

**INTERGOVERNMENTAL AGREEMENT NUMBER 101007
BETWEEN THE CITY OF PHOENIX AND
GILA RIVER INDIAN COMMUNITY
FOR SHARING OF COMMUNICATIONS FACILITIES**

This Agreement is made and entered into this 25th day of August, 2003, by and between the City of PHOENIX, a municipal corporation, (hereinafter called "PHOENIX"), and The GILA RIVER INDIAN COMMUNITY, (hereinafter called the "COMMUNITY"). The parties are sometimes referred to jointly herein as "AGENCIES" and individually as "AGENCY."

IT IS HEREBY AGREED, by and between the parties as follows:

1. Definitions:
 - a. "Telecommunications Facility" or in the plural "Telecommunications Facilities" shall mean existing telecommunications tower(s) and building(s) or space for buildings located at or near the base of the existing tower to house equipment.
 - b. "Site-Specific Supplemental Agreements" shall mean agreements between the AGENCIES to locate specific telecommunications equipment and material within the other AGENCY'S specific Telecommunications Facility.

2. Facilities Reciprocal Use. Subject to the terms of this Agreement, the AGENCIES each agree to allow the other AGENCY to use all or a portion of its Telecommunications Facilities, wherever located, upon request of the other AGENCY and without a usage fee, except where the requested usage would cause substantial interference with the telecommunications operations or service of the AGENCY owning the facility, or where prohibited by this or other agreements. The requested use of Telecommunications Facilities shall be for the construction, maintenance and operation of wireless telecommunications equipment and appurtenances only and for the purpose of public safety, not for commercial, for-profit, purposes. Due to the special circumstances of the Supplemental Agreement No. 1 to this Intergovernmental Agreement and Sublease Agreement, Contract No. 57643, between City of Phoenix, the City of Chandler, and the Community, these agreements are not subject to this Section 2.

3. Use Approval Procedure. Whenever an AGENCY desires to use a portion of Telecommunications Facilities owned by another AGENCY, the following procedures must be followed:
 - a. The AGENCY requesting the use of the other AGENCY'S Telecommunications Facility shall give the other written notification specifying the site and the character of the equipment which the requesting AGENCY desires to install at the site. The requesting AGENCY shall also submit a site installation plan to the other AGENCY'S

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- telecommunications section, and obtain written approval from that section prior to entering a Site-Specific Supplemental Agreement.
- b. If the other AGENCY accepts the request, the AGENCIES shall then enter into a Site-Specific Supplemental Agreement which shall set forth all relevant terms and conditions with respect to the site. The requesting AGENCY must enter into a Site-Specific Supplemental Agreement prior to installation of equipment. Each of these Site-Specific Supplemental Agreements shall make reference to this Agreement and become supplements to this Agreement. In order for the Site-Specific Supplemental Agreement to be effective, the agreement must be approved by the COMMUNITY'S Council and the Phoenix City Council.
4. Consulting Fees. Any consulting fees incurred shall be paid by the AGENCY employing the consultant.
5. Frequency Protection. The responsibility for resolving interference problems shall be specified in the Site-Specific Supplement Agreement.
6. Right of Ways. The AGENCIES will cooperate with each other in obtaining any necessary consents or rights-of-way should the underlying ownership to the site be in a person other than one of the AGENCIES.
7. Reciprocal Use, Rights, and Obligations.
- a. The AGENCY requesting use of the Telecommunications Facility shall bear the cost of purchasing, installing and maintaining the equipment necessary to complete the installation. Such AGENCY shall establish and maintain a budget according to its own rules and regulations.
- b. Each AGENCY shall have its transmitter frequencies examined by the telecommunications manager for the facility where the installation is to take place to detect any potential cause of interference at the telecommunications site. Transmitters shall employ isolators, circulators, resonant cavities and other devices to reduce interference as the state-of-the-art and good engineering practices dictate.
- c. The host AGENCY (of the Telecommunications Facility) shall take reasonable precautions to protect the other AGENCY'S equipment located at the facility, but shall not be responsible for damage to, or loss of, such equipment whether by fire, theft or otherwise unless caused by negligence of the owner of the facility.
- d. Each AGENCY shall be responsible for obtaining and maintaining any licenses required by the Federal Communications Commission for that AGENCY'S telecommunications equipment.

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- e. Private vendor(s) on contract with an AGENCY shall be escorted by an employee of the AGENCY contracting with the vendor when working at the telecommunications site.
8. Term. The term of this Agreement shall be for ten (10) years, commencing on August 25, 2003, and ending on August 24, 2013.
9. Option to Extend. This Agreement may be renewed for one additional ten (10) year term under the same terms and conditions as stated in this Agreement and any intervening amendments thereof. Either AGENCY shall give the other AGENCY written notice of its intention to renew this Agreement at least ninety (90) days prior to the expiration of this Agreement.
10. Termination. The AGENCY owning a Telecommunications Facility may terminate this Agreement or the other AGENCY'S use of any facility at any time by giving no less than 180 calendar days' written notice to the other AGENCY. The AGENCY not owning a Telecommunications Facility may terminate this Agreement or its use of the other AGENCY'S Telecommunications Facility at any time by giving no less than ninety (90) calendar days' written notice to the other AGENCY. In the event this Agreement is terminated, all Site-Specific Supplemental Agreements will terminate automatically.
11. Removal of Equipment. Upon expiration or termination of this Agreement, the equipment shall be removed or left in place and the Telecommunications Facility restored as specified in the Site-Specific Supplement Agreement.
12. Hold Harmless. Each AGENCY shall indemnify, defend and hold harmless each other AGENCY and its officers and employees from any liability, expense of damages resulting from the negligence of the AGENCY or its officers, employees, agents or contractors arising out of or in connection with this Agreement.
13. Successors and Assigns. This Agreement shall be binding upon the AGENCIES and upon their successors. An AGENCY may assign its rights or obligations under this Agreement only upon written approval of the other AGENCY.
14. Modification. Any amendment or modification of this Agreement shall be in writing and shall be effective only after signature of each of the AGENCIES. In the event of any conflict in the provisions of this Agreement and any Site-Specific Supplemental Agreement, the provisions of the Site-Specific Supplemental Agreement shall control.
15. Notice. Any notice, consent or other communication ("NOTICE") required or permitted under this Agreement shall be in writing and either delivered in person,

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sent by facsimile transmission, deposited in the United States mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for THE GILA RIVER INDIAN COMMUNITY:

Gila River Police Department
Communications Division Commander
669 West Seedfarm Road
P.O. Box 568
Sacaton, Arizona 85247
Telephone: (520) 562-7107
Fax: (520) 562-7051

If intended for the CITY OF PHOENIX:

Information Technology Department
Telecommunications Division/Wireless Communications
Wireless Manager
2441 S. 22nd Avenue
Phoenix, Arizona 85009
Telephone: (602) 262-6963
Fax: (602) 495-5698

Notice shall be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) business days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either AGENCY may change its mailing address, telephone or FAX number, or the person to receive the notice, by notifying the other AGENCY as provided in this Section.

Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

16. Transactional Conflicts of Interest. Each AGENCY acknowledges that this Agreement is subject to cancellation by the other pursuant to the provisions of Section 38-511, Arizona Revised Statutes.
17. Dispute Resolution. The AGENCIES mutually agree that any disputes arising between PHOENIX and the COMMUNITY pursuant to this Agreement or the

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Site-Specific Supplemental Agreements, if not resolved through informal dispute resolution, may be submitted to binding arbitration administered by the Phoenix Region of the AAA and conducted pursuant to the Commercial Arbitration Rules in effect at the time this Agreement is executed. Further, the AGENCIES agree that such arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. '9 *et seq.*, except as changed or limited by any provision of this Article. Claims will be submitted to a panel of three (3) arbitrators, a majority of whom will render a binding decision and/or award.

The AGENCY desiring to submit any disputed matter to binding arbitration shall do so by written notice to the other AGENCY. The notice shall include the following items: (1) the AGENCY'S position as to the disputed matters; (2) the factual and legal basis for compensation of the claim; (3) the basis for any extension of time and scheduled completion date; (4) the AGENCY'S estimated time for the hearing; (5) the AGENCY'S choice of arbitrator.

Each arbitrator shall be a person familiar, by profession or experience, with construction and the issues in controversy. Each AGENCY shall select an arbitrator. The two arbitrators so selected shall name a third arbitrator within ten (10) business days or, in lieu of such agreement on a third arbitrator, the third arbitrator shall be appointed by the Arbitration Committee of the AAA.

Within ten (10) business days after receipt of such demand and notice for binding arbitration, the responding AGENCY shall provide a written summary of its position, the basis for rejection of the claimant's claim for compensation, time extension or other relief, and the responding AGENCY'S choice of arbitrator.

By no later than thirty (30) calendar days prior to the commencement of the arbitration, each AGENCY shall provide the other with a complete witness and expert list, and copies of all exhibits.

In the event either AGENCY fails or refuses to respond to a demand for arbitration or to appear for the first scheduled hearing, the arbitration hearing shall be scheduled as soon as the arbitration panel can convene or reconvene. In such event, notice of a scheduled hearing shall be sent to the non-responding AGENCY by registered mail, return receipt requested by telefax. Should the non-responding AGENCY fail to appear after receipt of notice, the AGENCY attendant shall have an award entered by default in its favor by the arbitration panel in the amount prayed for in the papers submitted pursuant to this provision.

The arbitrator or arbitration panel shall be required to render a decision based on the substantive positions advocated by the AGENCIES with respect to each disputed matter. Any decision that does not reflect the substantive positions

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advocated by either AGENCY shall be considered beyond the scope of authority granted to the arbitrator or arbitration panel and shall be void.

The arbitrators shall render an independent, impartial review of the claim(s) presented; and each arbitrator shall act independently and shall not be any AGENCY'S representative. The arbitrator's deliberations are confidential and shall not be disclosed to third AGENCIES. Each arbitrator shall be disqualified as a witness, consultant or expert for either AGENCY in this or any other dispute between the AGENCIES arising out of the performance or non-performance of the Agreement. After the date when the hearing is scheduled, no AGENCY shall engage in *ex parte* communications with the designated arbitrators. This prohibition does not apply to routine requests for fees and expenses to be borne by the AGENCIES. No written communication shall be made between the arbitrators and an AGENCY without the other AGENCY receiving a copy, and no oral communications shall take place without the other AGENCY being present.

The arbitration panel shall be required to render a decision and award within thirty (30) calendar days after the close of the hearing.

Either AGENCY shall seek to enforce any judgment or award for money damages determined by the arbitration panel in favor of the respective AGENCY, in Federal Court for the district of Arizona. If such court declines jurisdiction either AGENCY may seek enforcement in any court of competent jurisdiction .

The fees and expenses of the arbitrator or arbitration panel shall be shared equally by the AGENCIES.

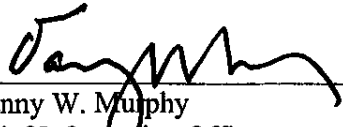
18. Governing Law. This Agreement shall be construed and interpreted in accordance with the Laws of the State of Arizona.
19. Effective Date. This Agreement shall become effective on August 25, 2003.

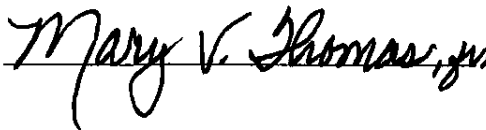
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IN WITNESS WHEREOF, the parties have caused this Intergovernmental Agreement to be executed by their duly authorized officers and agents on the day and year first written above.

CITY OF PHOENIX
A municipal corporation
Frank A. Fairbanks, City Manager

GILA RIVER INDIAN COMMUNITY
A sovereign Indian nation,
Honorable Richard P. Narcia, Governor

By: 
Danny W. Murphy
Chief Information Officer



Date: 9/9/03

Date: 11-26-03

ATTEST:


ATTEST:

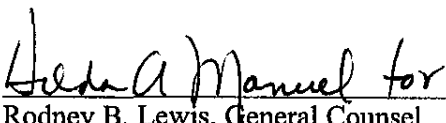

City Clerk


Community Council Secretary

In accordance with A. R. S. Section 11-952 this Agreement has been reviewed by the undersigned attorney who has determined that this Agreement is in proper form and within the powers and authority granted to the City of Phoenix under the laws of the State of Arizona.

This Agreement has been reviewed by the undersigned attorney who has determined that this Agreement is in proper form and within the powers and authority granted to the Community under the laws of the Gila River Indian Community.


Acting City Attorney


Rodney B. Lewis, General Counsel

Date: _____

Date: 11-26-03