

**EXHIBIT “A”
INTERGOVERNMENTAL AGREEMENT
BETWEEN COCHISE COUNTY AND CITY OF WILLCOX
FOR SHARING THE
WIRELESS EMERGENCY NOTIFICATION SYSTEM**

THIS INTERGOVERNMENTAL AGREEMENT dated March 17, 2016 (“**Agreement**”), is made by and between COCHISE COUNTY, a political subdivision of the State of Arizona (“**Cochise County**”) and the CITY OF WILLCOX, a political subdivision of the State of Arizona (“**Willcox**”). Cochise County and Willcox are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, Cochise County pays the lease for and maintains the Wireless Emergency Notification System (“**WENS**”), a voice and text messaging service system that provides emergency notification alerts to members of the public of Cochise County who are registered in the system database to receive notifications via this service; and

WHEREAS, Cochise County wishes to share the WENS with other governmental public safety entities, which will ultimately enhance emergency response services within Cochise County and increase safety and wellbeing for a greater number of Cochise County residents; and

WHEREAS, the Parties desire to cooperate and collaborate beyond statutory requirements to assure that disaster preparedness efforts are efficiently coordinated and effectively integrated within their jurisdictions; and

WHEREAS, the Parties have reached an agreement on the sharing of WENS and an understanding of the responsibilities of each Party in implementing this Agreement; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to the provisions of Arizona Revised Statutes (“**A.R.S.**”) § 11-952;

AGREEMENT

NOW, THEREFORE, the Parties hereto, in consideration of the stipulations, covenants, and agreements hereinafter set forth, hereby agree as follows:

ARTICLE 1. LICENSE AND SUPPORT

A. Under this Agreement Cochise County agrees to provide Willcox the following:

1. A non-exclusive, non-transferable, non-sub licensable administrative access to use all messaging capabilities and databases within the WENS system for the purpose of notifying residents and businesses within their jurisdictional boundaries of immediate life and health threats.
 2. Two hours of consultation and training from Cochise County Public Safety staff on best practices and requirements for set-up, configuration, and use of WENS.
- B. Parties shall comply with all WENS policies and terms of use. Violation of this provision shall be grounds for Cochise County's immediate termination of this Agreement. If the Agreement is terminated pursuant to this section, Cochise County is indemnified as outlined in Article Four of this Agreement.

ARTICLE 2. INFORMATION CONTROL, RELEASE, AND ACCURACY

A. The Parties agree that public notifications using WENS shall only be notification to the Party's residential base as follows:

1. Public notifications using WENS shall only be sent to the residents and businesses within the agency's jurisdictional boundaries.
2. Public notifications using WENS shall never be used for purposes other than emergency notifications or periodic tests.
3. For purposes of this agreement, "emergency" is defined to mean "circumstances where residents' lives, health, and/or safety are at immediate and serious risk."
4. Before Willcox initiates a WENS public notification, Willcox Police Chief or designee shall determine, and document in writing, that an emergency exists, and then shall authorize an emergency notification.
5. Violation of this provision shall be grounds for Cochise County's immediate termination of this Agreement. If the Agreement is terminated pursuant to this section, Cochise County is indemnified as outlined in Article Four of this Agreement.
6. Willcox may use WENS internally to send and receive messages between agency employees, and may conduct monthly test notifications, without violating this Agreement.

B. Willcox specifically disclaims any warranty concerning the functionality of the WENS System or its suitability for Cochise's purposes or systems.

C. Data in which third party copyright is in place or have other usage and distribution restrictions shall not be distributed via this Agreement. The Parties shall be responsible for removing any such information from data before it is supplied to the other Party.

D. Cochise County has, and shall retain, final decision-making authority regarding the use, of all data, contained in WENS. Cochise County shall also retain authority to authorize, modify, and veto proposals by Willcox to issue informational and emergency alerts using WENS.

ARTICLE 3. FINANCIAL CONSIDERATIONS

A. Cochise County retains responsibility for the basic WENS subscription cost for participation in this Agreement. Nothing included in this Agreement requires either Party to fund the activities of the other Party. Upon termination of this Agreement, all data within the WENS database will remain the property of Cochise County.

B. This Agreement shall be subject to available funding, and nothing in this Agreement shall bind either party to expenditures in excess of funds appropriated and allocated for the purposes outlined in this Agreement.

C. Willcox shall be solely responsible for any costs Willcox causes to be incurred above the normal contract lease rate Cochise County pays for WENS.

D. The employees of each party to this Agreement will not for any purpose be considered employees or agents of the other party. Each party assumes full responsibility for the actions of its personnel while performing services under this Agreement, and shall be solely responsible for their supervision, direction, and control.

ARTICLE 4. INDEMNIFICATION

To the extent permitted by law, each Party (as “**Indemnitor**”) agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers 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 actions taken in performance of this Agreement, and including WENS failures, to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

ARTICLE 5. TERMINATION

This Agreement may be terminated for any reason by either Party upon thirty days written notice to the other Party. Upon termination of this agreement, either party may

continue to contract with the WENS provider for services upon formation of a new contract binding only that party and the WENS direct provider.

ARTICLE 6. TERM

The term of this Agreement shall be for one year from the date of the last-signing party's signature, and for a period of nine years will automatically renew for an additional year twenty days before the scheduled end date, unless one party notifies the other at least thirty days before the end date of its intent to terminate the agreement. This agreement will terminate at the end of the ten-year period unless this agreement is amended in writing.

ARTICLE 7. MISCELLANEOUS PROVISIONS

A. NOTICES: All notices to the other Party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

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If to Cochise County: Lauri Owen, Civil Deputy County Attorney
Cochise County Attorney's Office
P.O. Drawer CA
Bisbee, Arizona 85603

If to Willcox: City Manager
101 S. Railroad Ave. Suite B
Willcox, AZ 85643

B. WAIVER OF TERMS AND CONDITIONS: The failure of Cochise County or [Willcox] to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights, or privileges, and they shall remain in full force and effect.

C. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona and County of Cochise.

D. NONASSIGNMENT: This Agreement has been entered into based upon the personal reputation, expertise, and qualifications of the Parties. Neither Party shall assign its interest in this Agreement, either in whole or in part.

E. ENTIRE AGREEMENT: This Agreement represents the entire agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties.

E. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

F. CONFLICTS OF INTEREST: The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

G. COMPLIANCE WITH CIVIL RIGHTS: The Parties agree to comply with A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Orders 75-5 and 99-4, and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

H. ARBITRATION: To the extent required by A.R.S. §§ 12-133 and 12-1518(B), the Parties agree to resolve any dispute arising out of this Agreement by arbitration.

I. WORKER'S COMPENSATION: Each Party shall comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each Party shall be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operations of protocol in place, and said Party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.

J. COMPLIANCE WITH LAWS: The Parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this Agreement and any disputes hereunder.

K. 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 the Parties' employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.

L. NO THIRD PARTY BENEFICIARIES: Nothing in 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.

M. AUDITS: Audits may be conducted at a time, mutually agreed upon, by any appropriate political subdivision or agency of Cochise County when required by applicable federal regulations. The parties further agree that all accounts, reports, files and other records relating to this agreement shall be kept for three (3) years after termination of this agreement and shall be open to reasonable inspection by the other party during that period.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth below.

“Willcox”
CITY OF WILLCOX, a political
subdivision of the State of Arizona

“Cochise County”
COCHISE COUNTY, a political
subdivision of the State of Arizona

By: Robert A. Irvin
Mayor, Robert A. Irvin

By: _____
Chairperson, Board of Supervisors

Dated: 3/17/2016

Dated: _____

ATTEST:

ATTEST:

[Signature]
Clerk of the City of Willcox

Clerk of the Board of Supervisors

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The attached Agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the each of the undersigned Attorneys who has independently determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to each of the above-identified parties.

SIGNATURE _____
Cochise County Attorney

Date

SIGNATURE [Signature]
City of Willcox Attorney

3/17/16
Date