

**AGREEMENT
FOR THE PURCHASE OF MOBILE DATA COMMUNICATIONS
INFRASTRUCTURE EQUIPMENT UTILIZING
FY 2008 FEDERAL ASSISTANCE TO FIREFIGHTERS GRANT FUNDING
CITY OF MONTEREY, HOST AGENCY**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2010, by and between the City of Monterey, (hereinafter the "CITY") and the County of Monterey (hereinafter the "COUNTY").

RECITALS:

WHEREAS, both CITY and COUNTY have agreed to work together to provide enhanced inter-operable emergency communication capability to meet federal mandates and improve emergency services throughout Monterey County; and

WHEREAS, the CITY, in consultation and cooperation with the Monterey County Fire Chiefs Association, the Monterey County NGEN Task Force, and all participating agencies, submitted a regional Assistance to Firefighters Grant proposal to the United States Department of Homeland Security for Mobile Data Communications System equipment and infrastructure; and

WHEREAS, Department of Homeland Security Preparedness Directorate's Office of Grants and Training, the Granting Agency, has awarded the grant to the CITY for a Federal share amount of \$933,920, which includes \$533,399 for shared mobile data communications infrastructure equipment; and

WHEREAS the Monterey City Council has approved a Resolution authorizing this Agreement with the County of Monterey for the purchase of shared mobile data communications infrastructure equipment up to an amount not to exceed \$533,399;

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. CITY'S OBLIGATION

- A. CITY shall coordinate with COUNTY to plan and purchase Mobile Data Communications Infrastructure Equipment (MDCI Equipment) for mobile data computer connection to the Monterey County emergency communications dispatch system, and other local government purposes, in accordance with appropriate federal, state, and local laws, rules, and regulations.
- B. The Next Generation (NGEN) Project Team, assigned by the Emergency Communications User Advisory Council (ECUAC), will collaborate, in concert with ECUAC's technical advisory committee (the NGEN Task Force) and the CITY on the acquisition of shared infrastructure items. CITY shall collaborate with COUNTY to establish the preferred functionality, design, and specifications of MDCI Equipment; CITY shall have final authority relative to the specific brand(s) and model(s) of MDCI Equipment purchased.
- C. CITY shall coordinate with the grant program manager and appropriate vendors to secure the MDCI Equipment in accordance with local procurement procedures and Federal purchasing guidelines. Unless otherwise permitted by the Granting Agency, County policy, and Host Agency policy; all grant-funded equipment identified for shared infrastructure shall be acquired through the competitive bid process

including the "Request for Proposals #10122 for Next Generation (NGEN) Public Safety Voice and Data Radio System."

- D. Any unexpended dollar amounts contributed by COUNTY will be returned within three months after the notice of completion for the project has been filed by the CITY, or the project is declared abandoned by the CITY, whichever is earlier.

2. COUNTY'S OBLIGATION

- A. COUNTY shall coordinate with CITY to plan and purchase Mobile Data Communications Infrastructure Equipment (MDCI Equipment) for mobile data computer connection to the Monterey County emergency communications dispatch system, and other local government purposes, in accordance with appropriate federal, state, and local laws, rules, and regulations.
- B. COUNTY shall cooperate with CITY to establish the preferred functionality, design, and specifications for the MDCI Equipment to be purchased by CITY.
- C. COUNTY shall provide technical input and requirements necessary to create effective MDCI Equipment specifications to meet collective needs.
- D. COUNTY shall cooperate with CITY to identify qualified vendors and pricing consistent with City of Monterey's purchasing policies.
- E. COUNTY shall coordinate with the grant program manager and appropriate vendors to secure the MDCI Equipment in accordance with local procurement procedures and Federal purchasing guidelines. Unless otherwise permitted by the Granting Agency, County policy, and Host Agency policy, all grant-funded equipment identified for shared infrastructure shall be acquired through the competitive bid process including the "Request for Proposals #10122 for Next Generation (NGEN) Public Safety Voice and Data Radio System."
- F. COUNTY shall provide funding and resources necessary to complete the purchase of the specified MDCI Equipment pursuant to the grant agreement documents with regards to local matching funds and contractual services as detailed in Exhibit A, which is attached to this Agreement.

3. COST SHARING PLAN

In consideration of the foregoing, COUNTY shall pay the CITY a share of the MDCI Equipment purchase costs in accordance with the COUNTY's cost sharing ratio as set forth in the attached Exhibit A.

4. PAYMENT PROVISIONS

COUNTY agrees to remit full payment of all invoices received from CITY within 30 days of receipt of invoice and purchased equipment. COUNTY agrees that CITY may issue invoice prior to delivery of MDCI Equipment, but not prior to actual award of contract or issuance of purchase order for purchase to MDCI Equipment vendor(s). CITY may invoice COUNTY for any portion, or the entire amount, of its respective costs as set forth in Exhibit A.

CITY agrees to remit full payment of all invoices received from COUNTY within 30 days of receipt of invoice and purchased equipment. CITY agrees that COUNTY may issue invoice prior to delivery of MDCI Equipment, but not prior to actual award of contract or issuance

of purchase order for purchase to MDCI Equipment vendor(s). COUNTY may invoice CITY for any portion, or the entire amount, of its respective costs as set forth in Exhibit A.

The CITY shall notify the County through the ECUAC of any additional amounts due as a result of costs exceeding the budgeted amount. Amounts, as approved by ECUAC, shall be paid to the CITY within ninety (90) days of the acceptance of the purchased MDCI Equipment, or cancellation of the project.

The County shall notify the CITY through the ECUAC of any additional amounts due as a result of costs exceeding the budgeted amount. Amounts, as approved by ECUAC, shall be paid to the County within ninety (90) days of the acceptance of the purchased MDCI Equipment, or cancellation of the project.

Contingent upon written approval of Granting Agency, ownership of shared infrastructure assets purchased with the Grant shall be with the County or a successor administrator of the NGEN system (such as a Joint Powers Authority or "JPA"). Any required transfer of ownership of assets shall be made at no cost to NGEN Participating Agencies except for necessary and actual out of pocket costs as approved by ECUAC. Any succeeding transfer of assets by Monterey County to a successor administrator of the NGEN system shall also be at no charge as specified in the NGEN Financing Agreement.

5. TERM OF THE AGREEMENT

This Agreement shall become effective as of December 1, 2009, and shall remain in effect for a period of six (6) months after notice of completion of the project has been recorded by the Preparedness Directorate's Office of Grant and Training.

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

COUNTY shall indemnify, defend, and hold harmless the CITY, 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 COUNTY's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the CITY. "CITY'S performance" includes CITY'S action or inaction and the action or inaction of CITY'S officers, employees, agents and subcontractors.

The CITY shall indemnify, defend, and hold harmless the COUNTY and 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 the CITY'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.

8. INSURANCE

- A. Without limiting COUNTY's or CITY's duty to indemnify, COUNTY and CITY shall maintain in force at all times during the performance of this Agreement, a program 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 that either 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 party prior to execution of this Agreement.

9. GENERAL PROVISIONS

- A. Project Governance. The CITY, and/or its authorized agents, in partnership with ECUAC, shall govern the project to specify and purchase the MDCI Equipment.
- 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. 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.
- K. 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.
- L. Notices. Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail as indicated below with the signatures to the location at which this Agreement is executed:

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

CITY OF MONTEREY:

COUNTY OF MONTEREY:

Fred Meurer, City Manager

Contracts / Purchasing Officer

Approved as to form:

Approved as to form:

City Attorney's Office

Deputy County Counsel

Approved as to liability provisions

Approved as to liability provisions

Risk Manager

Risk Manager

Approved as to fiscal provisions

Auditor-Controller

EXHIBIT A

Cost Share calculations are based on a total grant award of \$1,167,399 with specific Mobile Data Computer Infrastructure (MDCI) Equipment costs estimated at \$533,399.

The total cost for COUNTY was arrived at by calculating 20% required grant match to total cost of each type of MDCI equipment and adding a grant administration fee. The grant administration fee is based on the proportion of total grant funding applied to MDCI equipment (\$533,399) versus grant funding for 78 mobile data computers (\$624,000) as applied to the total \$14,000 grant administration fee. The \$10,000 grant funding for single-site audit requirement was not applied to calculations, as this requirement will be met by the City of Monterey's annual audit.

Description		AFG \$
Total DHS Award	80%	\$ 933,919
Total Match	<u>20%</u>	<u>\$ 233,480</u>
TOTAL 2008 AFG FUNDING	100%	\$1,167,399

AFG - Participating Agencies' Costs

				% of Total AFG
Mobile Data Computers	78	\$ 8,000	\$ 624,000	54%
Single Site Audit requirement	1	\$ 10,000	<u>\$ 10,000</u>	(Host's Cost)
			\$ 634,000	

AFG - County Communications	Qty.	\$/Unit	Total Cost	County's 20% Share
BASE STATION				
data radio capable (64kbps), (78 shares)	8	\$ 22,000	\$ 176,000	\$ 35,200
NETWORK MANAGEMENT SYSTEM	1	\$ 56,399	\$ 56,399	\$ 11,280
COMBINERS & MULTI-COUPERS				
complete w/ comparator & RF connection eqmt	9	\$ 8,000	\$ 72,000	\$ 14,400
UNINTERRUPTIBLE POWER SUPPLY	4	\$ 500	\$ 2,000	\$ 400
MICROWAVE SYSTEMS w/ dishes, waveguide circulator, & hot stand-by system change-over system	4	\$ 15,000	\$ 60,000	\$ 12,000
REPEATERS DMP support repeaters including antennae, feeders and installation	3	\$ 20,000	\$ 60,000	\$ 12,000
NETWORK COMMUNICATIONS SERVER w/ application upgrade	1	\$ 45,000	\$ 45,000	\$ 9,000
MICROWAVE WIRELESS DATA LINKS w/ antennae, feeders & installation	4	\$ 15,500	<u>\$ 62,000</u>	<u>\$ 12,400</u>
TOTAL INFRASTRUCTURE COST			\$ 533,399	\$ 106,680
Grant Administration Fees, County Portion (NGEN)	46%	14,000		\$ 6,452
Monterey County Cost Share				\$ 113,132

*Actual payment vs. expense adjustments will be resolved at conclusion of grant period subject to the provisions of Section 4 of this Agreement.