

FIRST AMENDMENT TO AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE THE REGIONAL WIRELESS COOPERATIVE NETWORK

This First Amendment to the Amended and Restated Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the Regional Wireless Cooperative Network (the “First Amendment”) is made and entered into effective **January 1, 2019**, by and between the signatories hereto. Unless indicated otherwise herein, all capitalized terms used herein shall have the meaning ascribed to them in the Agreement.

RECITALS

A. WHEREAS, the Parties wish to amend the rules and policies governing the regulation and management of the RWC’s internal affairs, which rules are presently set forth in Exhibit A to the Agreement, by replacing said Exhibit A with the document attached as Exhibit A hereto; and

B. WHEREAS the Parties deem it appropriate to make several additional revisions to the body of the Agreement in order to accommodate the revision of Exhibit A;

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. REPLACEMENT OF GOVERNANCE DOCUMENT: Exhibit A to the Agreement is hereby deleted and replaced with the Regional Wireless Cooperative Governance Document attached as Exhibit A hereto.

2. ADDITIONAL REVISIONS TO THE AGREEMENT:

- a. The first sentence within the second paragraph of Section 4.4 of the Agreement is hereby deleted and replaced with the following: “The Parties agree that all damages, costs and expenses not specifically provided for in this Agreement shall be shared by the Parties in proportion to each Party’s share of the total number of Subscriber Units at the time the claim or lawsuit is first served on any Party or the unforeseen costs or expenses were incurred (whichever occurs first).”
- b. The fourth sentence within Section 4.8 of the Agreement is hereby deleted and replaced with the following: “The cost of any insurance and/or self-insurance provided under this section shall be shared by the Parties pursuant to Section 3.3.2 of Exhibit A.”

3. SURVIVAL OF AGREEMENT: The Agreement shall remain in force and effect pursuant to its terms, except as modified by this First Amendment.

[signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment effective as of the date set forth above.

For: _____

Date: _____

By: _____

Name of Signor: _____

ATTEST:

Clerk

APPROVED AS TO FORM and within the powers and authority granted under the laws of the State of Arizona:

City/Town Attorney

EXHIBIT A

(see following page)

REGIONAL WIRELESS COOPERATIVE GOVERNANCE DOCUMENT

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RECITALS

A. This Agreement establishes (1) an organizational and management structure for ongoing Network administration, planning, operation, and maintenance; and (2) a budgeting and accounting process to allocate costs among Members, Conditional Participants, Interoperability Participants, and Associates for the Network's operation and maintenance.

B. The Members further desire to provide a process for admitting other Public Safety Agencies and General Government Service Entities to join and participate in the RWC pursuant to terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS

The following terms when used herein shall have the meaning ascribed to them below. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require.

<u>Term</u>	<u>Definition</u>
Administrative Manager	The Member selected by the Board pursuant to Subsection 2.2 of this Agreement that is responsible for the RWC administration, day-to-day operations and financial management whose powers and duties are more specifically set forth in Subsection 2.3.1 of this Agreement.
Agreement	This governance document.
Alternate Representative	One or more persons who have been designated by a Member to serve as their substitute representative and as having the authority to act on the Member's behalf for RWC matters as more specifically set forth in Subsection 2.2.1 of this Agreement.
Applicable Law	Applicable federal, state, and local law and regulation (including but not limited to, for a Member, that Member's Charter and City Code).
Associate	A non-Member entity that is authorized by the Board to use the Network to support an existing Member pursuant to Subsection 2.1.1 of this Agreement.

Board of Directors ("Board")	The governing body of the RWC whose duties are more specifically set forth in Subsection 2.2.
Capital Project Fund(s)	One or more funds established for infrastructure replacements and enhancements pursuant to and as more specifically set forth in Subsection 3.3.2.3.
Claims	Claims and lawsuits, including claims, demands, losses, liability, damages, payments, judgments, costs, expenses (including but not limited to reasonable attorney's fees incurred through all appeals).
Conditional Participants	A non-Member entity authorized by the Board or the Executive Director to use the Network for special events, tactical situations, emergency circumstances, or for other purposes subject to the terms and conditions more specifically set forth in Subsection 2.1.3.
Encryption Services Manager	As authorized by the Board, an entity responsible for the management of encryption keys and process whose powers and duties are more specifically set forth in Subsection 2.3.4 of this Agreement.
Encryption Services Operator	As authorized by the Board, an entity responsible for executing the activities of the encryption management services over a specific area as more specifically set forth in Subsection 2.3.5.
Executive Committee	The RWC committee responsible for producing and/or evaluating RWC proposals and recommendations as necessary, prior to submission to the Board and the other responsibilities as more specifically set forth in Subsection 2.2.13.
Executive Director	The chief executive officer responsible for oversight of RWC and Network activities at the direction of the Board as more specifically set forth in Subsection 2.3.6.1.
Final Budget	The Final Budget adopted by the Board for each fiscal year as more specifically set forth in Subsection 3.2.
Fiscal Year	The twelve (12) month accounting period for budgeting and expenditure reporting that commences on the first day of July and ends on the thirtieth day of June, unless otherwise agreed to by the Board.

General Government Service Entities	All public sector entities or departments whose primary responsibility is providing residents with services other than Public Safety services.
General Government Personnel	All employees, contractors or other individuals that provide work for General Government Service Entities.
Good Standing	The status of a Member who is in full compliance with the terms and conditions of this Agreement.
IGA	That certain Amended and Restated Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain, and Finance the Regional Wireless Cooperative Network (City of Phoenix Contract No. 124822-001), including all amendments thereto
Impact Assessment	Evaluation of impacts to the Network and RWC Members resulting from additional or expanded use of the Network.
Interoperability	The ability of emergency responders to communicate among jurisdictions, disciplines, and levels of government, as needed and as authorized.
Interoperability Participant	A non-Member entity authorized by the Board to use the Network for the purpose of participating in intermittent interoperable situations or circumstances as more specifically set forth in Subsection 2.1.2.
Member	Any entity that executes and becomes a Party to this Agreement to plan, design, construct, operate, maintain, and finance the RWC Network as more specifically set forth in Subsection 2.1.
Member's Equity	The Member's proportionate share of RWC Capital Equity as more specifically set forth in Subsection 3.4.
Member Personal Property	A Member Personal Property including, without limitation, all frequency licenses, equipment, hardware, and software that the Member owns.
Member Real Property	A Member's real property, and fixtures thereto, including without limitation real estate, buildings, structures, towers, generators, HVAC, fire detection, and suppression systems that the Member owns.
Member Retained Property	The Member's Real Property and Member Personal Property that will continue to be owned by individual Members and not be included as part of the Member's Equity.

Network	The Public Safety and general government communications system that is planned, designed, constructed, operated, maintained, and financed by the RWC and its Members, including all real estate, real property, and personal property that is purchased, leased or licensed by the RWC or owned or licensed by a Member and which such Member allows the RWC to use.
Network Administrator	As authorized by the Board, the entity that is responsible for the technical operations of the Network and whose powers and duties are more specifically set forth in Subsection 2.3.2 of this Agreement.
Network Manager	As authorized by the Board, an entity responsible for providing operations and maintenance for a defined portion of the Network whose powers and duties are more specifically set forth in Subsection 2.3.3 of this Agreement.
Network Partner	Other governmental or other regional communication systems that have entered into a written agreement with the RWC but are not parties to this Agreement.
Network Resource Plan	A plan document that describes available network resources users can access to carry out their communications. This plan will be used to allocate and manage resources on the network, and in the development of radio programming templates.
Network Resource Priorities	The priorities assigned to Network resources pursuant to Section 7.4.4.1, (see Network Resource Plan) such as talkgroups or physical radio frequency channels to ensure the most urgent communications receive the highest priority in the network.
Network Services	Services provided by the RWC related to Talkgroups, feature sets, encryption usage, priorities, roaming, and any other services.
Network System	The collection of devices, software, hardware, technologies, facilities, towers or other devices or structures that provide RWC voice and data communications capability for the Network.
New Member Special Assessment	The special assessment a new RWC Member may be required to pay upon joining the RWC pursuant to Subsection 3.3.5.1.

Operating Fund Contingency Balance	A reserve of money set aside to cover unforeseen future expenses as set forth in Subsection 3.3.2.2.
Parties	Collective reference to all entities that are signatories to this Agreement.
Party	Any individual entity that is a signatory to this Agreement.
Public Safety	Public Safety refers to the welfare and protection of the general public typically performed by Public Safety Agencies.
Public Safety Agencies	All local, county, state, tribal community, and federal law enforcement agencies, fire and medical services, emergency management and disaster preparedness agencies whose purpose and function at least in part is to enhance or maintain Public Safety.
Regional Wireless Cooperative (“RWC”)	The cooperative that was formed by the Parties to jointly plan, design, construct, operate, maintain, and finance the Network; the operations of which cooperative are governed by the IGA and this Agreement.
Representative	The person designated by a Member to act on behalf of the Member on all matters concerning the RWC as more specifically set forth in Subsection 2.2.1 of this Agreement.
RWC Assets	The real and personal property that the RWC owns, leases or licenses; except for Member Retained Property.
RWC Capital Equity	(1) The amount paid for RWC capital additions, upgrades or replacements including real estate, real property, and other property purchased by the RWC; and (2) Capital contributed by Members to the RWC. It does not include Member Retained Property or fees paid by Members that are a Member’s share of operation and maintenance costs.
RWC Net Position	The total RWC Assets, minus RWC liabilities as reported in the RWC financial statements.
RWC Policies and Procedures	The policies and procedures that have been adopted by the Board.
Special Assessment	Fee assessed by the Board to pay the cost of projects, or unforeseen expenses as more specifically set forth in Subsection 3.3.3. Each Special Assessment may use a unique cost distribution method.
Subscriber Unit	Any device authorized for use on the Network.

Super-Majority	A vote of no less than eighty percent (80%) of the Board Members present as more specifically set forth in Subsection 2.2.11
Talkgroup	A defined organizational grouping of radio users who need to communicate with one another.
Technical Working Group	A working group consisting of Member technical and operational practitioners who meet to address Network Services, operation and maintenance issues, performance issues, Impact Assessments, and other Network technical matters as established by the Board pursuant to Subsection 2.2.12.
User Working Group	As established by the Board pursuant to Subsection 2.2.12, a group (such as fire fighters, police officers or General Government Personnel) that meets to: (1) discuss or provide operational or field input regarding RWC Network use and performance; (2) share knowledge and experience; (3) receive input from RWC department delegates, industry providers or RWC management (or RWC management designee); and (4) conduct other related activities.
Working Day	A calendar day other than Saturday, Sunday or a United States federal holiday.

2. RWC STRUCTURE

2.1. Members

The RWC shall be comprised of its Members. Each Member shall have one voting Representative on the Board.

2.1.1. Associates

An entity may become an Associate if the entity: (1) is under contract to or supports an existing Member that uses the Network to provide Public Safety or general government services and is authorized by the Board to use the Network; and (2) is compliant with the conditions as set forth by the Board, this Agreement, and any other applicable agreements. Associates have no RWC voting rights or representation on the Board or the Executive Committee, but may have a delegate on other RWC committees as authorized by the Board. The Administrative Manager may assess fees and costs, including “in kind” non-monetary compensation, to an Associate in an amount determined by the Board.

2.1.2. Interoperability Participants

An Interoperability Participant may use the Network for intermittent interoperable situations, if authorized by the Board, and subject to: (1) the conditions imposed by the Board; (2) this Agreement; and (3) any other applicable agreements. Interoperability Participants shall have no RWC voting rights or representation on the Board or any RWC committees. The Administrative Manager, subject to the Board’s approval, may assess fees and costs (including “in kind” compensation) against an Interoperability Participant in an amount determined by the Board.

2.1.3. Conditional Participants

As a Conditional Participant, a non-Member entity may use the Network for (1) special events; (2) tactical situations; (3) emergency circumstances; or (4) any other circumstances as authorized by the Board. Conditional Participants have no RWC voting rights or Representative to the Board, or any RWC committees. The Conditional Participant's use of the Network is subject to any conditions imposed by the Executive Director or the RWC Board, and such conditions may include, without limitation, assessment of fees and costs (including "in kind" non-monetary compensation) in an amount determined by the Board. Notwithstanding anything to the contrary in this Subsection 2.1.3, the Executive Director may authorize the addition of a Conditional Participant without first obtaining Board approval, but continuation of the Conditional Participant's Network use and any conditions imposed by the Executive Director must be approved or disapproved by the Board at their next meeting. The Conditional Participant's right to use the Network may be terminated by the Board at any time.

2.1.4. Network Partner

Subject to Board approval, the RWC may enter into individualized agreements with Network Partners to share infrastructure, expand coverage, manage costs, or for other purposes which advance the interests of Public Safety.

2.1.5. Member Admission and Approval

Any entity in the Network service and expansion area, as defined by the Board, may apply for RWC membership. The Board, at its sole and absolute discretion, may admit an applicant as a Member upon completion of all the following and by majority vote of the Members:

- The Applicant's written request for RWC Membership.
- The Applicant's executing an agreement with the RWC that specifies the fees and costs the applicant must pay the RWC pursuant to Subsection 2.1.5.1 of this Agreement.
- The Applicant meeting all conditions imposed by the Board and this Agreement.
- The Applicant executing and becoming a Party to this Agreement.

2.1.5.1. Evaluation Factors

The Board has the sole and absolute discretion to either summarily deny or consider applicants for Membership status. If the Board elects to consider an application, an Impact Assessment must be completed. The applicant will be responsible for any costs associated with the Impact Assessment unless the Board directs otherwise, whether or not the applicant becomes a Member.

After completion of the Impact Assessment, the Executive Director will forward the assessment to the Board for approval with a written recommendation that includes financial and Network operational impact statements.

The RWC will evaluate requests for new Membership using the Impact Assessment factors as referenced in the Board approved policies and procedures.

2.2. Board of Directors

The Board governs the RWC subject to this Agreement and the IGA. The Board establishes RWC policy, develops and maintains a long-range capital budget, develops and adopts an annual budget, establishes funding, assesses fees,

approves Membership, and exercises any other authorized powers and duties. The Board may exercise such other powers and duties as authorized under this Agreement. The Board must act only in accordance with this Agreement and all applicable laws.

The Administrative Manager will be as defined in a RWC Board resolution in conjunction with this Agreement. The Board must select an Administrative Manager, which will have powers and duties as listed under 2.3.1. Except as otherwise determined by the Board, the Administrative Manager will serve a four-year term unless the Administrative Manager resigns or is removed by the Board pursuant to a Super-Majority Board vote prior to expiration of such term. Upon resignation, removal or no later than six months prior to expiration of the Administrative Manager's term, an ad hoc group of three to five Board members appointed by the Board Chair will review and recommend one or more Administrative Manager candidates for consideration by the Board. Unless otherwise determined by the Board, the Administrative Manager must give at least twelve months' prior written notice to the RWC Board before resigning as Administrative Manager. The Administrative Manager may serve any number of successive terms and must be elected by a Super-Majority vote. Except as limited by this Agreement, the Board may delegate additional powers and duties to the Administrative Manager as necessary to assure cost effective and efficient delivery of services.

The initial Network Administrator will be as defined in a Board resolution in conjunction with this Agreement. The Board must select a Network Administrator, which shall have powers and duties as listed under 2.3.2. The same entity may serve as Administrative Manager and Network Administrator. Except as otherwise determined by the Board, the Network Administrator will serve a four-year term unless the Network Administrator resigns or is removed by the Board pursuant to a Super-Majority vote prior to expiration of such term. Upon resignation, termination or no later than six months prior to expiration of the Network Administrator's Term, an ad-hoc group of three to five Board members appointed by the Board Chair must review and recommend one or more Network Administrator candidates for consideration by the Board. Unless otherwise determined by the Board, the Network Administrator will give at least twelve months' prior written notice to the RWC Board before resigning as Network Administrator. The Network Administrator may serve any number of successive terms and must be elected by a Super-Majority vote.

2.2.1. Representatives

The Board will consist of Representatives of the Members (or their respective Alternate Representative(s), as set forth below). There will be one (1) Representative for each Member. The Board Representatives must be police chiefs, fire chiefs, chief information officers (CIO), chief financial officers (CFO), city managers, county managers, town managers, State of Arizona department directors, regional agency directors, or other positions with executive level decision-making authority. A Member must be in Good Standing before that Member's Representative may exercise a vote on any matter at a Board Meeting.

The following procedures and rules govern the appointment and service of a Member's Representative:

- A Member is entitled to appoint one person that meets the above criteria to serve as that Member's Representative.
- A Member may also appoint one or more persons that meet the above criteria to serve as an Alternate Representative.
- At least two business days before the first Board meeting following joining the RWC, each Member must have notified the Executive Director in writing of the person or persons who are authorized to serve as the Member's Representative or Alternate Representatives. Notwithstanding Section 9.9.1 of this Agreement, such notification may be made via email.

- The appointment of a Member's Representative or Alternate Representative becomes effective when the Executive Director receives the written notice and will continue thereafter until the Executive Director receives any contrary written instruction regarding the Member's Representative or Alternate Representatives.
- The Member must rank the Alternate Representatives in the order that they shall serve when the Representative is absent.
- If the Member's Representative is not present at a meeting, then the Member's Alternate Representative will act in place of and exercise all powers of the Representative.
- Each Member shall be bound by the acts of its Representative, and the RWC is authorized to rely on the act of a Representative the same as if such act were done by the governing body of the Member.
- The Representative or Alternate Representative must be vested with the authority to lawfully act on the Member's behalf with respect to the RWC.
- The Executive Director must maintain a list of the names and addresses of all Board Member Representatives and Alternate Representatives.

2.2.1.1. Removal or Replacement

A Member may replace or remove its Representative or Alternate Representative at any time by giving written notice to the Executive Director. The removal or replacement of a Representative or Alternate Representative is effective when the Executive Director receives the written notice of such removal or replacement.

2.2.2. Chair and Vice Chair

The Board must elect one of its Members as Chair. The Chair will be the presiding officer of the Board, must serve a two-year term, and remains a full voting Representative. The Chair cannot serve more than two consecutive terms.

The Board must elect one of its Representatives as Vice-Chair. The Vice-Chair must execute the duties of the Chair during the absence or disability of the Chair.

During the absence or disability of the Chair and Vice-Chair, the Board must elect a temporary presiding officer from the attending Board Members.

2.2.3. Meetings

The Board will meet quarterly except to the extent that the Board determines to meet more or less frequently.

2.2.4. Special Meetings

A Representative with approval of the Chair may call a special meeting of the Board upon a minimum of five (5) Working Days' notice to the Board. In the event of an emergency, a meeting may be scheduled and noticed with less than five (5) Working days' notice provided notice is given to the public and Representatives in compliance with Arizona Open Meetings Law.

2.2.5. Notice and Agenda

The Executive Director will prepare the notice, agenda and minutes of Board meetings. Notwithstanding anything to the contrary in this Agreement, a Member's representative may add an item to be considered by the Board to the agenda by providing written notice to the Chair and the Executive Director one-hundred twenty (120) hours before the meeting. In emergency situations items may be added no later than twenty-four (24) hours before the applicable

meeting, so as to ensure compliance with the Arizona Open Meetings law. The Executive Director must provide a Board meeting notice and agenda to each Member with at least as much notice as is required to the public under Arizona law. For any agenda item requiring Super-Majority approval, the Executive Director must specifically reference that such agenda item requires Super-Majority approval.

2.2.6. Quorum

A quorum is required to conduct Board business. To constitute a quorum, a majority of the total number of the Members' Representatives must be present.

2.2.7. Attendance

Unless the Board Chair otherwise directs upon prior notice, a Member Representative or Alternate Representative may attend and participate in a meeting in person, by teleconference or video-conference, if the possibility of such method of attendance is noted in the meeting notice.

2.2.8. Rules

The Board must establish rules for its proceedings. An item not specifically covered by the rules established by the Board or by law shall be decided by the meeting's presiding officer using the latest standard edition of Robert's Rules of Order.

2.2.9. Voting Methodology

Except as otherwise provided in this Subsection, each Member attending a meeting of the Board must vote on all matters to be decided by the Board at that meeting, unless the Representative has a good-faith reason to abstain from voting and has explained their reasoning to the Board. A Representative's voting rights will be suspended anytime the Member is not in Good Standing.

2.2.10. Voting

All matters will be decided by a vote of one vote per Member, per action item. The Board Chair and Vice Chair are voting members on all items. A vote must pass by the affirmative vote of a majority of the Representatives in attendance, except those matters requiring Super-Majority approval. In case of a tie in votes on any motion, the motion then fails.

2.2.11. Super-Majority Voting

The following items will require Super-Majority voting:

- Termination or withdrawal of a Member;
- Adjustments to the amount a Member pays as its proportionate share of Network operations and maintenance cost pursuant to Section 3.3.2 of this Agreement;
- Annual Budget Adoption;
- Approving capital projects;
- Awarding a contract in excess of 10% of the RWC's overall budget;

- Selecting or removing the Administrative Manager;
- Selecting or removing the Network Administrator;
- Selecting or removing the Executive Director; and
- Dissolving the RWC.

The Board may revise the foregoing list by a Super-Majority vote.

2.2.12. Advisory Committees

The Board will establish, and the Executive Director will facilitate, the following: the Executive Committee, the User Working Group(s), and the Technical Working Group. The Board or the Executive Director may establish additional advisory or ad hoc committees as needed. Unless otherwise determined by the Board, each advisory committee will choose a chairperson and vice-chairperson and will establish key performance indicators and rules for conducting meetings and representation. The Executive Director or designee must be a participant on each committee. The committees will coordinate all activities through the Executive Committee and, unless otherwise directed by the Board or the Executive Director, must meet at least quarterly and provide status reports based on key performance indicators and other committee activities to the Board at least annually.

2.2.13. Executive Committee

The Executive Committee's purpose is to: (1) provide the RWC high level expertise in communications and operations; (2) advise the Board; (3) help direct the Executive Director's efforts; and (4) provide the RWC intermediate strategic direction. Prior to submittal to the Board, the Executive Committee must review and approve proposals and recommendations, budget and financial reports, audits, Network performance reports, and Board meeting agendas. The Executive Committee will have the authority to return proposals and recommendations back to the originator for review and revision.

2.2.13.1. Representation

The Executive Committee will consist of no less than five (5) delegates nominated by any Member and appointed by the Executive Director. The Executive Director is an Executive Committee non-voting member. Delegates, selected from the RWC Membership, will be comprised of at least: one (1) Police Department executive; one (1) Fire Department executive; one (1) General Government Service Entity executive; one (1) Chief Information Officer (or equivalent); and one (1) executive from a Network Administrator. The Executive Committee must not have a majority of delegates from one Member unless otherwise determined by vote of the Board.

2.2.13.2. Chair and Vice Chair

The Executive Committee will elect one of the Representatives as Chair. The Chair will be the presiding officer of the Executive Committee and shall serve a two-year term. The Chair will not serve more than two consecutive terms.

The Executive Committee must elect one of the Representatives as Vice-Chair. The Vice-Chair will execute the duties of the Chair during the absence or disability of the Chair.

During the absence or disability of the Chair and Vice-Chair, the Executive Committee will elect a temporary presiding officer from the attending Executive Committee Representatives.

2.2.13.3. Meetings

The Executive Committee will meet quarterly except to the extent that the Executive Committee determines to meet more or less frequently.

2.2.13.4. Special Meetings

A Committee Member with approval of the Chair may call a special meeting of the Executive Committee upon a minimum of five (5) Working days' notice to the other Committee Members. In the event of an emergency, a meeting may be scheduled and noticed with less than five (5) Working Days' notice provided notice is given to the Committee Members and the public in compliance with Arizona Open Meetings Law and a quorum is present.

2.2.13.5. Quorum

A quorum is required to conduct business. To constitute a quorum, a majority of the total number of the Executive Committee's Representatives must be present.

2.2.13.6. Attendance

Unless the Board Chair otherwise directs upon prior notice, an Executive Committee Representative may attend and participate in a meeting in person, by teleconference, or by video-conference, if the possibility of such method of attendance is set forth in the meeting notice.

2.3. Administrative Management

2.3.1. Administrative Manager

The Administrative Manager is responsible for day-to-day RWC administrative responsibilities that include, but are not limited to: (1) procuring resources, materials, and services; (2) establishing functions such as accounting, budgeting, contracting, purchasing, and inventory; (3) providing reports; and (4) performing other duties as assigned, and identified in the Board-approved RWC Policies and Procedures. The Administrative Manager will be reimbursed by the Members for all costs incurred as a result of performing its responsibilities.

2.3.2. Network Administrator

The Network Administrator is responsible for network operations, planning, monitoring, optimization, management, coordination, technical implementation and other duties as assigned, and identified in the Board-approved RWC Policies and Procedures.

2.3.3. Network Manager(s)

A Network Manager is responsible for: (1) the day-to-day operations and maintenance of an assigned portion of the RWC Network to comply with policies, procedures, and performance standards; and (2) performing other duties as assigned, and identified in the Board-approved RWC Policies and Procedures.

2.3.4. Encryption Services Manager

The Encryption Services Manager is responsible for managing encryption keys and process, and performing other duties as assigned by the Board or as identified in the Board-approved RWC Policies and Procedures.

2.3.5. Encryption Services Operator(s)

The Encryption Services Operator is responsible for performing encryption management services as delegated by the Encryption Services Manager and performing other duties as assigned by the Board, or as identified in the Board-approved RWC Policies and Procedures.

2.3.6. Executive Director

2.3.6.1. Responsibilities

The Executive Director will report to the Board and serve as a non-voting member of the Executive Committee. The Executive Director has day-to-day RWC administrative responsibilities that include, but are not limited to: (1) coordinating efforts of the Board, Executive Committee and advisory group delegates; (2) preparing and maintaining meeting notices, agendas and minutes; (3) managing the overall RWC administrative organizational structure and staffing; (4) maintaining the RWC Policies and Procedures in coordination with the Executive Committee and Board; (5) providing reports; and (6) performing other duties as assigned and identified in the Board-approved RWC Policies and Procedures.

2.3.6.2. Executive Director Selection

The Board Chair will appoint a committee of at least three Members with the assistance of the Administrative Manager, to recommend an Executive Director to perform RWC administrative duties. The Board shall vote to either approve or not approve such Executive Director recommendation. The Executive Director will serve until he or she resigns or is removed by the Board.

3. FINANCIAL MANAGEMENT

3.1. General

The Administrative Manager, acting through the Executive Director, is responsible for all RWC financial management responsibilities including, but not limited to, fund management, budget development, rates and fees, Member billing, vendor invoicing, procurement, financial reporting, grant management, and financial audits.

The Administrative Manager is responsible for the preparation and fair presentation of the RWC financial statements in accordance with generally accepted accounting principles (“GAAP”) in the United States of America as applied to governmental units; this includes the design, implementation, and maintenance of budgets, accounting records, and internal controls.

The Board of Directors must develop a fee structure to ensure adequate resources are available to support operations and maintenance and any needed capital improvements. The Board of Directors will annually review the fee structure as part of its annual budget adoption and at any other times that the Board deems necessary.

Each year, the Board of Directors must approve an annual budget. The budget will consist of the following accounts; (1) operations and maintenance; (2) capital; and (3) any other accounts determined by the Board.

3.2. Budget and Financial Planning and Reporting

No later than November 30th of each year, unless the Board of Directors directs a different date, the Executive Director in cooperation with the Administrative Manager must prepare and present to the Executive Committee, a (1)

preliminary budget for the subsequent Fiscal Year, (2) a five-year financial forecast (“FYFF”), and (3) fund balance reports (“FBR”). Unless the Board of Directors otherwise directs a different approval date by Super-Majority Vote, no later than December 31st of each year, the Board must approve, (1) the Final Budget for the subsequent Fiscal Year; (2) a FYFF; and (3) FBR. The Final Budget must include all funding sources, operational and maintenance costs, as well as planned capital costs for the upcoming year. The FYFF must include operational and maintenance costs, capital costs, and fund balance for the five (5) years following the Final Budget period. The FYFF will be used to prepare annual budgets for future years. After presentation to the Executive Committee, the proposed Final Budget, FYFF, FBR, and presentation of significant issues and financial assumptions shall be forwarded to the Board for approval. The budget approved by the Board must be the basis for developing the Member Fee (defined in Section 3.3.2 below). A copy of the adopted budget must be made available (1) for access by the public and (2) to each Member.

After the end of each Fiscal Year, the Executive Director must submit to the Executive Committee and Board a summary of financial activity, including a comparison of budgeted expenditures to actual expenditures.

3.3. Funding

3.3.1. General.

The Members will fund the RWC through annual fees, Special Assessments, and grants, as determined by the Board. Members will advance funds to the Administrative Manager on a quarterly basis upon receipt of an invoice. Payment of all invoices is due forty-five (45) days from the invoice date. A late payment charge on the current unpaid amount and any past due late fees will be assessed at the rate of one percent (1%) per month. Interest collected will be deposited into the appropriate RWC fund to be used to offset operating, maintenance or project costs.

In the event a Member disputes a billed amount, it must do so in writing to the Executive Director and must specify the reason upon which the protest is based within forty-five (45) days after service of an invoice or receipt of fiscal year-end reconciliation. The Member must pay the disputed amount, but may do so under protest. After the protest has been filed and the disputed amount has been paid, the dispute must be handled in accordance with the dispute resolution terms and conditions outlined in Section 9.3. of this agreement.

If a Member withdraws from the Network, that Member will be responsible for all unpaid fees and entitled to any fee refunds applicable for time of the Member’s Membership.

It shall be the responsibility of each Member to bill and collect from its individual departments and divisions all charges as are required in the payment of the amounts due under this Agreement.

It will be the responsibility of each Party to this Agreement to take the appropriate steps in conformity with state or local laws to ensure that it appropriates sufficient funds to cover the obligations it assumes under this Agreement. Each Party recognizes that the performance by the Parties under this Agreement may be dependent upon the appropriation of funds to or by that Party. Should any Party fail to appropriate the necessary funds, or default on payments to the RWC, the Board may require that party to immediately withdraw from this Agreement on the last day of the fiscal period for which funds are legally available. Notwithstanding Section 9.4 or anything to the contrary in this Agreement, subject to Board approval, the RWC shall retain use of such portion of the Member’s Real Property and Member Personal Property as the Board determines is necessary to the continued functioning of the network; however, the Board must endeavor to procure a satisfactory replacement for such property. Each Party agrees to give notice to the other Parties as soon as reasonably possible after the unavailability of funds comes to the Party’s attention. Except as otherwise provided in this Section 3.3.1, the ownership of personal property and real property that is used in the Network shall be governed by Section 4 of this Agreement.

3.3.2. Member Fees, Payments, Allocations

Each Member agrees to pay fees assessed on a quarterly basis unless otherwise directed by the Board. Invoices are sent by the Administrative Manager in the months of July, October, January, and April of each year (“Member Fee”) to cover the cost of RWC administrative services (“RWC Administrative Services”) including allocated insurance premiums, self-insurance costs, costs of Claims, contingencies, Network operations and maintenance services, and capital projects, and other appropriate fees as set forth in the annual budget adopted by the Board. The Administrative Manager will deposit each Member’s Member Fee into an account as designated by the Board that must only be used for RWC purposes. The Administrative Manager will draw down the actual costs incurred and report to the Members at least quarterly regarding withdrawals from such account. The Administrative Manager may change the method of payment for the Member Fee subject to the Board’s approval. The Member Fee is intended to fund the Board approved operations and maintenance budget for the current Fiscal Year in addition to the amount approved by the Board for the subsequent year’s infrastructure replacement and enhancement projects.

The prorated portion of the Member Fee that is intended to fund capital projects shall increase RWC Capital Equity, as established under Subsection 3.4, only to the extent that funds are deposited in the Capital Project Fund(s) as described in Subsection 3.3.2.3.

Notwithstanding the provisions of this Subsection 3.3.2 and Subsection 3.3.2.3, the Board upon Super-Majority Vote may adjust the amount a Member pays as its Member Fee. The Member Fee for such Member may be adjusted if the Board reasonably finds factors or circumstances are such that the formula used to determine the amount such Member pays for its Member Fee results in an unfair or inequitable assessment to that Member or to the other Members.

3.3.2.1. RWC Operating Fund

The portion of the Member Fee assessed by the Board and collected by the Administrative Manager to cover the cost of RWC Administrative Services, operations and maintenance, and contingency, will be deposited in the RWC Operating Fund.

3.3.2.2. Operating Fund Contingency Balance

The Board will establish and maintain an operating Fund Contingency Balance. The Board will maintain an Operating Fund Contingency Balance equal to twelve and one half percent (12.5%) of yearly budgeted total operation and maintenance costs or as otherwise determined by the Board. The Operating Fund Contingency Balance initially will be established semi-annually in the first year and maintained annually thereafter. The Board will establish the method for determining each Member’s financial obligation to the Operating Fund Contingency Balance. The use of the Operating Fund Contingency Balance must be approved by the Board.

3.3.2.2.1. Operating Fund Settlement

After the end of each Fiscal Year, the Executive Director must prepare the RWC Operating Fund settlement statement by comparing fees assessed to actual expenditures paid. Each year, the Board must approve the distribution method for year-end reconciliation.

3.3.2.3. Capital Project Fund(s)

The Administrative Manager will deposit into the Capital Project Fund(s) the portion of the Member Fee assessed and collected to cover Board approved infrastructure replacements and enhancements and to maintain the minimum

Capital Project Fund(s) balance. Subsidiary records for each Member will be maintained. Interest or interest expense will be applied monthly to each subsidiary account based on the average daily balance during the month. The interest rate applied will be the rate earned in the Administrative Manager's pooled cash account.

3.3.2.3.1. Minimum Balance

The Board may establish a minimum balance for the Capital Project Fund(s) contingency for the following fiscal year by September 30th of each year. Should the Board not establish a new minimum balance for the following fiscal year by September 30th, the then-current minimum balance shall remain in effect for the following fiscal year.

3.3.2.3.2. Approved Uses

The Capital Project Fund(s) must be used only for infrastructure replacements and enhancements approved by the Board except in the event of a major failure, disaster or force majeure event that necessitates immediate action to restore the Network to operating condition. In such cases, the Executive Director is authorized to expend funds without first obtaining Board approval. The Executive Director will report to the Board at the next Board meeting the funds that were expended for ratification of the expenditure and Special Assessment, if necessary. The Administrative Manager will not expend funds that will cause the Capital Project Fund(s) to be in a deficit position at any time.

3.3.3. Special Assessments

The Board may assess other fees on an as needed basis to: (1) pay the costs of unplanned projects such as disaster recovery, certain extraordinary claims or lawsuits; (2) pay the costs for uninsured casualty losses, regulatory fines or insurance deductibles; (3) pay for the use of the Network by an Interoperability Participant, Conditional Participant, Network Partner or Associate; or (4) pay the costs of special projects or system changes, replacements and/or expansions not previously included in the budget. Such changes may not benefit all Members in a proportionate manner. The Board may assess fees proportionately or individually and such fees need not be equal among Members. The Administrative Manager will deposit such fees collected as a Special Assessment into a special revenue fund.

3.3.4. Project Settlements

On an annual basis and also after the project is completed, the Administrative Manager will prepare the project's subsidiary account reconciliation statement by comparing fees assessed and paid to actual expenditures paid. If such reconciliation shows actual expenditures exceeded fees assessed and paid, the Administrative Manager will bill the applicable Member(s) for an amount sufficient to cover the shortage. After project completion, if the reconciliation shows expenditures are less than the fees assessed and paid, the Administrative Manager must either refund the unused fees or apply a credit to the appropriate Member(s) account(s). When more than one Member is funding a project, the Administrative Manager will transmit to each Member billings and refunds in accordance with the Board approved funding plan for the project.

3.3.5. Applicant Impact Assessment Fee

The RWC may require an Applicant to pay an Impact Assessment Fee to cover the cost of developing an Impact Assessment that addresses the Applicant's request for RWC membership and the Applicant's potential effect on the existing RWC infrastructure and the Members.

3.3.5.1. New Member Special Assessment

The Board may require a new Member to pay a one-time Special Assessment in an amount up to the full cost associated with providing services to the new Member. The New Member Special Assessment may include the cost to

provide service to the new Member's Subscriber Units, Network infrastructure investment necessary to increase Network capacity, and other costs deemed necessary to ensure existing Members receive the same services and benefits they received before the new Member joined the Network. The New Member Special Assessment shall be paid in accordance with the terms and conditions established by the Board.

3.3.5.2. Existing Member Capacity and Coverage Upgrade

If any existing Member(s) make a request for a capacity, coverage and/or performance change or upgrade that is expected to impact the Network coverage, capacity and/or performance of other Members, the Board may require such existing Member(s) to pay a Special Assessment to cover the cost of an Impact Assessment. The Technical Working Group will provide an analysis and recommendation regarding the existing Member's request for a capacity, coverage and/or performance upgrade and forward the information to the Executive Committee for review and recommendation to the Board for final approval.

3.3.6. Grants

The Administrative Manager may proceed to obtain grant funding on behalf of the RWC with approval of the Board. Any matching funds required by a grant towards a Network wide project will be assessed to the Members based on an appropriate allocation method determined by the Board.

3.4. RWC Capital Equity

RWC Capital Equity and each Member's Equity will be recalculated when: (1) A Member contributes assets to the RWC; or (2) an enhancement, expansion or replacement is completed by the RWC.

At Fiscal Year-end after each Member's payments into the Capital Project Fund(s) are applied, actual expenditures are allocated against each Member's account, and interest is applied to each Member's cash balance.

If a Member brings assets to the RWC and the Board accepts the assets on behalf of the RWC, the Member's Equity will increase based on the value of the assets at the time of transfer to the RWC, as agreed upon by the contributing Member and the Administrative Managing Member. Assets that are individually owned, as permitted in Section 4 of this Agreement, will not be counted as part of the RWC Net Position, and the Member(s) owning those assets shall not receive credit towards equity in the Network until those assets become part of the RWC as described in Section 4.3 of this Agreement.

3.5. Annual Audit

RWC financial records will be independently audited annually. The Board will determine the scope of work for the independent annual financial audit.

4. RWC ASSETS, MAINTENANCE, AND OWNERSHIP

4.1. Member's Retention of Assets.

4.1.1. Real Property

Each Member shall retain (as Member Retained Property) any and all right, title and interest in the Member Real Property that the Member authorizes or allows the RWC to use as part of the Network unless such Member Real Property is transferred to the RWC as provided in Section 4.3 below, which real property after such transfer shall become RWC Capital Equity and shall be credited to the Member's Equity. Such Member Retained (Real) Property may

be disposed of by the Member only if such disposal does not adversely affect the Network, and provided such disposal is approved by the Board as set forth in Section 4.4 below. The RWC may replace any Member Real Property that was used by, but not transferred to, the RWC, upon Board approval and notice to the contributing Member, and such Member Real Property shall no longer be encumbered by this Agreement.

4.1.2. Personal Property

Each Member will retain any and all right, title and interest in its Member Personal Property that is used by the RWC in connection with the Network, where desired by such Member. Such Member Retained (Personal) Property may be disposed of by the Member only if such disposal does not adversely affect the Network, and provided such disposal is approved by the Board as set forth in Section 4.4 below. The RWC may replace personal property that was solely owned by a Member and used by the RWC, but not transferred to the RWC, upon Board approval and notice to the contributing Member, and such Member Personal Property shall no longer be encumbered by this Agreement.

4.2. RWC's Maintenance of Member Real Property and Member Personal Property

The Member and the RWC must enter into an agreement regarding the conditions concerning the Network's use and maintenance of the Member's Real Property and Member Personal Property. Otherwise, each Member is responsible for the cost of maintaining its Member Real Property (including fixtures thereto) and Member Personal Property that are made part of the Network, to the extent necessary to maintain the operational integrity and capacity necessary to operate the Network. Each Member agrees that it will make all reasonable arrangements necessary to allow the Administrative Manager, Network Administrator, or Network Manager reasonable access to that Member's Real Property and Member Personal Property that are part of the Network for the purposes of inspecting, operating, and maintaining the Network. Unless otherwise provided by agreement, prior to exercising the right of inspection provided by this section, the Administrative Manager, Network Administrator, or Network Manager must give the Member whose property is to be inspected reasonable notice under the circumstances then existing.

4.3. RWC Acquired Real and Personal Property

All real and personal property purchased by and on behalf of the RWC will be included in the RWC Capital Equity. The Board must approve any transfer of real or personal property by a Member to the RWC. Any real or personal property purchased by or on behalf of the RWC shall be considered RWC Assets and shall be held for the benefit of the Members. The future maintenance, upgrade, replacement or incurred expenses of any transferred real or personal property become the sole responsibility of the RWC. Each Member's equitable ownership interest in the RWC Assets will be proportionate to the amount of its Member's Equity. The Members agree that any real or personal property jointly purchased for the RWC's benefit or transferred to the RWC by a Member will be titled and held in the name of the Administrative Manager, even though all financially contributing Members to the purchase of such property shall actually own a percentage share in such real or personal property, as set forth above.

4.4. Sale or Removal of Real and Personal Property Owned by or Used by the RWC in Connection with the Network

Unless delegated by the Board to the Administrative Manager, the Board will determine whether to approve the sale or disposal of any RWC owned Network real or personal property. In the event of a sale, the Members shall share in the proceeds, considerations or benefits, if any, from the sale in proportion to Members' Equity at the time of sale. If the Board elects to dispose of RWC Assets that formerly were Member Real Property or Member Personal Property,

such disposal shall not occur until the contributing Member is given a reasonable opportunity to pay the fair market value, or make other Board-approved arrangement, to re-acquire the property.

4.5. Liens on Real or Personal Property Used in connection with the Network

If any obligations of a Member issued to finance any real or personal property made a part of the Network are secured by any right, title, interest or lien in or upon such property (a "Finance Lien"), the rights of the RWC and the Members in and to such property, including the rights to use such property as part of the Network, will at all times be subordinate and subject to such Finance Lien and the rights of the holder or holders of such Finance Lien. If such financing was obtained after the RWC was given the right to use the Member's Real Property or Member Personal Property, then the terms and conditions of such financing shall provide RWC the reasonable opportunity to cure any default or non-appropriation to allow the RWC and its Members continued Network use of such Member Real Property or Member Personal Property.

4.6. Actions Must Preserve Tax Exempt Status of Obligations.

Neither the RWC nor any Member will take or fail to take any action with respect to the use and operation of the Network that would adversely affect the tax-exempt or tax-advantaged status of any obligations issued by any Member to finance any real or personal property that is part of the Network. Without limiting the foregoing, neither the RWC nor any Member will permit any private business use of the Network where such private business use would cause any Member's obligations to lose tax exempt or tax advantaged status under the Internal Revenue Code, as amended.

5. INSURANCE

5.1. Real Property

Each Member is responsible to insure at appropriate and sufficient coverage levels its Member's Real Property, including fixtures thereto. Each Member that has licensed real property, including fixtures thereto, to be used in connection with the RWC Network is responsible to insure such property according to the terms of the license agreement and at appropriate and sufficient coverage levels.

The Administrative Manager is responsible to insure real property cooperatively purchased or licensed for the benefit of the RWC as directed and at coverage levels approved by the Board. The Administrative Manager also is responsible for insuring, as directed and at coverage levels approved by the Board, all real property used in connection with the Network and that a Member has transferred ownership of to the RWC under this Agreement. Neither the Board nor the Administrative Manager shall be responsible for a loss involving Member Real Property.

5.2. Personal Property

Each Member is responsible to insure at appropriate and sufficient coverage levels its Member Personal Property titled in its own name. Each Member that has leased or licensed personal property to be used in connection with the RWC Network is responsible to insure the leased or licensed personal property according to the terms of the lease or license and at appropriate and sufficient coverage levels.

The Administrative Manager is responsible to insure personal property cooperatively purchased or leased for the benefit of the RWC as directed and at coverage levels approved by the Board. The Administrative Manager is

responsible for insuring, as directed and at coverage levels approved by the Board, all personal property used in connection with the Network and that a Member has transferred ownership to the RWC under this Agreement. Notwithstanding the foregoing, however, any and all personal property that is purchased or owned exclusively by a Member and brought into the Network by that Member must be insured by such Member at appropriate and sufficient coverage levels. Neither the Board nor the Administrative Manager shall be responsible for a loss involving Member Personal Property.

5.3. Liability Insurance; Indemnification

Each Party understands and acknowledges that any Claim may be filed for damages resulting from acts or omissions in connection with planning, designing, constructing, operating, maintaining, and financing the Network or that other unforeseen costs and expenses may be incurred in connection with the planning, designing, constructing, operating, maintaining and financing the Network. The Parties agree that except to the extent this Agreement provides otherwise, a Claim will be shared by the Parties in proportion to each Party's share of the total number of Subscriber Units at the time the Claim is first served on the RWC or any Party. Each Party must promptly notify the Board and the Administrative Manager upon receipt of any Claim relating to the Network. The Administrative Manager will take the lead role on behalf of the RWC in coordinating the investigation and defense of any Claim made in connection with planning, designing, constructing, operating, maintaining or financing the Network; provided, however, that the Members must reimburse the Administrative Manager for all damages, costs and expenses of whatever kind (including but not limited to attorneys' fees and litigation expenses) incurred by the Administrative Manager as a result of such obligation. Nothing in this section will preclude any Party, at its expense, from providing its own legal counsel in connection with any Claim made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Each Member is responsible to insure its liability relating to its RWC membership or liability that is not assumed by the RWC under this Agreement. With regard to any Claim arising out of or relating to the ownership or maintenance of Member Retained Property, such Member (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Members (as "Indemnitees") for, from, and against any Claim, but only to the extent that such Claim results in vicarious/derivative liability to the Indemnitees and are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The RWC, Board, Executive Director, Administrative Manager, Network Administrator, Network Manager, and Encryption Manager will not be liable for any Claim arising out of, based upon or attributable to any other Member's failure or omission in effecting or maintaining adequate insurance on its Member Retained Property.

The Board will authorize appropriate RWC insurance coverage to protect RWC from risks and potential liability under this Agreement and in connection with planning, designing, constructing, operating, maintaining or financing the Network. The Board will direct the Administrative Manager to obtain such insurance on behalf of the RWC. In deciding what insurance coverage and indemnities are appropriate, the Board may elect to self-insure for all or a portion of the risks.

5.4. Insurance Programs

The RWC, Board, individual Members and the Administrative Manager may use any combination of insurance, excess insurance or self-insurance to satisfy the terms of Section 5.

6. OPERATIONAL CONTROL AND DUTIES (PROGRAMMING AND CAPABILITIES)

6.1. Network Systems

The Network Administrator will program, maintain, and manage all Network systems in a manner consistent with maximizing the operational performance and minimizing the loss or corruption of data. The Network Administrator is responsible for RWC Network systems' programming, maintenance, backup and archiving.

6.2. Policies and Procedures

Unless otherwise specified by the Board, the Executive Director will develop and maintain the RWC Policies and Procedures in coordination with the Executive Committee. At a minimum, the Executive Director must review all RWC Policies and Procedures every two years. Revisions to the RWC Policies and Procedures must be approved by the Board. The Executive Director may consider specific revisions at any time upon request by any Representative or Alternate Representative, and may set such requests as a future agenda item for consideration and approval by the Board.

7. SERVICES

7.1. Network Use, Programming and Reprogramming, Encryption

When using the Network each Member, Associate, Interoperability Participant, and Conditional Participant will abide by all policies, procedures and guidelines established by the RWC and the terms and conditions of all applicable agreements including, without limitation, this Agreement.

7.2. Interoperability

The RWC will support interoperability among all Members, Associates, Conditional and Interoperability Participants. The RWC will follow the National Incident Management System (NIMS) protocols for interoperable communications.

7.3. Training

Each Member, Associate, Conditional and Interoperability Participant must ensure that its users are properly trained on the Network capabilities, policies and procedures.

7.4. Requests for Service

7.4.1. Routine Service

The Technical Working Group, subject to Board approval, will establish policies and procedures relating to Network Services.

7.4.2. Expanded Service

Members requiring or desiring expanded Network Services that may impact the Network must submit these requests in writing to the Executive Director. Examples of such expanded services include, without limitation, requests to: (1) add sites to the Network; (2) to increase system performance or coverage; or (3) to implement a Network upgrade in order to receive a new feature. Criteria for expanded services will be evaluated by the process set forth in 2.1.5.1. Such services shall be approved, if at all, by the Board.

7.4.3. Emergency Service

The policies and procedures for Network Services must address emergency situations, tactical response to such emergencies, and the decision making authority for such emergencies. The policies and procedures must include

notification requirements. Notwithstanding anything to the contrary in this Section 7.4.3, the Executive Director at all times has the authority to provide access to the Network in emergency situations.

7.4.4. Network Resources

Unless otherwise directed by the Board, the Network Administrator in coordination with the Technical Working Group establishes and approves all Network Resource Plans. These plans are used to develop the radio programming files.

7.4.4.1. Network Resource Priorities

Unless otherwise directed by the Board, the User Working Groups must establish priority levels for the individual Network Resource Priorities. In general, Network Resource Priorities are assigned highest to lowest as follows: (1) emergency calls; (2) Public Safety calls; and (3) General Government Service Entities' calls.

8. MAINTENANCE

8.1. Subscriber Unit Maintenance and Repair Responsibility

Each Member, Associate, Interoperability Participant, and Conditional Participant is solely responsible for the maintenance and repair of its Subscriber Units.

9. GENERAL PROVISIONS

9.1. Limitations

No RWC Board Member will be liable to the RWC for monetary damages for any action taken or any failure to take action as a Board Member. To the extent permitted by Applicable Law, the RWC will indemnify any director, officer, Executive Director, Administrative Manager, Network Administrator, Network Manager, Encryption Manager, Encryption Service Operator, Member, Representative, or Alternate Representative (each an "Indemnified Party", and collectively the "Indemnified Parties") from any liability or expense sought or imposed because such person is made party to a proceeding because he/she is a director, officer, Executive Director, Administrative Manager, Member, Representative, or Alternate Representative of the RWC. No Indemnified Party will be personally liable to the RWC or its Members for monetary damages for breach of fiduciary duty as a director, officer, Executive Director, Administrative Manager, Representative, or Alternate Representative. The limitation of liability provided herein will continue after the Indemnified Party has ceased to occupy such position as to acts or omissions occurring during such director's term or terms of office, and no amendment or repeal of this Section 9.1 will apply to or have any effect on the liability or alleged liability of any Indemnified Party for or with respect to any acts or omissions of such Indemnified Party occurring prior to such amendment or repeal. Notwithstanding the foregoing, the provisions of this Section 9.1 are expressly subject to, and shall not be interpreted in a manner that would conflict with or cause violation of, Applicable Law.

9.2. Dissolution

If the Board determines that it is not feasible or desirable to continue the RWC activities, then, after complying with applicable federal or state dissolution procedures, assets of the RWC will be returned to the Members in proportion to their RWC Capital Equity.

9.3. Conflict Resolution

9.3.1. Mediation

If a complaint, dispute or controversy (hereinafter complaint) arises between any of the Parties to this Agreement, it is hereby agreed that the complaint will be brought to the Board for non-binding conflict resolution. The Board will have the authority to establish appropriate and reasonably prompt procedures to govern the processing of all complaints and an internal conflict resolution process.

The Parties agree that, at any point in the conflict resolution process, the Board may adopt and impose an interim emergency remedy to ensure the continuation of essential communication services until the matter is resolved.

9.3.2. Injunctive Relief

Nothing in this Agreement will prohibit any Party from seeking injunctive relief for the preservation of property. In the event any of the conflict resolution procedures are ruled unlawful or made unlawful by statute, the other terms of this Agreement are declared separate and severable and will remain in full force and effect.

9.3.3. Arbitration

In the event a dispute is not resolved pursuant to Section 9.3.1 of this Agreement, the Parties agree to use arbitration if arbitration is required by A.R.S. § 12-133 or A.R.S. § 12-1518.

9.3.4. Cooperation

9.3.4.1. Generally

The Parties agree to make, sign and deliver all documents and to perform all acts that are necessary to fully carry out the terms of this Agreement. Each of the Parties will fully cooperate with and assist one another in obtaining all licenses, permits, authorizations, approvals, and consents required in the performance of this Agreement. Nothing in this Agreement will be construed or interpreted to require the RWC to be responsible for dispatching or otherwise causing its Members to respond to an event within another Member's jurisdiction.

9.3.4.2. Specific Performance

RWC may elect and will have the right to seek specific performance by any Party of any or all of the obligations set forth in this Agreement. The Parties agree that RWC may seek specific performance by way of special action filed in superior court seeking an injunction ordering the Party to perform its obligations under this Agreement. The Parties agree not to raise as a defense the position that there is an "adequate remedy at law." If RWC seeks specific performance, the Parties hereby stipulate and consent to the jurisdiction of the superior court in any such special action.

9.4. Termination or Withdrawal

Subject to Section 3.3.1 above, any Member may voluntarily terminate its participation in the RWC (i) by providing twenty-four (24) months written notice to the Board or (ii) by providing prompt notice in the event the Member's governing body fails to appropriate sufficient funds for the Member to continue its RWC membership; in either case provided that the terminating Member: (a) relinquishes all Network equipment purchased or partially purchased by the RWC; (b) transfers or relinquishes any unexpended RWC accounts which have been collected for the replacement

or expansion of equipment or infrastructure; (c) pays all fees and charges owed to the RWC up to and through the effective date of termination; (d) agrees to pay for all costs to effect the withdrawal of the Member, including costs to reconfigure the Network for the remaining Members, and (e) agrees to such additional or alternative terms and conditions as may be unanimously established by all Parties, including the terminating Member.

9.5. Amendments to the Agreement

Any Member may propose an amendment or an addendum to this Agreement to the Executive Director. The Executive Director will make a recommendation to the Board. The Board must vote on any amendments or addendums brought to it by the Executive Director. This Agreement may be recommended for amendment to the Parties' respective governing bodies only by a written document approved and executed after a Super-Majority vote of the Members. Upon a Super-Majority vote of the Members, each Member will take appropriate steps in conformity with state and local law to authorize and approve the proposed amendment or addendum. Each Member must file a copy of the appropriate resolution, ordinance or other recorded action by which its legislative or governing body approved the amendment with the Executive Director of the RWC. No such amendment shall be effective until approved by the governing bodies of the Parties to this Agreement.

9.6. Entire Agreement

This Agreement, together with the IGA, contains the entire agreement and understanding among the Parties concerning the subject hereof and supersedes and replaces all prior negotiations, agreements and proposed agreements, written or oral, relating thereto. Each of the Parties hereto acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained herein concerning the subject matter hereof, to induce it to execute this Agreement and acknowledges that this Agreement has not been executed in reliance on any promise, representation or warranty not contained herein.

9.7. Existing and Future Agreements.

9.7.1. Incorporation in Future Agreements

The Parties agree that the provisions of this Agreement will be incorporated in any future subcontracts between the RWC, the Parties and any other person, political subdivision or public agency that contracts with RWC or any Party to make use of the Network.

9.7.2. No Subcontracts for Network Use without Board Approval

The Parties agree that they will not enter into subcontracts for the use of the Network without the prior approval of the Board, which will have the authority to review the subcontracts for conformity with the rights and obligations set forth in this Agreement.

9.7.3. Modification of Existing Network Contracts between any of the Parties

The Parties agree that this Agreement is a modification of all existing governance agreements between the Parties in regard to the Network. In the event of any conflict, inconsistency, or incongruity between the provisions of this Agreement and any of the provisions of any previous agreement between the Parties, the provisions of this Agreement shall in all respects govern and control.

9.7.4. Interpretation

Nothing in this Agreement shall be construed or interpreted:

9.7.4.1.1. To supersede any non-network-related contracts such as existing mutual aid agreements or radio support agreements between or among the Parties.

9.7.4.1.2. To prohibit a Party from entering into separate agreements after the Effective Date of this Agreement concerning Member Real Property and Member Personal Property that the Party authorizes and allows the RWC to use as part of the Network, provided the separate agreements are consistent with this Agreement and compatible with the RWC's use of the property for the Network.

9.7.4.1.3. To supersede prior existing agreements concerning a Member Real Property or Member Personal Property that the Party authorizes and allows the RWC to use as part of the Network.

9.7.5. No Third Party Beneficiary

This Agreement is entered into for the sole and exclusive benefit of the Parties, and no other person shall claim any implied right, benefit or interest in this Agreement. The Parties do not intend to create rights in or remedies to any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established under this Agreement.

9.8. Records; Confidentiality

9.8.1. RWC Records

The RWC will make its financial records regarding the planning, designing, constructing, operating, maintaining and financing the Network available to any Party to this Agreement. Such request for inspection must not be made more frequently than once a month.

9.8.2. Party's Network Records

Each Party to this Agreement agrees to make available to the RWC its financial records related to planning, designing, constructing, operating, maintaining, and financing the Network. Such request for inspection may not be made more frequently than once a month.

9.8.3. Confidentiality of Network Information

To the extent permitted by Applicable Law, the Parties must treat Network information as proprietary and confidential. Network information includes, but is not limited to, technical data, engineering details, construction documents, equipment lists, programming configurations, and operational procedures. Any Party who receives a request for information or a public records request concerning Network information must promptly forward the request to the Executive Director for review and response, who shall have a reasonable amount of time to consider whether to object to or seek to enjoin disclosure of the requested information or any portion of it before the Party who received the request may disclose it. Notwithstanding the foregoing, nothing in this subsection shall prohibit any Member from producing non-confidential or non-proprietary documents or information pursuant to a public records request.

9.9. Notices

9.9.1. Notice Form and Service

Any notice, consent or other communications ("Notice") required or permitted under this Agreement must be in writing and either delivered in person, or, deposited in the United States mail, postage prepaid, registered, or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed with confirmed receipt to the addresses of each Member that are on file with the Executive Director.

9.9.2. Effective Service Date

If mailed as provided in Section 9.9.1 of this Agreement, notice will be deemed received five (5) days after the Notice is deposited in the U.S. mail as provided above. If delivered as provided in Section 9.9.1 of this Agreement, a notice will be deemed received at the time it is personally served, or on the day received as confirmed by any commercial air courier or express services. Any time period stated in a Notice shall be computed from the time the Notice is deemed received.

9.9.3. Change in Address

A Party may change its mailing address or the person to receive Notice by notifying the Executive Director and the other Parties as provided in Section 9.9.1.

9.10. Performance and Uncontrollable Events

9.10.1. Performance of Party Obligation

Unless provided otherwise in this Agreement, all terms and conditions that are to be performed by the Parties or any of the Parties will be performed at the sole expense of the Party so obligated, and if the RWC (or any other Party) pays any sum of money or does any act that requires the payment of money by reason of the failure, neglect or refusal of the obligated Party to perform such term or condition, the sum of money paid by the RWC (or the other Party) shall upon notice as required by Section 9.9.1 be payable to the RWC (or other Party) by the Party obligated to perform.

9.10.2. Uncontrollable Event

No Party will be considered to be in default in the performance of any obligations under this Agreement (other than obligations of a Party to pay costs and expenses) if failure of performance is due to an uncontrollable event. The term "uncontrollable event" means any cause beyond the control of the Party affected; including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, action or non-action by (or failure to obtain the necessary authorizations or approvals from) any governmental agency or authority or the electorate, labor or material shortage, sabotage, and restraint by court order or public authority; that by exercise of due diligence and foresight the Party reasonably could not have been expected to avoid and that by exercise of due diligence it will be unable to overcome. A Party that is rendered unable to fulfill any obligation by reason of an uncontrollable event will exercise due diligence to remove such inability with all reasonable dispatch. Unavailability of funds shall not be deemed an uncontrollable event.

9.10.3. Burden of Proof regarding Uncontrollable Event

If any Party claims that its failure to perform was due to an uncontrollable event, the Party will bear the burden of proof that such activity was within the meaning and intent of this section, if such claim is disputed by any Party to this Agreement.

9.11. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts executed and intended to be performed entirely within the State of Arizona by residents of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision therefore shall be instituted only in the courts of Maricopa County, Arizona.

9.12. Headings

Article and section headings are inserted herein solely for convenience and the same will not by themselves alter, modify, limit, expand or otherwise affect the meaning of any provision of this Agreement.

9.13. Assignment and Binding Effect

This Agreement will be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that nothing herein will relieve any Party of any obligation under this Agreement, except upon the express written consent of the RWC.