

RESOLUTION NO. 16-01

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AUTHORIZING EXECUTION AND ADOPTION OF THE FIRST AMENDMENT TO THE AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE THE TOPAZ REGIONAL WIRELESS COOPERATIVE ("TRWC") NETWORK.

WHEREAS, on August 7, 2008, the City of Apache Junction, the Superstition Fire and Medical District (formerly known as the Apache Junction Fire District), the Town of Gilbert and the Town of Queen Creek entered into an Intergovernmental Agreement to Plan, Construct, Operate, Maintain and Finance the TRWC Network Contract Number 2008-3002-0359.

WHEREAS, on May 1, 2012, the City of Apache Junction, the Apache Junction Fire District, the Town of Gilbert, the Town of Queen Creek and the Rio Verde Fire District (collectively the "Parties") entered into an Amended and Restated Intergovernmental Agreement to Plan, Construct, Operate, Maintain and Finance the TRWC Network Contract Number 2008-3002-0359 that superseded and replaced in its entirety the August 7, 2008 Agreement.

WHEREAS, the Parties desire to enter into this First Amendment to add the Fort McDowell Yavapai Nation as an additional party to the Amended and Restated Agreement and the Fort McDowell Yavapai Nation agrees to be bound by all terms and conditions of the Amended and Restated Agreement as amended by this First Amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION ARIZONA, AS FOLLOWS:

- 1) The council finds that it is in the best interest of the City of Apache Junction to amend the agreement to include the Fort McDowell Yavapai Nation.
- 2) The Council hereby approves and the city manager is authorized to execute the First Amendment to the Amended and Restated Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the TOPAZ Regional Wireless Cooperative Network as set forth in "Attachment A".

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS 5th DAY OF January, 2016.

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SIGNED AND ATTESTED TO THIS ____ DAY OF _____, 2016.

JOHN S. INSALACO
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk
APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney

ATTACHMENT A

When Recorded Return To:

William H. Anger
Engelman Berger, P.C.
3636 N. Central Ave., Suite 700
Phoenix, AZ 85012

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

1. Parties. This First Amendment to Amended and Restated Intergovernmental Agreement ("First Amendment") is entered into by and between the City of Mesa, the City of Apache Junction, the Superstition Fire and Medical District (formerly known as Apache Junction Fire District), the Town of Gilbert, the Town of Queen Creek, the Rio Verde Fire District and the Fort McDowell Yavapai Nation ("Parties").

2. Recitals.

2.1. The City of Mesa, the City of Apache Junction, the Apache Junction District, the Town of Gilbert and the Town of Queen Creek entered into an Intergovernmental Agreement to Plan, Construct, Operate, Maintain and Finance the TRWC Network Contract Number 2008-3002-0359 and dated August 7, 2008 ("August 7, 2008 Agreement").

2.2. The City of Mesa, the City of Apache Junction, the Apache Junction District, the Town of Gilbert, the Town of Queen Creek and the Rio Verde Fire District entered into an Amended and Restated Intergovernmental Agreement to Intergovernmental Agreement to Plan, Construct, Operate, Maintain and Finance the TRWC Network Contract Number 2008-3002-0359 with an Effective Date of May 1, 2012 ("Amended and Restated Agreement") that superceded and replaced in its entirety the August 7, 2008 Agreement.

2.3. The Parties enter into this First Amendment to add the Fort McDowell Yavapai Nation as a Party to the Amended and Restated Agreement and the Fort McDowell Yavapai Nation agrees to be bound by all terms and conditions of the Amended and Restated Agreement as amended by this First Amendment.

2.4. The Parties are authorized to enter into this First Amendment by the joint exercise of powers provisions of Title 11, Chapter 7, Article 3 (§§ 11-951 et seq.), Arizona Revised Statutes and the authorization of their legislative or other governing bodies.

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3. Incorporation of Recitals; Date and Duration of First Amendment.

3.1. The accuracy of the Recitals set forth in Subsections 2.1 through 2.4 above are hereby acknowledged and such Recitals are incorporated into this First Amendment by this reference.

3.2. The "Effective Date" of this First Amendment is February 1, 2016. All Parties shall execute this First Amendment and comply with the requirements of A.R.S. § 11-952, which includes appropriate action by the legislative or other governing body of the Party for the approval of this First Amendment, determination by the Party's attorney that the First Amendment is within the powers and authority of the Party, and the proper filing of the First Amendment.

3.3. The Parties agree to modify and amend the Amended and Restated Agreement under the same terms and conditions as originally agreed subject to the additional terms and modifications set forth in this First Amendment. The Parties reaffirm their respective rights and obligations under the Amended and Restated Agreement except as modified by this First Amendment.

4. TRWC Network Definition.

4.1 When used in the Amended and Restated Agreement and this First Amendment the "TRWC Network" shall mean the public safety and general government communications system originally procured and built by the City of Mesa and commonly referred to as "TOPAZ" or the "Trunked Open Arizona Network" that is planned, designed, constructed, operated, maintained, and financed by the TRWC and its Members, including all real estate, real property and personal property that is purchased, leased or licensed by the TRWC or owned or licensed by a Member and allowed to be used by TRWC in connection with the TRWC Network. Unless the context clearly requires otherwise, capitalized terms used herein shall have the same meaning as in the Amended and Restated Agreement.

5. A New Section 25 is added to the Amended and Restated Agreement that states as follows:

"Waiver of Sovereign Immunity. The Fort McDowell Yavapai Nation agrees to waive its sovereign immunity solely and exclusively for the strictly limited purpose of resolving a claim or dispute that may arise with respect to the interpretation or enforcement of the Amended and Restated Agreement as amended by the First Amendment or the Fort McDowell Yavapai Nation's use of or participation in the TRWC Network. In addition, the First Amendment shall not become effective until and unless the Fort McDowell Yavapai Nation 1) waives its sovereign immunity solely and exclusively for the strictly limited purpose of resolving a claim or dispute that may arise with respect to the interpretation or enforcement of the First Amendment and 2) consents to the jurisdiction of the federal or state courts authorized in Section 22 of the Amended and Restated Agreement solely and exclusively for the strictly limited purpose of resolving a claim or dispute that may arise with respect to the interpretation or enforcement of the Amended

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and Restated Agreement as amended by the First Amendment or the Fort McDowell Yavapai Nation's use of or participation in the TRWC Network."

6. **Conflict of Interest.** The Parties understand and acknowledge that this First Amendment and the Amended and Restated Agreement may be subject to cancellation under A.R.S. § 38-511 (Arizona's public employee conflict of interest law) in the event there is a conflict of interest of the type specified in A.R.S. § 38-511 by persons significantly involved in initiating, negotiating, securing, drafting or creating this First Amendment.

7. **Entire Agreement.** The Amended and Restated Agreement as amended by this First Amendment, including the Governance Agreement attached as Exhibit A to the Amended and Restated Agreement, contains the entire agreement and understanding among the parties regarding the formation, governance and operations of the TRWC, and supersedes and replaces all related prior negotiations, agreements and proposed agreements, written or oral. Each Party 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 in the Amended and Restated Agreement as amended by this First Amendment and acknowledges that the Amended and Restated Agreement and this First Amendment have not been executed in reliance on any promise, representation or warranty not contained in the Amended or Restated Agreement or this First Amendment. The Amended and Restated Agreement as amended by this First Amendment shall not be amended, modified or supplemented at any time unless in writing.

8. **Governing Law.** This First Amendment and the Amended and Restated Agreement shall 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 the Amended and Restated Agreement as amended by this First Amendment or any provision thereof shall be instituted only in the courts of Maricopa County, Arizona.

9. **Counterparts.** This First Amendment may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. **Amended and Restated Agreement Still Effective .** All provisions of the Amended and Restated Agreement shall remain in full force and effect except as amended by this First Amendment.

[Signatures on following pages]

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IN WITNESS WHEREOF, the Parties have caused this First Amendment to be
executed by their duly authorized officers.

TOWN OF GILBERT

Date: _____

By _____
Town Manager

Printed Name

ATTEST:

Town Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the Town of Gilbert

Town Attorney

Printed Name

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IN WITNESS WHEREOF, the Parties have caused this First Amendment to be
executed by their duly authorized officers.

CITY OF MESA

Date: _____

By _____
City Manager

Printed Name

ATTEST:

City Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the City of Mesa

City Attorney

Printed Name

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IN WITNESS WHEREOF, the Parties have caused this First Amendment to be
executed by their duly authorized officers.

TOWN OF QUEEN CREEK

Date: _____

By _____
Town Manager

Printed Name

ATTEST:

Town Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the Town of Queen Creek

Town Attorney

Printed Name

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IN WITNESS WHEREOF, the Parties have caused this First Amendment to be
executed by their duly authorized officers.

**SUPERSTITION FIRE & MEDICAL
DISTRICT (FORMERLY KNOWN AS THE
APACHE JUNCTION FIRE DISTRICT**

Date: _____

By _____
Board Chair

Printed Name

ATTEST:

Board Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the County of _____

Attorney for the Board

Printed Name

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IN WITNESS WHEREOF, the Parties have caused this First Amendment to be
executed by their duly authorized officers.

CITY OF APACHE JUNCTION

Date: _____

By _____
City Manager

Printed Name

ATTEST:

City Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the City of Apache Junction

City Attorney

Printed Name

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IN WITNESS WHEREOF, the Parties have caused this First Amendment to be
executed by their duly authorized officers,

RIO VERDE FIRE DISTRICT

Date: _____

By _____

Its: _____

Printed Name

ATTEST:

Board of Directors, Clerk

Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the County of Maricopa

County Attorney

Printed Name

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FORT MCDOWELL YAVAPAI
NATION

Date: 10-28-2015

By Ruben Balderras

Ruben Balderras
Printed Name

ATTEST:

Selenia Castaneda
Selenia Castaneda
Printed Name

APPROVED AS TO FORM and within the
powers and authority granted under the laws
of Arizona to the Fort McDowell Yavapai Nation

J. O. ...
Fort McDowell Yavapai Nation Attorney

Tracy D. ...
Printed Name