

**MEMORANDUM OF AGREEMENT RE
NEXT GENERATION RADIO SYSTEM JOINT GOVERNANCE
AND FINANCING**

This Memorandum of Agreement re Next Generation Radio System ("NGEN") Joint Governance and Financing (the "NGEN Financing Agreement") is entered into this 12th day of May, 2009 by and between the County of Monterey ("County"), 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, City of Seaside, and the City of Soledad (collectively referred to as "the Cities"), and the California State University Monterey Bay, Monterey Peninsula Airport District, Big Sur Volunteer Fire Brigade, Carmel Valley Fire Protection District, Greenfield Fire Protection District, North County Fire Protection District, Salinas Rural Fire Protection District and Spreckels Volunteer Fire Company, and (the "non-County entities".) The County, Cities, and the non-County agencies are hereinafter referred to collectively as the "Parties."

RECITALS

Whereas, the parties to this Agreement are local government entities in Monterey County, State or District entities in Monterey County and the County of Monterey; and

Whereas, the parties, by separate agreements, currently participate in, or are represented on, the Emergency Communications Users Advisory Council ("ECUAC"), as governed by the "Agreement for 911 Emergency Communications Dispatch Services, attached hereto as Exhibit B; and

Whereas, the Federal Communications Commission ("FCC") has promulgated regulations and a decision (47 CFR section 90.201; 47 CFR section 90.203 and *In Re Implementation of sections 309(f) and 337 of the Communications Act of 1934, as amended* (2004) WT Docket No. 99-87 (Decision of the FCC) which require equipment changes to the systems used by the Parties; and

Whereas, the purpose of this Financing Agreement is to provide joint oversight regarding the procurement and operation of the "Next Generation Radio System" or "NGEN"; and

Whereas, the Parties are mandated to comply with these regulatory changes and also desire to improve interoperability and otherwise enhance the system via the procurement and use of new equipment under the terms of this Agreement; and

Whereas, the parties wish to work cooperatively to specify and procure the best and most appropriate NGEN system which meets the public safety needs of the Parties and the residents of the County of Monterey; and

Whereas, the participating agencies intend to design and implement this NGEN system under the terms outlined in this Agreement; and

Whereas, the estimated cost of the shared equipment for the NGEN project ranges from \$7.8 million dollars to \$12 million dollars, which costs are to be financed and paid in accordance with this Agreement; and

Whereas, individual parties will absorb the cost of the field equipment to be used exclusively by their individual agency; and

Whereas, the parties find that it is to their mutual benefit and advantage to work together and share in the acquisition of NGEN shared infrastructure and equipment, bearing those cost on a proportionate basis.

NOW, THEREFORE, in mutual consideration of the terms and conditions provided below, the Parties agree as follows:

TERMS

1. Governance The parties agree the Emergency Communications Users Advisory Council ("ECUAC") shall provide oversight regarding the operations under this Agreement and the existing Agreement(s) for 9-1-1 Emergency Dispatch Services, which are incorporated by this reference and attached as Exhibit B. Said governance shall continue unless or until a new entity is created by separate Agreement among the parties and specifies a new or different governance.
2. Shared Infrastructure, Engineering and Project Management
 - A. Monterey County will acquire the shared infrastructure, equipment, engineering, and project management for the NGEN system which will be procured per the terms of this Agreement. The shared infrastructure will be maintained by Monterey County in accordance with approved policies and maintenance agreements implemented between the ECUAC and Monterey County. Upon system acceptance, the shared infrastructure will be stewarded by Monterey County until such time as a Joint Powers Authority is created to operate the Emergency Communications function.
 - B. The City of Salinas contribution toward shared infrastructure costs shall be governed by the MOU attached as Exhibit C. Ownership of shared infrastructure purchased through the 2007 COPS Technology Grant shall also be governed by Exhibit C.
 - C. By executing this Agreement, each Party agrees that a committee (the "NGEN RFP Review and Selection Committee") selected by the ECUAC or appointed by its represented Agency Groups (such as Chief Law Enforcement Officers and Fire Chiefs Associations) to represent all Parties, shall recommend approval for procurement of a Design-Build vendor. Such recommendation

shall be based upon an extensive review of proposals submitted in response to a formal Request For Proposal (RFP) issued by the County, as well as investigations into the various aspects of the proposals, answers to questions posed by the Selection Committee and vendor references. The NGEN RFP Review and Selection Committee will make a final contract award recommendation to the ECUAC, who shall notify the Emergency Communications Policy Advisory Council ("ECPAC") members (as identified in Exhibit B, Section 7.A.), of the recommended vendor and forward its recommendation to the Board of Supervisors on behalf of all Parties. In the event that the Selection Committee cannot reach consensus on a recommendation, but forwards the top two equally qualified vendor proposals to the ECUAC to make the final choice, the ECUAC shall require a two-thirds majority vote to break the tie, notify ECPAC and forward its recommendation to the Board of Supervisors.

- D. It is the intention of the parties that the combined total of costs for shared infrastructure, soft costs (such as project management and Selection Team expenses), and mobile data infrastructure, not exceed the upper limit of \$12 million estimated for this project.
- E. Should the cost of the shared infrastructure exceed that estimated in the Recitals above, the parties shall meet and confer regarding whether or how to proceed with this Agreement. The ECUAC shall develop policies regarding its oversight responsibilities under this Agreement, including circumstances under which a "super majority" of two-thirds (2/3) of the voting members present at a scheduled meeting would be required to authorize, or recommend for approval to the Board of Supervisors, new or enhanced financial agreements. Said policies shall be approved by the Emergency Communications Policy Advisory Council ("ECPAC").
- F. In addition to the voice and data infrastructure, NGEN member agencies intend to procure radio subscriber equipment (portable and mobile radios and accessories) and leverage optional volume pricing.

3. Agency Voice Equipment

- A. Each party to this Agreement shall utilize at its own expense subscriber equipment such as mobile and portable radios, which is compatible to and will interface into the NGEN voice communication system and be used by its own personnel.

4. Mobile Data Communications System (MDCS) and Agency Equipment

- A. The RFP process will assume that agencies currently participating in the existing MDCS will continue to do so. Agencies wishing to opt out of participating in the Mobile Data Communications System of the shared

infrastructure of the NGEN project must do so in writing to the ECUAC prior to the award of a contract by the Board of Supervisors. ECUAC will provide direction regarding opt out timing and process. Actual terms of financing will be calculated by Monterey County when vendor selection is final and system costs are known.

- B. Each party to this agreement electing to use the MDCS shall pay its proportionate share, as defined in Exhibit A, as updated, if applicable, for the MDCS shared infrastructure.
- C. Each party to this Agreement may acquire at its own expense field equipment such as computers, mobile and portable radios, which is compatible to and will interface into the NGEN system and be used by its own personnel for receipt of data files.
- D. An Addendum or Amendment to this Agreement shall be signed by all Parties sharing in the cost of MDCS shared infrastructure, prior to contract approval by the Board of Supervisors.

5. Financing

A. Debt Financing

- (1) On behalf of all participating agencies, Monterey County will secure lease financing from the best available source, based on the County's stand-alone credit rating, in an amount sufficient to cover the construction of the NGEN infrastructure (see paragraph B below), less the pro-rata share of those participants opting out of the shared financing. Participants in the shared financing may elect to pre-pay lease obligations, but may incur penalties prescribed by the terms of the financing source. Participants shall have an opportunity to review the lease terms prior to their being finalized.
- (2) Project soft costs, such as for employment of a Project Manager, expenses of the RFP Review and Selection Team, and related administration and oversight costs will most likely not be financed but will be billed in the first two years of the project (FY 2009-10 and 10-11), with debt service on shared infrastructure (pursuant to the design build contract) beginning in FY 2011-12 for a period of fifteen years as described in EXHIBIT A.

B. Participant Financing Options

- (1). SELF-FUNDING. Agencies choosing to not participate in the joint financing must make that election at the time of signing this Agreement. Once the financing is structured, self-funding agencies will no longer be able to elect

to join the financing and must provide funding through alternative sources. Those self-funding agencies will be required to deposit, on or before the bond financing date, their pro-rata share of the anticipated infrastructure costs, as specified in Exhibit A, to be expended during the next twelve months, and at the beginning of each subsequent twelve month period and continuing through completion of infrastructure construction. These funds will be held in trust with the County Treasurer. Accumulation of interest in the deposit account and the Financing Proceeds Fund established pursuant to the financing will accrue to the benefit of the project as a whole.

Example: For all examples, the joining agency (City A) will use 10% of the total of the \$12,000,000 of total infrastructure costs, \$5,000,000 will be spent in year one, \$4,000,000 in year two, and \$3,000,000 in the final year of construction. City A must contribute \$1,200,000 toward the project. City A must deposit \$500,000 with the County Treasurer on or before the closing date of the bond offering ("bond date"). Assuming estimated construction costs total \$4,000,000 in year two, City A would be required to deposit \$400,000 before the first anniversary of the bond date, with the final \$300,000 being deposited at the beginning of year three of construction.

(2). PRE-PAYMENT BY AGENCY. By depositing funds equivalent to that agency's next fiscal year's debt, with the County 30 days or more prior to the Bond Date, an Agency may elect to pre-fund debt service annually, in order to avoid the deduction from property taxes on deposit with the County Treasurer. Should any pre-paying agency fail to pay its requisite debt service 30 calendar days or more before the bond date, the County will withhold that Agency's annual debt service requirement from the next property taxes collected. Interest earned on those deposits will accrue to the benefit of the project, not the individual agency.

(3). STANDARD TAX DEDUCTION PAYMENT. Execution of this agreement authorizes the County to collect semi-annual debt service payments from property taxes. If an agency does not pre-pay its annual self-funding or debt service requirement as provided in paragraph 2 above, the County shall withhold the semi-annual debt service payments from property taxes collected through execution of this NGEN Financing Agreement or a subsequent JPA. In December and April, after property taxes are collected, but before distribution to the various agencies, the County will deduct the agency's next debt service payment before distribution. Agencies will be given debt amortization schedules outlining the exact principal and interest amounts throughout the term of the bond. No fees will be charged by the County for administrative services relating thereto.

(4). PAYMENT BY NON-PROPERTY TAX COUNTY AGENCIES

The following agencies do not receive property taxes from which its funding obligations can be withheld: CSUMB, Spreckles Volunteer Fire Company, Big Sur Volunteer Fire Brigade, and Monterey Peninsula Airport District.

These Agencies may elect to participate in the pooled financing or self-fund their share of core infrastructure cost. In either case, each Agency shall pre-fund its debt service annually, on or before the bond date.

Delinquency: If a non-property tax Agency does not pay its annual funding payment 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 (30) days until such time as the bill is paid in full.

6. New participants

- A. Agencies not party to this Agreement on the date of its first execution may join the NGEN project and system, subject to the approval of the BCUAC and on such terms as set by the BCUAC.
- B. Agencies joining this Agreement subsequent to its initial formation may not participate in the joint financing (paragraph 4 A) unless initial participation in the financing was 100% of all signatory agencies at the time of first execution of this agreement. Where applicable, new amortization schedules will be calculated for all financing participants based on the addition of a new agency which will participate in financing.
- C. Provided there is 100% participation in the financing structure, an agency joining this NGEN Financing Agreement will be required to pay its pro-rata share of capital and core infrastructure costs, as determined by the BCUAC and currently set forth in Exhibit A, as may be updated periodically. Those agencies will be required to reimburse the parties participating in the NGEN Financing Agreement for its pro-rata share of already expended costs, its' attributable principal costs from date of joining to the next payment date, and the following twelve months estimated expenditures, with those funds being used to rebate costs to original participants. It is the intent of the Parties that a new participant's buy-in fees during the initial construction period will be used to proportionally lower existing Parties next annual debt payment. After completion of system build, buy-in fees shall be used to pay down existing Parties' annual maintenance fees. In addition, subsequent participants will be required to pay all costs assessed by the BCUAC.
- B. If all original Parties to this Agreement choose to participate in the financing, making the Project 100% financed a new Agency may choose to join the financing pool. Upon the addition of a new participant who so chooses, the County Debt manager shall, using the original formula, re-allocate the Core infrastructure costs to include the new participant in existing financing. Upon

such re-allocation, the debt of all other participants shall be proportionately adjusted, consistent with Exhibit A.

7. Ownership of Equipment

- A. Except as provided below in Section 7.B, at the end of the debt service period, the County will, on behalf of all participating agencies, own the Core equipment and infrastructure. If a successor governing body is created by a new agreement among the Parties, Monterey County shall pass title to same at no cost to the Parties except necessary and actual out of pocket costs related to the transfer, subject to review by ECUAC.
- B. Ownership of shared infrastructure equipment purchased with Salinas 2007 COPS Technology Grant is subject to the conditions set forth in the City of Salinas MOU, attached hereto as Exhibit C.

8. Duties to be Performed by the County of Monterey As Administrator

The County shall exercise all powers and conduct all other duties and obligations permitted or required to be performed by local agencies under this Agreement for the operation, administration and maintenance of the NGEN System.

Annually, Monterey County shall cause to be performed a special district audit and a State Controller's report. The fees and costs associated with these documents shall be shared by the parties in the proportion represented in Exhibit A.

9. Dispute Resolution

If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties by the following procedure. Each party to this agreement shall nominate one proposed mediator by name. If a majority of parties nominate the same mediator, that mediator shall be used. If no majority is determined by the nominations, the mediator shall be selected by lot from among nominations provided by each party.

All costs and fees required by the mediator shall be split equally by the parties; otherwise each party shall bear its own costs of mediation. ECUAC shall develop policies regarding the procedures to be used for mediation.

10. Amendments/Withdrawals

This Agreement may be amended at any time by signatures of three-fourths of the parties. Should a signatory agency wish to withdraw from this agreement, said agency shall give not fewer than 24 months' written notice to all parties hereto. Said

withdrawing agency shall be required to pay in full any residuals amounts due from it under this agreement.

11. Indemnification

Each party hereto shall indemnify, defend, and hold harmless the others, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by said indemnifying party, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the indemnifying agency. Each shall reimburse the other for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the indemnifier is obligated to indemnify, defend and hold the other harmless under this Agreement.

12. Interpretation of Agreement

Nothing in this Agreement shall be construed to hold any Party liable to any other Party, or any person not a party hereto, for the design, construction, installation, inspection, operation, maintenance and/or repair of any of the NGEN system or equipment. This Agreement is designed to implement the financing of shared equipment and is not an agreement as defined in Government Code Section 895.

13. Severability

If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the portions of this Chapter not held to be unconstitutional or invalid.

14. Participation

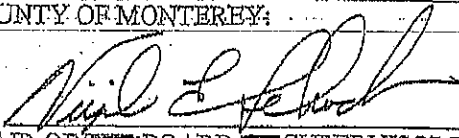
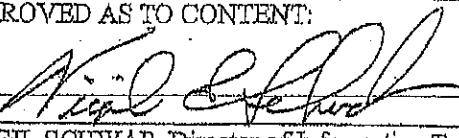
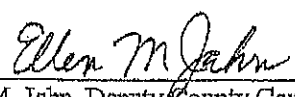
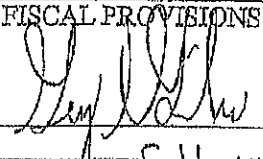
Participation of all Agencies noted is expected but, in the event that an agency elects not to participate, the agreement will remain valid for those agencies which execute the agreement.

15. Signatures

This Agreement may be signed in counterparts with the signature pages attached to form a complete document.

County Signature Page:

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: 	
CHIEF OF THE BOARD OF SUPERVISORS DIRECTOR OF INFORMATION TECHNOLOGY	
Date: 12 MAY 09	
APPROVED AS TO CONTENT:	
By: 	
VIRGIL SCHWAB, Director of Information Technology	
Date: 12 MAY 09	
APPROVED AS TO FORM:	
	
Ellen M. Jahn, Deputy County Counsel	
Date: 5-7-09	
APPROVED AS TO FISCAL PROVISIONS:	
By: 	
Auditor-Controller	
Date: 5-11-09	
APPROVED AS TO LIABILITY PROVISIONS:	
By: _____	
Risk Management	
Date: _____	
Notices shall be sent to:	With a Copy that shall not constitute notice:
Mike Derr Contracts Purchasing Officer 168 W. Alisal Salinas, CA 93901 (831)755-4992 (831)755-4969 derrm@co.monterey.ca.us	Virgil Schwab Director of Information Technology 1590 Moffett Salinas, CA 93905 (831)759-6923 (831)759-6910 schwaby@co.monterey.ca.us

Estimated NGEN Infrastructure Costs by Agency per Fiscal Year

			FY 09/10	FY 10/11	FY 11/12 thru 2027
			15 Year Vendor		
Infrastructure Total (Does Not Include Subscriber Radios):			Soft Cost Expenses	Soft Cost Expenses	Infrastructure Financing Only
Agency	# Radios	Percentage	\$500,000.00	\$500,000.00	\$11,000,000.00
County of Monterey	1264	39.342%	\$196,711.85	\$196,711.85	\$441,588.10
City of Carmel by the Sea	71	2.048%	\$10,239.40	\$10,239.40	\$22,985.88
City of Del Rey Oaks	31	0.894%	\$4,470.72	\$4,470.72	\$10,036.09
City of Gonzales	63	1.817%	\$9,085.66	\$9,085.66	\$20,395.93
City of Greenfield	63	1.817%	\$9,085.66	\$9,085.66	\$20,395.93
City of King City	67	1.933%	\$9,662.53	\$9,662.53	\$21,890.91
City of Marina	123	3.548%	\$17,738.68	\$17,738.68	\$38,820.88
City of Monterey	341	9.836%	\$49,177.98	\$49,177.98	\$110,397.02
City of Pacific Grove	141	4.067%	\$20,334.58	\$20,334.58	\$45,648.04
City of Salinas	531	15.316%	\$76,579.18	\$76,579.18	\$171,908.56
City of San Jose	27	0.779%	\$3,803.86	\$3,803.86	\$8,741.11
City of Seaside	202	5.826%	\$29,131.81	\$29,131.81	\$65,396.43
City of Solvang	68	1.961%	\$9,806.75	\$9,806.75	\$22,014.66
CSU Monterey Bay	24	0.692%	\$3,461.21	\$3,461.21	\$7,769.88
Monterey Airport	31	0.894%	\$4,470.72	\$4,470.72	\$10,036.09
Big Sur Volunteer Fire	33	0.952%	\$4,789.16	\$4,789.16	\$10,683.58
Carmel Valley Fire	84	2.423%	\$12,114.22	\$12,114.22	\$27,194.57
Greenfield Fire Protection District	24	0.692%	\$3,461.21	\$3,461.21	\$7,769.88
North County Fire District	80	2.307%	\$11,537.35	\$11,537.35	\$25,899.60
Salinas Rural Fire	58	1.673%	\$8,384.58	\$8,384.58	\$18,777.21
Spreckels Volunteer Fire	12	0.346%	\$1,730.60	\$1,730.60	\$3,884.94
EMS	29	0.836%	\$4,182.29	\$4,182.29	\$9,388.60
	3487	100.000%	\$500,000.00	\$500,000.00	\$1,122,423.70

Cost allocations will change if different assumptions are used, as inventories are updated, and if different agencies elect to or not to participate.

The following assumptions were used in the allocation calculations:

- 1 Assumes that the number of radios will be the basis for any cost sharing formula
- 2 Assumes that the number of radios is accurate as of the time of the signing of the cost sharing agreement for the Functional Design Specification
- 3 Assumes that all agencies will participate.
- 4 Assumes pay as you go during first two years for soft costs
Assumes maximum finance rate of 8% and maximum amount financed of
- 5 \$11,000,000

Important Note: Radio counts, which are the basis of the cost sharing percentage for each Agency, will change during the course of this project and cost share will, therefore, also change. Total project costs are capped at \$1 million for soft costs and \$11 million for shared infrastructure, but each agency's annual share payment may vary as device counts change. Section 1 of the Agreement Terms specifies that the Emergency Communications Users Advisory Council (ECUAC) shall serve as the governing body for this project unless or until a new entity is created by separate agreement. Agreement Sections 2.A., 2.C., 2.E., 4.A., 6.A., 6.C., 7.A., and 9 contain references to duties and responsibilities of ECUAC as the governing body, providing oversight of the design, procurement and installation of the system and the ongoing operation and maintenance of the system after acceptance. ECUAC will likewise establish policies and procedures for how and when such changes will be computed and become effective.