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INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF PHOENIX

RETURN TO CITY OF PHOENIX  
ACCOUNT #34

AND  
THE CITY OF GOODYEAR  
FOR SHARING OF  
TELECOMMUNICATIONS FACILITIES  
AGREEMENT NO. 95-PWCA-028

71736

This Intergovernmental Telecommunications Facilities Sharing Agreement ("Sharing Agreement") is made and entered into as of the first day of July, 1995 by and between the City of Phoenix, a municipal corporation, (hereinafter called "PHOENIX"), and the City of Goodyear, a municipal corporation, (hereinafter called "GOODYEAR").

RECITALS:

WHEREAS, GOODYEAR and PHOENIX have the power to execute intergovernmental agreements pursuant to A.R.S. Section 11-952; and

WHEREAS, PHOENIX has the power to enter into intergovernmental agreements pursuant to Chapter 2, Section 2, and Chapter 4, Section 2, subsection 64 of the Phoenix City Charter; and

WHEREAS, GOODYEAR AND PHOENIX desire to share telecommunications facilities and/or services owned by each Party under the conditions set forth in this Sharing Agreement; and

WHEREAS, potential electronic sites are limited, and in order to avoid a proliferation of site developments by a number of users, it is in the public interest for both Parties to share those facilities that serve the common good.

NOW THEREFORE, it is hereby agreed, by and between the parties as follows:

AGREEMENT:

1. FACILITIES RECIPROCAL USE

Subject to Paragraph 2, GOODYEAR and PHOENIX each agree to allow the other party to use its telecommunications facilities, wherever located, upon request of the other party except where the requested usage would cause substantial interference with the telecommunications operations or service of the party owning the facility, or where prohibited by agreements.

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2. SITE-SPECIFIC SUPPLEMENTALS

Whenever either party desires to share telecommunications facilities owned by the other party, such party shall give the other written notification specifying the site and the character of the equipment which the requesting party desires to install at the site. If the other party accepts the request, the parties shall then enter into a site-specific supplemental agreement which shall set forth all relevant terms and conditions with respect to the site Supplemental Agreement. Each of these site-specific Supplemental Agreements shall make reference to this Sharing Agreement and become supplements to this Sharing Agreement. The parties will cooperate with each other in obtaining any necessary consents or rights-of-way should the underlying ownership to the site be a person other than one of the parties to this Sharing Agreement.

3. CONSULTING FEES

Any consulting fees incurred shall be paid by the party employing the consultant.

4. FREQUENCY PROTECTION

The responsibility for resolving interference problems shall be specified in the site-specific Supplemental Agreement.

5. USE APPROVAL PROCEDURE

Reciprocal use by either party of the other party's telecommunications facilities shall be subject to the following conditions:

- a. Prior to installation, the party requesting the use of the facility shall submit a site installation plan and equipment specifications to the owner's telecommunications section, and obtain written approval from that section prior to installation. If the site is owned by a third party, the party requesting the use of the facility shall also submit a site installation plan and equipment specifications to the site owner and obtain their written approval.
- b. The party requesting use of the facility shall bear the cost of purchasing, installing and maintaining the equipment necessary to complete the installations.
- c. The owner of the facility shall take reasonable precautions to protect the other party'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.

6. RECIPROCAL USE, RIGHTS AND OBLIGATIONS

- a. Each party 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.

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- b. Each party shall be responsible for obtaining and maintaining any licenses required by the Federal Communications Commission for that party's telecommunications equipment.
- c. Private vendor(s) on contract with either party shall be escorted by an employee of the party contracting with the vendor when working at the telecommunications site.

7. **TERM**

The term of this Sharing Agreement shall be for five (5) years, subject to the termination provisions of Paragraph 9 of this Sharing Agreement, commencing on July 1, 95 and ending on July 1, 2000.

8. **OPTION TO EXTEND**

The party owning the telecommunication facility grants the other party the option of renewing this Sharing Agreement for one additional five (5) year term under the same terms and conditions as stated in this Agreement and any intervening amendments thereof. The party, exercising its option, shall give the owner written notice of its intention to renew this Sharing Agreement at least sixty (60) days prior to the expiration of this Sharing Agreement.

9. **TERMINATION**

The party owning a telecommunication facility may terminate this Sharing Agreement or the other party's use of any facility at any time by giving no less than 365 days written notice to the other party. The party not owning a telecommunications facility may terminate this Sharing Agreement or its use of the other party's telecommunication facility at any time by giving no less than sixty (60) days written notice to the other party. In the event this Sharing Agreement is terminated, all Supplemental Agreements shall terminate automatically.

10. **REMOVAL OF EQUIPMENT**

Equipment shall be removed or left in place and the facility restored as specified in the site-specific Supplemental Agreement.

11. **INDEMNIFICATION**

PHOENIX shall indemnify, defend and hold harmless GOODYEAR and its officers and employees from any liability, and/or expense of damages resulting from the negligence of PHOENIX or its officers, employees, agents or contractors arising out of or in connection with this Sharing Agreement. GOODYEAR shall indemnify, defend and hold harmless PHOENIX and its officers and employees from any liability, expense of damages resulting from the negligence of GOODYEAR or its officers, employees, agents, or contractors arising out of or in connection with this Sharing Agreement.

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12. **SUCCESSORS AND ASSIGNS**

This Sharing Agreement shall be binding upon the parties and upon their successors. Neither Party may assign its rights or obligations under this Sharing Agreement without the written consent of the other party.

13. **MODIFICATIONS**

Any amendment or modification of this Sharing Agreement shall be in writing and shall be effective only after signature of each of the parties. In the event of any conflict in the provisions of this Sharing Agreement and any Supplemental Agreement, the provisions of the Supplemental Agreement shall control.

14. **CONFLICT OF INTEREST**

The parties acknowledge that this Sharing Agreement is subject to cancellation by either party pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

15. **NOTICE**

Any notice, consent or other communication ("Notice") required or permitted under this Sharing Agreement shall be in writing and either delivered in person, 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 GOODYEAR:

CITY OF GOODYEAR  
Telecommunications Supervisor  
Goodyear, Arizona 85338  
  
Telephone: (602) 932-3910  
FAX: (602) 932-1177

If intended for the CITY OF PHOENIX:

CITY OF PHOENIX  
Information Technology Department  
Communications Superintendent  
2441 South 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) 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 party may change its mailing address, telephone or FAX number, or the person to receive the notice, by notifying the other party as provided in this Paragraph.

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.

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16. EFFECTIVE DATE

This Sharing Agreement shall become effective as of the date it is filed with the Maricopa County Recorder.

IN WITNESS WHEREOF, the parties have caused this Sharing 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 Fairbanks,  
City Manager

CITY OF GOODYEAR  
A Municipal Corporation  
Stephen Cleveland,  
City Manager

By: J.R. Mills  
Date: 6/8/95

By: Stephen S. Cleveland  
Date: May 11, 1995

ATTEST:  
Vicky Mil  
City Clerk

ATTEST:  
Barbara A. Runaway  
City Clerk

In accordance with A.R.S. Section 11-952 this Sharing Agreement has been reviewed by the undersigned attorney who has determined that this Sharing 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.

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

Milward J. Hoenes  
City Attorney  
ACTING  
Date: May 23, 1995

Donald J. Keyser  
City Attorney  
Date: May 11, 1995

RECORDED  
MAY 23 1995  
Rev. May 4, 1995

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