

**AGREEMENT BETWEEN MONTEREY, SAN BENITO AND
SANTA CRUZ COUNTIES FOR THE SAN BENITO MONTEREY BAY AREA
MICROWAVE SYSTEM EXTENSION**

THIS AGREEMENT is made and entered into as of October 1, 2013 by and among the County of Monterey, the County of San Benito and the County of Santa Cruz (hereinafter collectively referred to as “Counties” and individually as “County”), three political subdivisions of the State of California.

RECITALS

WHEREAS, the County of Santa Cruz is included in a Federal Homeland Security grant program administered by the City of San Jose and the County of Santa Clara called the Urban Area Security Initiative (UASI) and that UASI has obtained and provided funding to address the unique planning, equipment, training and exercise needs of large urban areas, specifically in the San Francisco Bay Area and to assist in building an enhanced and sustainable capacity to prevent, respond to, and recover from acts of terrorism; and

WHEREAS, since 2001, each Office of Emergency Services of the County of Monterey, the County of San Benito and the County of Santa Cruz has been involved in a collaborative effort to coordinate all-hazards public safety emergency management issues between law enforcement, fire, public health and emergency medical services agencies in the Counties. This group, named the Tri-County Mutual Aid Committee (hereinafter referred to as “TRIMAC”), has met to discuss a range of emergency planning and response issues common to Counties; and

WHEREAS, TRIMAC concluded that the implementation of a high bandwidth microwave network would provide a beneficially secure network infrastructure among the Counties. In the event of a disaster, the microwave network connection would allow any of the Counties to quickly restore vital information resources without relying on third party data network carriers or the physical transport of technicians and equipment; and

WHEREAS, a system already exists among the Counties known as the Monterey Bay Area Microwave System (hereinafter referred as “MBAMS”). However, the existing wireless infrastructure into San Benito County is not robust enough to handle communications needed to fully interoperate with regional emergency services partners; and

WHEREAS, Counties desire to enter into this Agreement to enhance regional communications between the Counties and Santa Clara County by improving the wireless infrastructure into San Benito County and to extend MBAMS infrastructure to the San Benito County Sheriff’s Center. This project, known as the San Benito MBAMS Extension (hereinafter referred as the “Project”), will support the objectives of UASI specifically relating to maintaining high capacity connectivity among the Counties for improved regional interoperable communications to support public health and public safety services; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

A. EACH COUNTY'S OBLIGATIONS

1. Each County shall fully participate in the Project and agrees to advise their respective participants of the support they will need to facilitate governance, operations, and maintenance of the Project and the system once completed. Each County shall designate an employee who shall participate in weekly status meetings/conference calls regarding Project planning and to meet with infrastructure vendors as needed. Each County designee shall be present for and participate in final Project testing.
 - a. Santa Cruz County shall be deemed the Lead Agency and shall be responsible for administration of the oversight of the grant, the purchase of infrastructure and engineering services.
 - b. Monterey County shall be deemed the Technical Liaison and shall be responsible for ensuring that all infrastructure vendors have access to any site in Monterey County necessary to perform work on the Project.
 - c. San Benito County shall be the Host Agency and shall be responsible for interfacing its Network Operation Center to the microwave hub at the San Benito County Sheriff's Center. San Benito County shall be responsible for ensuring that all infrastructure vendors have access to any site in San Benito County necessary to perform work on the Project.

B. OPERATIONS AND MAINTENANCE

1. Each County shall be responsible for maintenance of all infrastructure equipment located on their premises. This shall include any costs of labor, parts, equipment, or rent for the sites for which the respective County is responsible. This maintenance of equipment includes participation in any regular systems checks, preventative maintenance and/or related measurement tests as recommended by the system's manufacturer.
2. Each County shall maintain any Project specifications, construction plans, drawings, and schematics in their respective possession.
3. Each County shall manage and approve the construction, implementation, maintenance and operation of the equipment located within their respective facility.
4. Each County shall ensure that sufficient bandwidth is set aside for Public Health operations as defined in UASI.
5. Each County shall identify its intent to obtain revenues from internal agencies to participate in the Project.

6. In addition to the foregoing, each County agree to fund and manage the replacement of all equipment under their direct responsibility as related to the baseline MBAMS system. Each County shall work cooperatively in the event of need for system replacement and expansion.
7. Responsibilities for the equipment and sites are as follows:
 - a. Santa Cruz County: Loma Prieta to Carol Drive, Upper Park Drive, 701 Ocean Street, Watsonville Fire Station No. 2 and Lower Mt Toro;
 - b. County of Monterey: 1590 Moffett in Salinas;
 - c. San Benito County: Fremont Peak site to San Benito County Sheriff's Center.

C. SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, unenforceable or in conflict with any law of a Federal, State or local government having jurisdiction over this Agreement, the same will either be reformed to comply with applicable law or stricken from the Agreement so as not to affect the validity or enforceability of the remainder of the Agreement.

D. INDEMNIFICATION

Each County shall indemnify, defend, and hold harmless the other participating Counties, 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 that County's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of another County. "County's performance" includes County's action or inaction and the action or inaction of County's officers, employees, agents and subcontractors.

E. INSURANCE

1. Without limiting a County's duty to indemnify, each 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:
 - a. Commercial general liability, including but not limited to premises and operations, including coverage for bodily injury and property damage, personal injury, contractual liability, broad-form property damage, products and completed operations, with a combined single limit for bodily injury and property damage of not less than \$1,000,000

per occurrence;

- b. Commercial 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; and
 - c. Worker's Compensation insurance 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.
2. In the event any County 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 above, shall be furnished upon request to the other Counties prior to execution of this Agreement.

F. TERM

Upon execution, this Agreement shall remain in effect for a period of five (5) years. After five (5) years, this MOU may be extended for up to two (2) additional five-year (5) periods following the approval of each participating County's governing body.

G. AMENDMENT

This Agreement may be amended or modified by a fully executed written document approved by the governing bodies of each County.

H. WAIVER

Any waiver of any terms and conditions in this Agreement must be made by a fully executed written document approved by the governing bodies of each County. A waiver of any of the terms and conditions in this MOU shall apply to the specific instance expressly stated and shall not be construed as a waiver of any other terms or conditions in this Agreement.

I. 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 and assigns.

J. COMPLIANCE AND NONDISCRIMINATION

Each County will comply with all applicable Federal, State and local laws and regulations. Each County shall not discriminate against any employee or applicant for employment or subcontractor because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. Such action shall include, but not

be limited to, the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; selection for training (including apprenticeship); employment; upgrading; demotion; or transfer.

K. HEADINGS

The section and paragraph headings in this Agreement are for convenience only and shall not be used to interpret the terms of this Agreement.

L. TIME IS OF THE ESSENCE

Time is of the essence in each and all of the provisions of this Agreement.

M. GOVERNING LAW

This Agreement shall be governed by and interpreted under the laws of the State of California. The venue for any legal action shall be the State of California.

N. CONSTRUCTION OF AGREEMENT

The Parties agree that each County 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.

O. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

P. AUTHORITY

Any individual executing this Agreement on behalf of a County represents and warrants hereby that he or she has the requisite authority to execute this Agreement and to bind that County to the terms and conditions of this Agreement.

Q. INTEGRATION

This Agreement, including any exhibits, shall represent the entire Agreement among the Counties with respect to the Project and shall supersede all prior negotiations, representations or agreements, either written or oral, among the Counties as of the effective date of this Agreement. This Agreement is not for the benefit of a third party nor does it create a new legal duty to third parties.

IN WITNESS WHEREOF, each County has caused this Agreement to be executed by their duly authorized representative as of the day and year first written above.

COUNTY OF MONTEREY

By: _____ Date _____

APPROVED AS TO FORM

By: _____ Date _____

COUNTY OF SAN BENITO

By: _____ Date _____

APPROVED AS TO FORM

By: _____ Date _____

COUNTY OF SANTA CRUZ

By: _____ Date _____

APPROVED AS TO FORM

By: _____ Date _____