

**INTERGOVERNMENTAL AGREEMENT  
FOR 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 (Agreement)**, is made and entered into by and between Cochise County, a political subdivision of the State of Arizona (“County”) and **The Arizona Board of Regents on behalf of the University of Arizona, Arizona Public Media** (hereinafter referred to as “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.
- D. 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.
- E. 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.
- F. County has applied to the FCC to establish a fixed service path within the 6,875 – 7,125 MHz band for links between Bisbee, Sierra Vista and Texas Canyon which crosses the established broadcast service area of AZPM, and AZPM has submitted a letter in support of the County’s application, which is the consideration for the license to be granted to AZPM to collocate its antenna pursuant to this Agreement.
- G. County and AZPM desire to set forth the terms upon which AZPM may collocate its antenna on the Tower.

## AGREEMENT

### 1. Purpose.

The purpose of this Agreement is to set forth the rights and responsibilities of the parties related to the installation and collocation of AZPM's FM radio antenna on the Tower.

### 2. License. The County hereby grants AZPM a license to install and maintain an FM Radio Broadcast Antenna (the "Antenna") on the 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, for modifications to the existing tower and an additional structure for a generator with sufficient capacity to facilitate use of all of the County's and AZPM's equipment and its propane fuel tank.
- B. The Antenna to be collocated on the Tower will be a 19' 11", 3-bay antenna, to be attached to a mast placed at the top of the Tower. Any change to the size and capacity of the Antenna will require approval by the County.
- C. The Tower and Modifications. Adding the Antenna to the Tower may require structural modifications to the Tower. Accordingly:
  - i. AZPM will commission, at its expense, a detailed independent engineering study of the Tower and the modifications required to place the Equipment on it and will submit a construction plan to the Cochise County officials for review and approval. Modifications likely include reinforcement of the Tower structure and possibly adjustments to the location of equipment on the Tower for proper wind loading.
  - ii. The County has the right to review and approve, or disapprove, the construction plan. Upon County's approval, AZPM will contract with a licensed and insured tower contractor to make all approved structural and other modifications of the Tower at AZPM's expense.
  - iii. Before the Antenna is installed, the County shall have the right to inspect the Tower modifications to determine whether they are sufficient to support the Antenna and the County's antenna.
  - iv. 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. AZPM will reimburse the County for one-half the cost of maintenance.

- v. After the Antenna is installed, AZPM will have 24/7/365 access to the Tower to perform maintenance of its Antenna; provided, however, that AZPM shall notify the County before accessing the Tower.
- vi. If the Tower is destroyed or damaged in whole or in part by fire, lightning, windstorm, flood, earthquake, explosion, collapse, aircraft or other casualty, i) the County shall have the right but not the obligation to repair or rebuild the Tower, and ii) AZPM shall have the right to terminate this Agreement by written notice to the County within thirty (30) days of such destruction or damage.

D. 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 Tower that house the generator and other equipment necessary to operate the Antenna and the County's antenna; provided, however, that AZPM shall notify the County before accessing the Shelter. 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 Cochise County's approved BLM site plan. Cochise County will supply AZPM with at least one (1) set of keys to the Shelters.

E. 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.

F. Electric Power Generator.

- i. Installation. At its expense, AZPM will purchase and install, at a location adjacent to the base of Cochise County's tower, a propane-powered electric power generator to be configured in a manner that will comply with the stipulations of Cochise County's approved BLM site plan. This will replace Cochise County's existing generator, which will be removed at AZPM'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 Cochise County's transmitter and associated equipment during grid-sourced electric power service interruptions.

- iii. All costs related to the purchase, installation, repair and maintenance of the generator will be borne by AZPM.
- G. Generator Fuel. AZPM will be responsible for maintaining a sufficient fuel reserve for the generator and will work with Cochise County to develop a metric for determining its share of re-fueling fees, which cost will be borne by AZPM.
- H. 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.
- I. Mule Mountain Site Plan.
  - i. Costs of Preparation. AZPM will assume all costs related to preparation and submission of the required modified BLM Mule Mountain telecommunications site plan.
  - ii. As the approved tenant of BLM's Mule Mountain telecommunications site, Cochise County will act as petitioner to the BLM for approval of the required modified site plan.
  - iii. Cochise County agrees to represent AZPM's best interests to the Mule Mountain Users Association and to facilitate acceptance of AZPM's co-location at Cochise County's Mule Mountain location.
- J. County's Antenna. The County shall have the right to change-out or add an antenna to the Tower; provided, however, that any such change-out or addition 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. 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, Cochise 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 (insert name of other governmental entity)'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 ARS § 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:

- 1) *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.

- 2) *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).
  - 3) *Workers' Compensation.* Statutory limits, with Employers' Liability coverage in an amount not less than \$1,000,000.00 per injury, illness, or disease.
  - 4) *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: David Raber

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**

\_\_\_\_\_  
Richard Searle  
Chair, Board of Supervisors

\_\_\_\_\_  
Authorized Officer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
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 Hanson, Chief Civil Deputy County Attorney

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Heather K. Gaines, Associate General Counsel,  
University of Arizona

\_\_\_\_\_  
Date

