

**AGREEMENT
FOR THE SHARING OF COSTS FOR A TELEPHONE EMERGENCY
NOTIFICATION SYSTEM (TENS)**

THIS AGREEMENT is made and entered into as of the first day of July 2010, by and between the County of Monterey, a political subdivision of the State of California (hereinafter the “County”) and the following cities and other agencies (hereinafter individually the “Agency” and collectively the “Agencies”):

City of Carmel-By-The-Sea
City of Del Rey Oaks
City of Gonzales
City of Greenfield
City of King
City of Marina
City of Monterey
City of Pacific Grove
City of Salinas
City of Sand
City of Seaside
City of Soledad
California State University, Monterey Bay

RECITALS:

WHEREAS, in 2008, the County of Monterey was awarded a grant from the State of California Office of Homeland Security to purchase and install a Telephone Emergency Notification System (TENS);

WHEREAS, Agencies participating in the Agreement for Emergency Communications Dispatch Services (9-1-1 Service Agreement) worked collaboratively to identify and procure a TENS System;

WHEREAS, in order to expedite implementation of the TENS system to improve communications during the summer of 2008 Basin Complex fires, the County advanced the project prior to execution of formal agreements with the stakeholders, and Agencies covered first year costs under the informal letters of commitment submitted with the grant application;

WHEREAS, the grant period was a two year term that expired at the end of FY 2009-10. Total grant funds of \$186,000 were expended in year one. Second year costs of \$285,444 will be billed in arrears in July 2010, as per the budget estimates for 911 Dispatch and related communications costs;

WHEREAS, the County and the Agencies recognize such services are best managed as a consolidated consortium via the Emergency Communications Users Advisory Council (ECUAC) or a successor JPA;

WHEREAS, the County and the Agencies established a public outreach campaign titled Alert Monterey County and website www.AlertMontereyCounty.org ; and

WHEREAS, this Agreement is intended to establish a cost sharing basis for the continuing operation and maintenance of the TENS system, AlertMontereyCounty and associated costs.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. COUNTY'S OBLIGATION

- A The County shall coordinate, administer, and maintain the Telephone Emergency Notification System (TENS) and AlertMontereyCounty for the benefit of all Agencies through the Emergency Communications Department (hereinafter the "Department").
- B The County, through the ECUAC, shall develop by-laws and standard operating procedures for use of the system including a process for training agencies to manage their own use of the system.
- C The Department shall continue to seek grant opportunities and make application for grant and other external sources of funds on behalf of the participating agencies and utilize any such funds received to proportionately offset all participating agency's portion of the project expense.

2. AGENCY'S OBLIGATION

- A The Agencies shall assist in governing, through the ECUAC, maintaining, operating, and communicating with their local residents about the TENS system and AlertMontereyCounty.
- B The Agencies shall provide technical and operational input necessary for effective design and use of the TENS system and AlertMontereyCounty to meet their individual and collective needs for such system.
- C The Agencies shall undertake efforts to market the system and assist in seeking or supporting the acquisition of external funding (grants, earmarks, etc.).

3. COST SHARING PLAN AND PAYMENT PROVISIONS

- A In consideration of the foregoing, each Agency will pay the County on an annual basis an amount derived by the formula below based on the costs for services provided in the prior fiscal year ("Billing Year"). The payment shall be due ("Due Date") 60 (sixty) days after the billing date. County shall bill the Agency no later than July 31st of each year for the prior fiscal year.
- B The formula to determine costs is as follows
Formula Definitions:

A	Resident Population of Agency (Source: for county and cities, “State of California Department of Finance Data” for the billing year.) Note: first two years costs shall use January 1, 2008 population figures from DOF as per ECUAC approved initial agreement.
B	Total population of the County of Monterey (Source: for county and cities, “State of California Department of Finance Data” for the billing year.)
C	Share-Of-Cost

Contract Cost Allocation Formula:

$$(1) \quad \frac{A}{B} = C$$

- C The Share-Of-Cost is applied to costs for the TENS System vendor contract, AlertMontereyCounty.org website maintenance, and any related costs approved by the ECUAC and incurred by the Department during the billing year. The result shall be an invoice payable to the County in accordance with guidelines herein.
- D Total cost to all participating agencies for the support of the project is capped at \$300,000 per fiscal year. This cap cannot be exceeded without a super-majority approval of the governing body.
- E In addition to the foregoing formula, the ECUAC may, with approval of the Emergency Communications Policy Advisory Council and at its own discretion, augment the formula on a pro rata basis to include provisions of special funding to support additional services such as a public outreach campaign.
- F The ECUAC may levy one-time fees for new member Agencies to join the consortium and participate in the use of the system under the County contract.
- G The ECUAC may choose to select other source documents to replace those defined in the Formula Definitions above if the new documents provide more accurate information.
- H The Department shall bill each agency on an individual basis.
- I Delinquency. If an Agency does not pay its annual fees for service as set forth above on or before the Due Date, the amount unpaid shall be deemed delinquent. A delinquency fee in the amount of five percent (5 %) of the delinquent amount shall be added to the amount owed and charged to the Agency. The delinquency fee shall be applied to the amount owed (including any previously added delinquency fee) every thirty (30) days until such time the bill is paid in full.

4. ADDITIONAL PARTICIPANTS

As permitted by the vendor contract, the ECUAC may approve by a majority vote other agencies joining the project on a case-by-case basis after the execution of this agreement.

The cost basis for additional participants joining the project after the execution of this agreement shall be established by the same method(s) as it was for the member Agencies. Additional participants desiring to join the project shall be required to execute this Agreement, and any successor agreements, and make a financial commitment and payments to the project which shall offset the existing member Agencies cost basis in the same manner as other external fund contributions.

5. TERM OF THE AGREEMENT

A The initial term of this Agreement shall be for two years commencing July 1, 2010, covering the operational period of July 1, 2009 through June 30, 2011, unless sooner terminated as provided herein.

B Following completion of the initial two-year operational term, this Agreement shall automatically be renewed for successive periods of one year, unless an agency notifies the County of its intention to withdraw. Such notice shall be in writing, mailed or delivered to the County no later than ninety (90) days prior to July 1 of the then current year and the withdrawal shall become effective on July 1st one year from that date unless otherwise agreed to by the County, the Emergency Communications Policy Advisory Council, and the withdrawing Agency.

6. SEVERABILITY

If any part, term or provision of this agreement shall be held void, illegal, unenforceable, or in conflict with any law of a Federal, State or Local Government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

7. INDEMNIFICATION

Each Agency shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with that Agency's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "County's performance" includes County's action or inaction and the action or inaction of County's officers, employees, agents and subcontractors.

The County shall indemnify, defend, and hold harmless each Agency, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to

any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the County's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the an Agency or Agencies. "Agency's performance" includes Agency's action or inaction and the action or inaction of Agency's officers, employees, agents and subcontractors.

8. INSURANCE

A Without limiting Agency's or County's duty to indemnify, all Agencies and the County shall maintain in force at all times during the performance of this Agreement, a policy or policies of insurance with the following minimum limits of liability:

1. Comprehensive general liability, including but not limited to premises, and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products, and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
2. Comprehensive automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
3. Worker's Compensation in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident, and \$1,000,000 each disease.

B In the event any party is lawfully self-insured in any or all of the aforementioned insurance areas, a letter certifying those areas of coverage, and in the minimum amounts as set forth in this contract, shall be furnished upon request to the other parties prior to execution of this Agreement.

9. GENERAL PROVISIONS

A Project Governance. The Emergency Communications Users Advisory Council shall govern the TENS System and AlertMontereyCounty. By a majority vote at a meeting at which a quorum of the represented voting agencies is present the project may be terminated and/or reconstituted as directed by the approved motion.

B Amendment. This Agreement may be amended or modified only by an instrument in writing signed by all the parties hereto.

C Waiver. Any waiver of any terms and conditions hereof must be in writing and signed by the parties hereto. A waiver of any of the terms

and conditions hereof shall not be construed as a waiver of any other terms or conditions in this Agreement.

- D Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the parties hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- E Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Agreement.
- F Heading. The section and paragraph headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- G Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- H Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California. The venue for such actions shall be the County of Monterey, California.
- I Construction of Agreement. The parties agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment hereto.
- J Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Participation of all Agencies noted is expected but, in the event that an agency elects not to participate, the agreement will remain valid for those agencies which execute the agreement and the costs sharing formula shall be modified to share costs proportionately between the remaining agencies as defined in Section 3 above.
- K Authority. Any individual executing this Agreement on behalf of an entity represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such entity and bind the entity to the terms and conditions of the same.
- L Integration. This Agreement, including the exhibits hereto, shall represent the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties as of the effective date hereof.
- M Notices. Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail as indicated with the signatures below.

THIS SECTION INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the COUNTY and each of the Agencies have caused this Agreement to be executed by their duly-authorized representative as of the day and year written above.

COUNTY OF MONTEREY: By: _____ CONTRACTS / PURCHASING OFFICER
Date: APPROVED AS TO FORM:
By: _____ TRACI KIRKBRIDE, Deputy County Counsel
Date: APPROVED AS TO CONTENT:
By: _____ LYNN DIEBOLD, Director of Emergency Communications
Date: APPROVED AS TO FISCAL PROVISIONS:
By: _____ Auditor-Controller
Date: APPROVED AS TO INSURANCE PROVISIONS:
By: _____ Risk Management
Date:

<p>CITY OF CARMEL-BY-THE-SEA</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <hr/> <p>Name</p> <hr/> <p>Address</p> <hr/> <p>City State Zip</p>	<p>CITY OF DEL REY OAKS</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <hr/> <p>Name</p> <hr/> <p>Address</p> <hr/> <p>City State Zip</p>
<p>CITY OF GONZALES</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <hr/> <p>Name</p> <hr/> <p>Address</p> <hr/> <p>City State Zip</p>	<p>CITY OF GREENFIELD</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <hr/> <p>Name</p> <hr/> <p>Address</p> <hr/> <p>City State Zip</p>

<p>CITY OF KING CITY</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City State Zip</p>	<p>CITY OF MARINA</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City State Zip</p>
<p>CITY OF MONTEREY</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City State Zip</p>	<p>CITY OF PACIFIC GROVE</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City State Zip</p>

<p>CITY OF SALINAS</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City State Zip</p>	<p>CITY OF SAND</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City State Zip</p>
<p>CITY OF SEASIDE</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City State Zip</p>	<p>CITY OF SOLEDAD</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Notices shall be sent to:</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Address</p> <p>_____</p> <p>City State Zip</p>

CALIFORNIA STATE UNIVERSITY,
MONTEREY BAY

By: _____

Name: _____

Title: _____

Date:

Notices shall be sent to:

Name

Address

City

State

Zip

EXHIBIT A – SAMPLE COST SHARE

Based on Total System Costs of \$260,000 budgeted for FY 2009-10 and State DOF population counts as of 1/1/2008, as per ECUAC direction for the first two year term. Amounts will change based on actual system costs for each Fiscal Year and population counts for each calendar year. FY 2010-11 estimated cost share column is based on the actual vendor cost reduction negotiated for this fiscal year, using 2008 population figures; actual population will vary.

City	TENS Estimate for County and Cities			2010 - 2011 Estimated TENS Cost
	Population 1/1/08	Percent of Total	2009 - 2010 Budgeted TENS Cost	
Carmel-By-The-Sea	4,049	0.94%	\$2,456.52	\$1,777.73
Del Rey Oaks	1,627	0.38%	\$987.10	\$714.34
Gonzales	8,803	2.05%	\$5,340.77	\$3,864.99
Greenfield	17,316	4.04%	\$10,505.59	\$7,602.65
King City	11,852	2.77%	\$7,190.59	\$5,203.66
Marina	19,171	4.47%	\$11,631.02	\$8,417.10
Monterey	29,322	6.84%	\$17,789.61	\$12,873.93
Pacific Grove	15,472	3.61%	\$9,386.84	\$6,793.04
Salinas	150,898	35.21%	\$91,549.58	\$66,252.32
Sand City	298	0.07%	\$180.80	\$130.84
Seaside	34,194	7.98%	\$20,745.45	\$15,013.00
Soledad	27,905	6.51%	\$16,929.92	\$12,251.79
County (unincorporated population)	107,642	25.12%	\$65,306.23	\$47,260.61
TOTAL for Cities and County	428,549	100.00%	\$260,000.00	\$188,156.00

Sample Cost Share for Other Agencies such as CSUMB shall be assessed by determination of the Governing Body. The share of costs paid by other agencies shall reduce the costs for other agencies before the population formula is applied. Because the population of CSUMB is largely duplicated, a cost share of \$6,000 for 2009 – 2010 was established roughly based on CSUMB population. **The share of costs paid by such “Other Agencies” shall reduce the costs for agencies above before the population formula is applied.**

Agency	Population 1/1/08	Percent of Total	2009 - 2010 Budgeted TENS Cost	2010 – 2011 Estimated TENS Cost
CSUMB			\$6,000	\$4,620