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CITY OF FRESNO
City Clerk's Office (Original)

**AGREEMENT
BETWEEN CITY OF FRESNO AND COUNTY OF KINGS
(PUBLIC SAFETY INTEROPERABLE COMMUNICATION GRANT)**

This Agreement ("Agreement") is made and entered into this 7th day of February, 2012, by and between the City of Fresno, a California municipal corporation ("City"), and the County of Kings, a Political Subdivision of the State of California ("Agency").

RECITALS

A. City has received an award of \$5,431,433.30 in grant funds under the federal Homeland Security Public Safety Interoperable Communication Grant Program ("PSIC Program"), administered by the State Office of Homeland Security ("OHS"), pursuant to Grant No. 2007-GS-H7-0008 ("Grant"), incorporated herein by reference.

B. City, through its police department, is responsible for administering the disbursement of Grant funds received pursuant to the Grant for the regional (i.e., seven county region under the Grant) interoperable communication projects.

C. Agency desires to undertake a project for Fire Frequency Swap with Law Enforcement, more particularly described in the attached **Exhibit A** and incorporated by reference herein, ("Project") to be funded in part from the Grant funds up to a total of \$870,956.64.

D. The parties agree that the Project will add to and enhance existing regional operational efforts and future goals for interoperable communications.

E. Agency, in performing governmental functions or cooperating and coordinating with City hereunder, shall do so in conformance with the PSIC Program.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

Section 1. Responsibilities of City. Contingent upon funding being available, City agrees to utilize up to a total of \$870,956.64 of the Grant funds for the Project. City will coordinate the preparation and prompt submittal of documentation to OHS required under the Grant, draw down of Grant funds and remit to the Agency or its designated payee(s) ("Payee") any Grant funds received for the Project subject to the receipt of detailed invoices reimbursable pursuant to the terms and conditions of the Grant and approved for payment by Agency. Nothing in this Agreement shall commit the taxing authority or general fund of City.

Section 2. Responsibilities of Agency. Agency will be responsible for the purchase, contract administration, Project management and all costs and expenses of the Project. Agency may use Grant funds for costs and expenses reimbursable under the Grant up to a total of \$870,956.64. Agency will be responsible for providing detailed invoices to the City for disbursement of monies from the Grant funds. Agency will remain responsible for any costs not reimbursable pursuant to the Grant. Agency will be responsible, at its sole cost and expense, for maintaining any equipment or improvement obtained pursuant to this Agreement in

accordance with the terms and conditions of the Grant. Any Payee of Agency shall be designated by Agency in writing following Agency's acceptance of delivery, or the partial or completed work, and Agency's approval for payment of the detailed invoice from the Payee. Agency agrees to use the Project as intended under the Grant and consistent with Grant requirements. Agency acknowledges and agrees that funding is dependant upon satisfactory performance and availability of funds.

Section 3. Term of Agreement and Termination.

(a) Term of Agreement. The term of this Agreement shall begin September 14, 2010 and end upon one of the terminating events described in 3(b) below unless extended by mutual written agreement of the parties or terminated as provided herein.

(b) Termination.

(1) Non-Allocation of Funds – The terms and conditions of this Agreement are contingent on the approval of funds by the appropriating party; provided however, should sufficient funds not be allocated, (i) the Agreement may be modified at any time upon mutual written agreement of the parties, or (ii) this Agreement may be terminated at any time by the non-appropriating party giving at least 30 days' advance written notice of an intention to terminate to the other party.

(2) Breach of Contract – Either party may terminate this Agreement upon 30 days advance written notice to the other party, in the event the other party substantially fails to perform or comply with any of the terms or conditions hereof and such failure is not cured during such 30-day notification period. In no event shall any payment by City constitute a waiver by City of any breach of this Agreement or any default which may then exist on the part of the Agency. Neither shall such payment impair or prejudice any remedy available to City with respect to the breach or default.

(3) Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated by either party upon the giving at least 30 days advance written notice of an intention to terminate to the other party.

(4) Notwithstanding the foregoing, this Agreement shall automatically suspend or terminate upon City's written notice to Agency of any of the following events: (i) Grant termination, (ii) any non-appropriation or non-allocation of Grant funding required in pursuit hereof, (iii) Agency's illegal or improper use of Project procured with Grant funds, (iv) Agency's failure to comply with any term of this Agreement, (v) Agency's failure to comply with Federal Drug/Alcohol regulations, or (vi) Agency's failure to comply with any applicable provisions of the Grant. City shall have the right to demand of Agency the repayment to City of any funds disbursed to Agency or its Payee under this Agreement, which were not expended either in accordance with the terms of this Agreement, or with the terms of the Grant. Agency shall promptly refund any such funds upon demand.

Section 4. Indemnification. Agency shall be solely liable for, and shall indemnify, defend and hold harmless City and each of its officers, officials, employees, agents and volunteers ("Indemnitees") from, any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by any of the Indemnitees, the Agency or any other person, and from any and all claims, demands and actions in law or equity (including attorney's

fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of the Agency or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

If Agency should subcontract all or any portion of the Project, Agency shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

Section 5. Insurance. It is understood and agreed that each party maintains insurance policies or self-insurance programs to fund their respective liabilities. Agency agrees that such programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the City and each of its officers, officials, agents, employees and volunteers. Evidence of insurance, certificates of insurance or other similar documentation shall not be required of any party under this Agreement.

If Agency should subcontract all or any portion of the Project, Agency shall require each subcontractor to provide the same insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers as required by Agency to be provided by subcontractor in favor of Agency including, without limitation, endorsement of any commercial general liability or auto liability insurance policy to cover City and each of its officers, officials, employees, agents and volunteers as additional insureds under the policy; and endorsement of the workers' compensation insurance policy to contain a waiver of subrogation as to the City and each of its officers, officials, agents, employees and volunteers.

Section 6. Independent Contractor. The parties are acting in an independent capacity. Each party agrees that it, including any and all of its officers, agents, and employees, shall have absolutely no right to employment rights and benefits available to the other party's employees. Each party shall be solely liable and responsible for providing to, or on behalf of, its own officers, agents, and employees all legally and contractually required employee benefits. In addition, each party shall be solely responsible and save the other party harmless from all matters relating to payment of the party's employees, including, but not limited to, compliance with applicable social security withholding and all other regulations governing such matters. Further and without limitation, Agency will be responsible for its own actions in completing the Project under this Agreement and City shall not be liable for any civil liability that may arise from the completion of the Project by the Agency.

Section 7. Maintenance of Records. Agency shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement and any expenses. Agency shall make such materials available at its offices at all reasonable times during the Agreement period and for three years from the date of expiration or termination of the Agreement. City and any duly authorized representative of the state or federal government that has provided funding for any acquisition or activities under this Agreement shall have access to any books, records, and documents of the Agency that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. This paragraph shall survive expiration or termination of this Agreement.

Section 8. Non-waiver. Waiver of any breach or default hereunder will not constitute a continuing waiver, or a waiver of any subsequent breach, of either the same or another provision of this Agreement.

Section 9. Severability. If any provision of this Agreement is held invalid or unconstitutional, such decision shall have no effect on the validity of the remaining provisions of the Agreement and such remaining provisions shall continue to remain in full force and effect.

Section 10. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

Section 11. Governing Law. The interpretation and enforcement of this Agreement will be governed by the laws of the State of California and where applicable, by federal law. The parties agree to submit any disputes arising under this Agreement to a court of competent jurisdiction located in Fresno County, California.

Section 12. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. It is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

Section 13. Assignment and Binding. Neither party shall assign or transfer its rights or obligations under this Agreement without the written consent of the other party. Subject to the preceding sentence, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

Section 14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

Section 15. Compliance with Laws and Grant. In completing the Project under this Agreement, Agency shall at all times comply with all applicable laws of the United States, the State of California and its respective jurisdiction, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

Section 16. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

Section 17. Extent of Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by each party.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

County of Kings,
A Political Subdivision of the State of
California

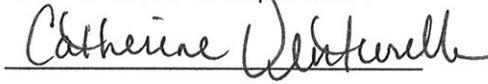
By: 
Jerry P. Dyer, Chief of Police
Fresno Police Department

By: 
Richard Fagundes, Chairman of the
Board of Supervisors FEB 14 2012

ATTEST: YVONNE SPENCE, CMC
REBECCA E. KLISCH
City Clerk

ATTEST:
Catherine Venturella
Clerk of the Board of Supervisors

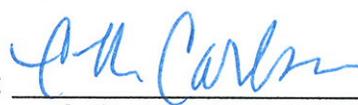
By: 
Deputy 3/1/12

By: 

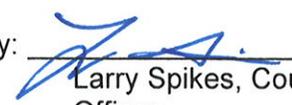
No signature of City Attorney required.
Standard Document #FPD 3.0 has been
used without modification, as certified by
the undersigned.

APPROVED AS TO LEGAL FORM:
Colleen Carlson
County Counsel

By: 
Jeffrey Motoyasu
Lieutenant
Fresno Police Department

By: 
Colleen Carlson, County Counsel

Addresses:

By: 
Larry Spikes, County Administrative
Officer

City:
City of Fresno
Attention: Courtney Espinoza, SCSO
P. O. Box 1271
Fresno, CA 93715-1271
Phone: (559) 621-2495
FAX: (559) 457-1541

Agency:
County of Kings
Attention: Larry Spikes, County
Administrative Officer
1400 W. Lacey Blvd.
Hanford, CA 93230
Phone: 559-582-3211, ext. 2375
FAX: 559-585-8047

Attachment:
Exhibit A – Project Description

**Exhibit A
Agreement
Between City of Fresno and County of Kings
(PSIC Program)**

Project Description

Fire Frequency Swap with Law Enforcement

Existing Conditions

Kings County, Hanford and Lemoore Fire Departments currently utilize the UHF band for their dispatch and day-to-day communications. However, the majority of other fire departments in the Central Planning Area utilize the VHF band. Also, all Fire Departments in California are required to have VHF radios, even if they use other bands for day-to-day operations, in order to interoperate with CalFire and other departments under the FIRESCOPE radio interoperability plan.

Proposal Overview

Kings County Fire Department and the Hanford and Lemoore Fire Departments are proposing that they move their dispatch and day-to-day operations from the UHF band to the VHF band. This will require the identification and licensing of approximately eighteen new, narrowband VHF frequencies (six repeater pairs and six simplex tactical frequencies). The current UHF frequencies would be turned over to Kings County Sheriff, Lemoore PD and Hanford PD, providing them badly needed relief from their current shortage of frequencies, and/or to be used as additional incident command and tactical channels to fulfill Platinum-10 requirements.

In order to complete this project the Kings County Flat Top Mountain Repeater Site Tower will be replaced and new VHF mobile and portable radios will be purchased. These portable radios will enable interoperability with EMS and Law Enforcement when on the scene of a multi-discipline incident. VHF pagers will also be purchased for fire crew alerting.

The dispatch consoles for each entity (Kings County Fire, Kings County Sheriff, Hanford Fire, Hanford Police, Lemoore Fire and Lemoore Police) will be modified to add the new channels.