

**INTERGOVERNMENTAL AGREEMENT
FOR CONSTRUCTION OF A COMMUNICATIONS TOWER AND
INSTALLATION OF AN FM RADIO ANTENNA BETWEEN
COCHISE COUNTY AND THE ARIZONA BOARD OF REGENTS ON
BEHALF OF THE UNIVERSITY OF ARIZONA, ARIZONA PUBLIC MEDIA**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into by and between Cochise County, a political subdivision of the State of Arizona, hereinafter “County” and The Arizona Board of Regents on behalf of the University of Arizona, Arizona Public Media, hereinafter “AZPM”, pursuant to A.R.S. § 11-952 *et seq.*

RECITALS

A. County and AZPM may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. §§ 11-951 through 11-954 and 41-2631 through 41-2634.

B. County is a member of the Mule Mountain Users Association (the “Association”), which controls access to a tower owned by the County that is located on an area of the Mule Mountains commonly known as Juniper Flats (the “Tower”).

C. The County currently has an 80-foot self-supporting Tower located on the Site, and an engineering study jointly commissioned by AZPM at County’s request determined that the Tower is substantially over capacity.

D. County and AZPM agree that, due to the substantial overload on the current Tower, structural modifications to the existing Tower would be impossible or prohibitively costly, and instead agree that it is in the best interest of both County and AZPM to construct/replace with a new tower (the “New Tower”) on the site currently occupied by a secondary County tower.

E. The County currently has two shelters (the “Shelters”) next to the Tower, one of which houses communications equipment, and one of which houses a generator.

F. On April 8, 2016, AZPM applied to the Association to co-locate an FM antenna and transmitter on the Site and have access to the Shelters for installation of related equipment.

G. Because the existing Tower is over capacity, County and AZPM desire to set forth the terms upon which AZPM and County will jointly fund the construction of the New Tower on

which AZPM may collocate its antenna, and will share in the costs and use of shelters and other ancillary equipment.

AGREEMENT

1. **Purpose.** The purpose of this Agreement is to set forth the rights and responsibilities of the parties related to the construction of the New Tower, installation and collocation of AZPM's FM radio antenna on the New Tower, and the joint use of shelters, generators and other ancillary equipment at the Site.

2. **License.** The County hereby grants AZPM a license (the "License") to install and maintain an FM Radio Broadcast Antenna (the "Antenna") on the New Tower on the following conditions:

A. **Approvals.** The County has supported AZPM's application to the Association, which has been granted, and will continue to support any further approvals needed from the Association. In addition, the County will cooperate in securing any approvals for this license as may be needed from the Bureau of Land Management, which owns the real estate on which the Tower is located, and on which the New Tower will be constructed, for construction of the New Tower and for such additional structures as may be necessary for a generator with sufficient capacity to facilitate use of all of the County's and AZPM's equipment, its fuel tank, and such other equipment as may be necessary to the operation of the New Tower and communications equipment.

B. The AZPM FM Broadcast Antenna that will initially be collocated on the New Tower will be a 19' 11", 3-bay antenna, to be attached to a mast placed at the top of the Tower. The attached mast must be of sufficient height to provide 10' of clear vertical space below the antenna to prevent obstruction of the antenna's radiation pattern, and 10' of clear vertical space above the antenna to accommodate any additional antennae that may be installed later and must be located above the FM antenna.

C. AZPM will also install a Licensed Microwave Dish pointing west towards Sierra Vista to provide communication with the new FM Station.

D. **Construction of the New Tower.** County and AZPM agree to cooperate in the engineering, design and construction of the New Tower, and to share in the costs of same, as follows:

- i. AZPM has commissioned, at its expense, a detailed independent engineering study of the Tower, that resulted in the determination that the New Tower must be built.
- ii. AZPM and County will share the costs associated with engineering, design and construction of the New Tower equally, as set forth in more detail in this Agreement.

- iii. AZPM retained the services of a soil engineer to perform initial testing necessary to inform the design of the New Tower, and covered the costs of this engineer; these costs will be included in the project cost that is shared equally by the parties. The soil engineer's fees were \$2,884.
- iv. County and AZPM will cooperate in designing the New Tower, using a design and engineering team to be selected by County through its standard procurement process, with a cap of \$400,000. If the cost will exceed \$400,000, the parties will discuss whether to move forward with construction of the New Tower before proceeding further.
- v. County will select a contractor or contractors for construction of the New Tower, using its standard procurement process.
- vi. AZPM will reimburse County for 50% of the costs of design and construction, with a credit to be given for amounts paid by AZPM to the soils engineer as set forth in paragraph 2, above. County will provide AZPM with copies of all invoices or billing statements for which reimbursement is sought, together with appropriate backup documentation, and AZPM will process reimbursement payments regularly, but not more frequently than monthly.
- vii. The parties acknowledge that after the Tower is modified and the Antenna is installed, from time to time the Tower will require maintenance. The County will be responsible for performing or contracting for maintenance.
- viii. After the New Tower is built, AZPM will have 24/7/365 access to the New Tower to perform maintenance of its Antenna; provided, however, that AZPM shall notify the County before accessing the New Tower.
- ix. Damage or Destruction.
 - a. In the event the New Tower is damaged or destroyed within ten (10) years from the date it is built, and such damage or destruction is not due to the negligence or intentional act of either party, County shall be responsible for promptly rebuilding the New Tower, but AZPM will contribute an amount equal to one-half of any deductible that the County must pay.
 - b. If the New Tower is damaged or destroyed, and such damage or destruction is determined by a court to have been caused by the negligence or intentional act of either party, the party whose negligence or intentional act resulted in the damage or destruction shall be responsible for the cost of repairing or rebuilding the New Tower, with no contribution from the other party.
 - c. Each party shall be solely responsible for insuring its equipment, including antennas, mounted on the New Tower or located at the site.

E. Modification of and/or Future Equipment Installation on the New Tower. After completion of construction of the New Tower and installation of the initial complement of equipment, including AZPM's antenna, on the New Tower, in accordance with the certified design capacity of the structure, any future tower modifications and/or installations of additional equipment will be allowed only following completion of an analysis to be conducted by a licensed structural engineer that certifies that the proposed tower modification and/or equipment installation will not exceed the design capacity of the tower structure.

F. Shelters. The County will provide AZPM with 24/7/365 access to the equipment and generator shelters (the "Shelters") located at the base of the New Tower that house the generator and other equipment necessary to operate the Antenna and the County's antenna. AZPM may install one (1) 72" rack in which to place AZPM's transmission equipment to be configured in a manner that will comply with the stipulations of County's approved BLM site plan. County will supply AZPM with at least one (1) set of keys to the Shelters.

G. Electric Power. AZPM will install a dedicated electric power meter to monitor the power consumption of its broadcast and related equipment and will set up an account with the local utility company for its electrical power service. The installation will include two (2) transfer switches and two (2) circuit breakers.

H. Electric Power Generator.

- i. County will obtain a new diesel-powered generator to serve the New Tower, to be configured in a manner that will comply with the stipulations of County's approved BLM site plan. AZPM will cover one-half of the cost of the generator, in an amount not to exceed \$20,000. This will replace the County's existing generator, which will be removed at County's expense.
- ii. Rating. The generator will be rated to supply the electrical load required to continuously operate AZPM's radio transmitter and associated equipment and County's transmitter and associated equipment during grid-sourced electric power service interruptions.
- iii. County will bear all costs associated with routine repairs and installation of the generator. In the event of a catastrophic failure resulting in the need to incur more than \$5,000 in repair costs, or the need to replace the generator, AZPM will share equally in those costs.

I. Generator Fuel. County will be responsible for maintaining a sufficient fuel reserve for the generator and will work with AZPM to develop a metric for determining AZPM's share of re-fueling fees.

J. Installation and Use of the Antenna/Interference Elimination. The parties acknowledge that there is potential for operation of the Antenna to interfere with the frequencies of the County's antenna and frequencies of other members of the Association. Accordingly:

- i. After installing the Antenna, but before permanent operation, there will first be a test period to ensure that there is no interference. This will be determined by the Users Association.
- ii. At any time during the term of this Agreement, if operation of the Antenna interferes with wireless communications operations of the County or other members of the Association, AZPM will promptly respond to eliminate any such interference and will bear all costs incurred in eliminating such interference.

K. Mule Mountain Site Plan.

- i. **Costs of Preparation.** County and AZPM will equally share in the cost of preparing and submitting the required BLM Mule Mountain telecommunications site plan for the New Tower and any related construction.
- ii. As the approved tenant of BLM's Mule Mountain telecommunications site, County will act as petitioner to the BLM for approval of the required modified site plan.
- iii. County agrees to represent AZPM's best interests to the Mule Mountain Users Association and to facilitate acceptance of AZPM's co-location at County's Mule Mountain location.

L. **County's Antenna.** The County shall have the right to change-out or add an antenna to the New Tower; provided, however, that any such change-out or addition made in accordance with Section 2.D. of this Agreement shall not interfere with AZPM's operation of its Antenna; and provided further that if such change-out or addition affects or may affect the structural integrity of the Tower, the County will be responsible for modifying the Tower at its own cost.

3. Term and Termination

A. This Agreement will commence on the date of execution by all parties. It shall remain in effect for twenty-five years. County may terminate this Agreement only in the event of material breach by AZPM, and only if such material breach is not remedied within sixty days of written notice to AZPM specifying such breach. If AZPM diligently undertakes a remedy, but it is not possible to remedy the breach within sixty days of written notice, AZPM must undertake and diligently pursue such remedy, and if the breach is not fully remedied within 180 days, the County may in its discretion terminate this Agreement. Either party may terminate this Agreement for material breach by the other party, with notice to such party, and after good faith attempts to resolve any dispute concerning the breach. Any modification of this Agreement shall be by formal written amendment executed by both parties. The parties may extend this Agreement by formal written extension executed by both Parties.

B. Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason the Cochise County Board of Supervisors or the Arizona State legislature does not appropriate sufficient monies to allow the fulfillment of either party's obligations under this Agreement. In the event of such cancellation, County shall have no further

obligation to AZPM, and AZPM's only obligation to County will be to remove its equipment from the Tower and restore the Tower and Site to their condition as of the Effective Date of this Agreement.

C. Upon termination of this Agreement, AZPM will promptly remove its Antenna and any of its equipment in the Shelter; provided, however, that, at the County's option, the Generator and any other equipment necessary to operate the County's antenna shall remain.

4. **Severability.** Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

5. **Indemnification.** Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, AZPM shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless County, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of AZPM's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

6. **Americans with Disabilities Act.** The Parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

7. **Cancellation for Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

8. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any of AZPM's, or between AZPM and any County employees. None of the parties shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other party.

9. **Insurance.**

A. Coverages. Subject to section 10. E. below, the Parties to this Intergovernmental Agreement shall obtain and maintain at their own expense, during the entire term of this Agreement the following type(s) and amounts of insurance:

- i) *Commercial General Liability.* Coverage shall be at least as broad as ISO form CG 00 01 in an amount not less than \$2,000,000.00, endorsed to include County as an additional insured with coverage at least as broad as ISO form CG 20 10.
- ii) *Commercial General Automobile Liability.* Coverage shall be at least as broad as ISO form CA 00 01 in an amount not less than \$1,000,000.00 for vehicles actually used in the operations at the Premises (as compared to use for simple commuting).
- iii) *Workers' Compensation.* Statutory limits, with Employers' Liability coverage in an amount not less than \$1,000,000.00 per injury, illness, or disease.
- iv) *Property.* Property insurance covering the Party's real and personal property.

B. Waiver of Subrogation. Each Party waives its claims and subrogation rights against the other for losses typically covered by liability or property insurance coverage.

C. Certificates of Insurance. The Parties shall provide each other with current certificates of insurance within thirty (30) days of the execution of this Intergovernmental Agreement. All certificates of insurance must provide for guaranteed thirty (30) days written notice to all Parties to this Intergovernmental Agreement of cancellation, non-renewal or material change.

D. Self-Insurance Pool. The requirements of this Section 9 above may be alternatively met by the Parties through self-insurance or participation in a governmental insurance risk pool, at no less than the minimal levels set forth in this article. If applicable, Parties to this Intergovernmental Agreement shall provide all other Parties with certificates of self-insurance under A.R.S. §§ 11-261 and 11-981 or documentation of participation in an insurance risk pool pursuant to A.R.S. § 11-952.01, or participation in the self-insurance program administered by the State of Arizona Department of Administration pursuant to A.R.S. §§ 41-621, *et seq.*, within thirty (30) days of the execution of this Intergovernmental Agreement. All certificates must provide for guaranteed thirty (30) days written notice to all other Parties of cancellation, non-renewal or material change.

10. **Compliance with Laws.** The parties shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. In the event any services provided under this Agreement require a license issued by the Arizona Registrar of Contractors (ROC), County certifies that those services will be provided by a contractor licensed by ROC to perform those services in Arizona. The laws and regulations of the State of Arizona shall govern the rights, performance and disputes of and between the parties. Any action relating to this Agreement shall be brought in a court of the State of Arizona in Pima County.

Any changes in the governing laws, rules, and regulations during an agreement shall apply, but do not require an amendment/revisions.

11. **Non-Discrimination.** To the extent applicable, the parties shall comply with all laws and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and any State law that mandates that all persons, regardless of race, religion, handicap, color, age, sex, political affiliation, veteran's status, genetic code or national origin shall have equal access to employment and educational opportunities.

12. **No Third Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

13. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

COUNTY:
Cochise County
Attn: Joe Casey
IT Director
1415 Melody Land, Bldg. D
Bisbee, AZ 85603
520-432-8302
JCasey@cochise.az.gov

UNIVERSITY OF ARIZONA:
Arizona Public Media
Attn: Jack Gibson
University of Arizona
1423 E. University Blvd. #225
Tucson, AZ 85721
520-621-5805

14. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

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IN WITNESS THEREOF, the parties have affixed their signatures to this Agreement on the date written below.

COCHISE COUNTY

**ARIZONA BOARD OF REGENTS,
UNIVERSITY OF ARIZONA**

Ann English
Chair, Board of Supervisors

Authorized Officer Signature

Printed Name and Title

Date

Date

ATTEST

Arlethe Rios, Clerk of Board

Date

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The foregoing Intergovernmental Agreement between Cochise County and The Arizona Board of Regents on behalf of the University of Arizona, Arizona Public Media has been reviewed pursuant to A.R.S. § 11-952 *et seq.* by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the Intergovernmental Agreement represented by the undersigned.

COCHISE COUNTY:

Britt W. Hanson,
Chief Civil Deputy County Attorney

Date

ARIZONA BOARD OF REGENTS, UNIVERSITY OF ARIZONA

Heather K. Gaines,
Associate General Counsel

Date