

## **AGREEMENT FOR NGEN SERVICES AND GOVERNANCE**

This Agreement for Next Generation Radio System (NGEN) Services and Governance “Agreement” is made and entered into as of the date of last signature, by and between the County of Monterey, a political subdivision of the State of California (“County”) and the following Cities, Fire Districts, and other organizations: Big Sur Fire, 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, City of Soledad, California State University Monterey Bay, Mid Coast Fire Brigade, Monterey Peninsula Airport District, Monterey County Regional Fire District, and North County Fire Protection District. County and these Cities, Fire Districts and other organizations are collectively referred to herein as “Parties”:

### **RECITALS**

**Whereas**, the Parties desire to maintain equipment and personnel for response to fire, law enforcement, emergency medical services (EMS) and the management of other emergency incidents occurring within areas under their respective jurisdictions; and

**Whereas**, the Parties desire to augment the fire protection, law enforcement and emergency medical service capabilities available in their respective jurisdictions by entering into this Agreement; and

**Whereas**, the Parties desire to participate in a county-wide NGEN Radio System, hereinafter “System”, as established in this Agreement. The System consists of all necessary communications equipment, sites, and other related services and technology for law enforcement, fire, emergency medical, and other services agencies and is further defined in Exhibit A, to this Agreement; and

**Whereas**, the Parties desire to collaborate as partners to better serve the public with the understanding that a formal structure will enable the County to work with representatives of the Parties and Agencies of the System to achieve clear policy direction and consistent coordination regarding a county-wide public safety radio communications system; and

**Whereas**, the Parties desire to enter into this Agreement whereby the County will own and operate the System for the benefit of the Parties, and

**Whereas**, the Parties desire to work in partnership to provide direction and decision-making on items such as operations, budget, strategy, and vision as they pertain to the County's provision of a county-wide public safety radio communications system; and

**Whereas**, the County, through its Department of Information Technology and under the governance of the Board of Supervisors, is willing and able to furnish such services through a mutually agreeable cost sharing plan.

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

**1. DEFINITIONS**

A. Agency: A public agency, or other authorized user organization, including, but not limited to, a general government agency (local, state, or federal), its authorized employees and personnel (paid or volunteer), participating in and using the System under this Agreement. The Parties understand and agree that each Party may have one or more Agencies of public safety radio communications services pursuant to this Agreement.

B. Agreement: This Agreement that establishes NGEN and sets 1) the terms and conditions by which the system will be governed, managed, operated and 2) modified by the Parties signing the Agreement and 3) which sets forth the terms and conditions under which the System provides services to the agencies and 4) the agency's responsibilities while operating on the System.

C. Capital Fee: Charges to fund capital replacement, upgrades, and system enhancements. This fee will be based on the NGEN Capital Budget.

D. Cost Allocation: The methodology used to apply the True-up process to agency specific billing. The cost allocation methodology is defined in Section 13 of this Agreement.

- E. County: Monterey County, which has multiple roles relevant to the System and the Agreement: These include, administration, budget and finance, provider of services, and recipient of services.
- F. County Board of Supervisors: The Board of Supervisors for Monterey County, pursuant to Government Code section 25000, is the governing body for Monterey County. It has final authority regarding all aspects of the System, including budget, for delivery of countywide public safety radio communications services.
- G. Department of Emergency Management (DEM): A department of the County of Monterey coordinates emergency preparedness, response and recovery functions and responsibilities. As part of its planning responsibilities, DEM is the lead entity for the development and maintenance of the Tactical Interoperability Communications Plan. The Director of Emergency Management is responsible for day to day administrative and operational activities of DEM and acts as the Monterey County Interoperability Coordinator.
- H. Emergency Communications Department (ECD): A Monterey County department that provides dispatch and call-taking services through the 9-1-1 Services Agreement; manages agency billing of NGEN Operation & Maintenance (O&M) fees, debt service fees and funds disbursement from the NGEN Debt Service Fund and the O&M Fund.
- I. Fiscal Year (FY): A "Fiscal Year" is defined as the Fiscal Year for the County of Monterey from July 1 of each year through June 30 of the following year.
- J. Information Technology Department (ITD): A Monterey County department that provides, maintains, and operates information technology and communications services to County of Monterey.
- K. Monterey County Interoperability Committee: Tasked with providing recommendations to the NGEN Boards regarding governance, operational protocol, technical solutions, and the training needed to implement the

Tactical Interoperable Communications Plan (TICP). The NGEN Boards, through the Monterey County Interoperability Coordinator, or their designee, shall coordinate all governance for the development and implementation of this TICP. Membership includes representatives from Member Agencies who participate in meetings, working groups, planning, training, and implementation as necessary.

L. Monterey County Interoperability Coordinator: Coordinates with the NGEN Boards as applicable to establish the Monterey County Interoperability Committee and any necessary working groups, adopt solutions and plans for interoperability, establish training requirements in support of the Tactical Interoperable Communications Plan (TICP), and execute necessary Memoranda of Understanding and Share Agreements for interoperable communications.

M. Monterey County Operational Area (MCOA): The MCOA covers 3,771 square miles with a population of over 415,000. The MCOA stretches from Watsonville in the north to Parkfield in the South, including the Salinas Valley, the Big Sur coastline, and the Monterey Peninsula and is contiguous with the boundaries of the County.

N. New Party: An agency that intends to enter into an Agreement with the Parties and that has not paid either a buy-in fee, or the debt service fee used to construct the System.

O. NGEN Boards: The NGEN Boards are the NGEN Executive Board, and the NGEN Operations Board whose responsibilities are specified in this Agreement.

P. NGEN Executive Board: The NGEN Executive Board is comprised of certain executives of the Parties and represents the Parties as specified in this Agreement.

Q. NGEN Operations Board: The NGEN Operations Board is comprised of certain Executive Directors and/or Chiefs of the law enforcement and fire protection agencies receiving services as specified in this Agreement.

- R. Operations and Maintenance (O&M): The functions, duties and labor associated with the daily operations and normal repairs, replacement of parts and structural components, and other activities needed to preserve the System so that it continues to provide acceptable services.
- S. O&M Fee: Charges applied to Parties of the System to recover the cost of O&M. This fee will be based on the NGEN O&M Budget.
- T. Parties: The County and the Cities, Fire Districts, and other organizations that are signatory to this Agreement.
- U. Project 25 (P25): A digital radio standard that defines interfaces between various components of Land Mobile Radio (LMR) systems. The P25 standard is a joint effort of the National Association of State Telecommunications Directors and the Association of Public-Safety Communications Officials.
- V. Radio Manager: The Information Technology Department Radio Manager represents the NGEN Operations Board interests and makes decisions on issues related to the day-to-day operation of the system and any urgent or emergency system operational or repair decisions. In coordination with the NGEN Operations Board, the Radio Manager recommends, develops, applies, and enforces policies, procedures, contracts, organizations, and agreements that provide the service levels as defined in the NGEN Service Level Agreement, Exhibit B to this Agreement.
- W. Service Level Agreement (SLA): Outlines the obligations in connection with O&M of the System. The performance metrics contained in the SLA, Exhibit B to this Agreement, describe the maintenance standards for the NGEN system infrastructure.
- X. Subscriber Equipment: Portable, mobile and console equipment that is intended to operate on the NGEN infrastructure for day-to-day radio communications including for intra-agency, inter-agency and cross-jurisdictional interoperability purposes. Subscriber equipment can also include network management terminals, key management facility equipment,

gateway and other assets which are determined not to be a burdened cost share.

Y. System: The NGEN Radio Communications System, as established in the Agreement.

Z. True-up: True-up is a count for those devices designed to serve an individual Agency exclusively. The true-up process is defined in Section 12 of this Agreement.

AA. Very High Frequency (VHF). Radio frequency spectrum between 150 to 174 Megahertz (MHz).

## **2. THE SYSTEM**

A. The System is comprised of land mobile radio technology that provides county-wide radio coverage using supplemental and overlapping P25 digital trunked and analog conventional systems. The radio frequency channels interoperate seamlessly with dispatch consoles, a broadband push-to-talk service, and other interoperability systems. A System overview is included in Exhibit A to this Agreement.

B. Recommendations to add, delete, or modify system components, sites, channel capacity, performance enhancements, etc., that are not part of routine maintenance actions must be coordinated and approved by the NGEN Boards prior to implementation.

## **3. GOVERNANCE**

A. The Parties agree to the formation of the NGEN Boards to consult and advise on the county-wide public safety radio communications system and services provided by the Monterey County Information Technology Department. Responsibilities of the NGEN Boards are defined herein. For those items where the NGEN Boards do not have direct responsibility, such as, but not limited to, labor relations, the County shall coordinate and collaborate in good faith with the Parties through the NGEN Boards.

- B. The Monterey County Interoperability Committee is established and is tasked with providing recommendations to the NGEN Boards regarding operational protocol, technical solutions and the training needed to implement the Tactical Interoperability Communications Plan.
- C. The Technical Working Group is established and is tasked to present decisions, analysis, and strategic input to the NGEN Boards. The Technical Working Group is chaired by the Radio Manager and shall be comprised of operations representatives from the Parties. Technical Working Group tasks are further defined in Exhibit B.
- D. Each Party to the Agreement is responsible for financial participation in the O&M and Capital Fees for the System.
- E. Each Party to the Agreement is responsible for the operation and maintenance of its own subscriber equipment operating on the System.

#### **4. NGEN EXECUTIVE BOARD**

- A. Voting members: Comprised of four City Managers; one city manager representing Salinas, one city manager representing the South County Cities of Gonzales, Greenfield, Soledad, and King City, one city manager representing the North Peninsula Cities of Marina, Seaside, and Sand City, and one city manager representing the South Peninsula Cities of Carmel-by-the Sea, Monterey, Del Rey Oaks, and Pacific Grove; plus one representative of the Fire Districts, one representative of the Monterey County Sheriff, and the County Administrative Officer, for a total of seven (7) voting NGEN Executive Board members. No designees will be allowed for these positions.
- B. The three City Managers representing the South County Cities, North Peninsula Cities, and the South Peninsula Cities will be selected by members of the Monterey Bay Area Manager's Group. The Monterey County Fire Chiefs Association shall select the Fire Districts Representative.
- C. Each Voting Member will have one equally weighted vote. Voting Members must

be Present for their vote to count. To be considered Present a Voting Member must attend in person or through Ralph M. Brown Act, Government Code section 54950-54963 (Brown Act) compliant remote attendance for their vote to count. The weight of each vote shall be dependent upon how many voting members are Present with the total weight always equaling 100% and a quorum must be Present for voting to occur.

- D. A quorum shall be four of the voting members present who represent greater than 50% of the NGEN O&M funding as delineated in the most recent billing statement.
- i. All recommendations and other actions taken by the NGEN Executive Board pursuant to this Agreement requires a simple majority vote of a quorum at a duly noticed and conducted meeting, that includes the following non-voting advisors:
1. NGEN Operations Board Chairperson or Vice Chair.
  2. Monterey County Chief Information Officer or their designee.
  3. Monterey County Emergency Communications Department Director or their designee.
- ii. The following non-voting advisors of the NGEN Executive Board are NOT required to be present at a meeting for a vote on any recommendation or action: Monterey County Emergency Medical Services Bureau Chief.
- iii. The presence or absence of an advisor at a meeting of the NGEN Executive Board shall not count towards establishing a quorum.
- E. Meetings of the NGEN Executive Board shall be conducted in compliance with the requirements of the Brown Act.
- F. NGEN Executive Board meeting agendas will be physically posted and electronically posted on the NGEN web site in accordance with Brown Act requirements.



G. The NGEN Executive Board shall elect a chair and such other officers as it sees fit. The NGEN Executive Board may establish procedures for its business and operations, create committees composed of the Party representatives or other persons, and perform such other acts that do not violate the terms of this Agreement, the bylaws adopted by the NGEN Executive Board, or applicable law.

H. Tenure: In the event of removal, resignation, or death of a voting member of the NGEN Executive Board, the entity responsible for appointment of that member shall promptly appoint a successor to fill the position.

I. NGEN Executive Board Duties

- i. The Parties understand and agree that the NGEN Executive Board has the responsibility, under this Agreement, to make recommendations that affect the costs, nature and scope of the public safety radio communications services provided to their organizations; all recommendations regarding the costs, nature, and scope of the public safety radio communications services provided to the Parties under this Agreement shall be made at NGEN Executive Board meetings at which a quorum of voting members is present.
- ii. The NGEN budgets may be augmented pursuant to this Agreement to provide special funding as needed for reasons such as, but not limited to, purchase of special or upgraded equipment, replacement of failed equipment, purchase of system software and hardware, and physical communications site upgrades; the NGEN Executive Board shall recommend equitable apportionment and cost sharing methods of such special costs among the Parties, as otherwise provided in this Agreement.
- iii. The NGEN Executive Board may recommend that the County, acting through the Monterey County Board of Supervisors, enter into binding service agreements on behalf of all Parties or it may recommend that a service is referred to the affected Parties governing bodies for approval before a service is implemented.

- iv. The NGEN Executive Board may make recommendations to the County regarding public safety radio communications services program and budget-related issues. NGEN Executive Board members shall be responsible for providing information on public safety radio communications services program and budget issues to the Agencies that they represent. Agencies shall present such information to their governing bodies, as they deem appropriate.
  - v. The NGEN Executive Board shall have responsibility to propose to the Parties fiscal policies that affect Parties and Agencies.
  - vi. The NGEN Executive Board shall meet at least four times per year, provided a quorum can be present, to receive reports from County Staff on all policy matters pertaining to budget, personnel, equipment, operations, or fiscal issues which could affect costs to Agencies. The NGEN Executive Board may review items presented by the County, items initiated by members of NGEN Executive Board, items initiated by the NGEN Operations Board, and items initiated by Parties and Agencies.
  - vii. The NGEN Executive Board may appoint additional Standing and Ad Hoc Committee(s) as necessary to advise it or to consider special issues.
  - viii. The NGEN Executive Board may request financial or performance audit(s) of the NGEN accounts, including that the auditor be independent from the County. The costs of an independent financial audit shall be borne, proportionally, by the Parties as specified in this Agreement. Upon the NGEN Executive Board's request for an audit, County Staff will cooperate in such audits.
  - ix. Bylaws. The NGEN Executive Board shall adopt bylaws consistent with this Agreement, which may be amended. These by-laws shall be the guiding governance document for the NGEN Executive Board in performing its duties under this Agreement. In the event of a conflict between the NGEN Executive Board's By-Laws and this Agreement, this Agreement shall prevail.
1. The NGEN Executive Board shall provide 30-days advance notice to the

Parties of any scheduled NGEN Executive Board meeting at which it will consider a proposal to amend the bylaws.

2. Amendments to the bylaws must be approved by the NGEN Executive Board per the voting requirements in Section 4 of this Agreement.
- x. Members of the NGEN Executive Board shall disseminate information and requirements to the Agencies they represent.

## **5. NGEN OPERATIONS BOARD**

- A. Membership of the NGEN Operations Board consists of executives, or their designees, from three law enforcement agencies, three fire protection agencies, the Monterey County Sheriff, Salinas Police Chief, Salinas Fire Chief, the Director of Emergency Communications Department, and the Monterey County Chief Information Officer or their designees, for a total of eleven (11) members. Representatives of the law enforcement and the fire protection agencies will be selected by their respective Chiefs associations.
- B. The Parties agree that attendance and full participation by all NGEN Operations Board members is crucial. A simple majority shall be established for each meeting of the NGEN Operations Board. After 3 unexcused absences by any one member of the NGEN Operations Board, the entity or entities represented by that member shall appoint a different individual to serve as a member of the NGEN Operations Board.
- C. Each member has one vote; there shall be no weighted voting.
- D. All recommendations and other actions taken by the NGEN Operations Board pursuant to this Agreement require a simple majority vote of the voting members who are present to take action and at least 4 voting members must be present to take action.
- E. Key responsibilities of the NGEN Operations Board include:
  - i. Developing and recommending operational requirements for services and capital improvements.

- ii. Tasking committees or specific staff to resolve issues, develop protocols; investigate technologies, and address other operational issues associated with the System.
- iii. Providing recommendations to the NGEN Executive Board on operational policies, goals, and operational enhancements, including those that have budgetary implications.
- iv. Receive reports from the Radio Manager on service goals and the status on meeting those goals.
- v. Meets monthly or as needed (but not less than four times per year).

F. Duties of the NGEN Operations Board include:

- i. The NGEN Operations Board shall provide operational policy recommendations.
- ii. Members of the NGEN Operations Board shall disseminate information and requirements to the Agencies they represent.
- iii. The NGEN Operations Board shall receive reports from the Radio Manager, or other County staff, on all policy matters pertaining to budget, personnel, equipment, operations, or fiscal issues which could affect costs to Agencies and Parties. The NGEN Operations Board may review items presented by the County, initiated by members of the NGEN Operations Board, and initiated by Agencies and Parties.
- iv. The NGEN Operations Board may appoint Standing and Ad Hoc Committee(s) as necessary to advise it on technical matters or to consider special issues.
- v. In advance of addition of new technology or services that affect costs to Agencies, the NGEN Operations Board shall review and recommend cost sharing and funding mechanisms to the NGEN Executive Board.
- vi. The NGEN Operations Board shall be responsible for providing recommendations to the NGEN Executive Board regarding the adoption of System O&M standards, which at a minimum shall include: 1) identification

of minimum technical standards for the System equipment and subscriber units; 2) identification of protocols for the modification of talk group assignments and their usage; 3) identification of minimum periodic maintenance standards and schedules for System equipment; 4) identification of problem reporting and resolution practices for System equipment; and 5) identification of security standards, policies, and procedures.

vii. Bylaws. The NGEN Operations Board shall adopt bylaws consistent with this Agreement, which may be amended. These by-laws shall be the guiding governance document for the NGEN Operations Board in performing its duties under this Agreement. In the event of a conflict between the By-Laws and this Agreement, this Agreement shall prevail.

1. The NGEN Operations Board shall provide 30-days advance notice to the Parties of any scheduled NGEN Operations Board meeting at which it will consider a proposal to amend the by-laws.
2. Amendments to NGEN Operations Board bylaws must be approved by 80% of the members of the NGEN Operations Board.

## **6. COUNTY OBLIGATIONS**

- A. The County shall operate, maintain, and otherwise manage all telecommunications sites and transmission media identified as components of the System that are necessary to facilitate the common, county-wide public safety communications. All other mobile, portable, base station, remote radio, data transmission equipment, terminals, and broadband push-to-talk devices designed to serve an individual Agency exclusively shall be provided for and maintained at that Agency's expense and shall comply with Section 7C of this Agreement.
- B. County shall coordinate, administer, and maintain all systems defined by the NGEN Boards to benefit all Parties, including development of standard operating procedures that may include training of Parties' staff to meet their responsibilities. All systems shall be maintained and operated consistent with applicable federal, state, and local laws, rules, and regulations such as the State of California Department of Justice and Federal Communications

Commission.

- C. County, on behalf of all Parties, shall continue to seek grant opportunities, shall make applications for grants and other external sources of funds with authorization by the County Board of Supervisors, and shall utilize any such funds received to proportionately offset all Parties' portion of project expenses.
- D. County shall provide technical expertise in radio communications and public safety information technology services and as well as associated administrative services such as, but not limited to, human resources, budgeting, auditor, treasurer, and technical support.
- E. With the approval of the County Board of Supervisors, County shall be the signatory on agreements with third-party vendors for services such as, but not limited to, support of systems required under this Agreement.

## **7. RESPONSIBILITIES OF THE PARTIES**

- A. Each Party, through its representative on the NGEN Boards, shall assist in oversight of management and operation of the public safety radio communications system and system components and shall provide technical and operational input necessary for effective design and use of the system to meet individual and collective needs.
- B. Each Party shall be responsible for communicating with its agencies about the System.
- C. Each Party shall, at its own cost, be responsible for the procurement, maintenance, and replacement of its assets that are not part of the System. Such assets must be compliant with configuration and system specifications defined by Monterey County Information Technology Department and used by those Agencies personnel at that Party's expense.
- D. All Parties shall provide information requested by the NGEN Boards such as True-Up inventory, in a timely manner.
- E. Each Party shall comply with future requirements as recommended by the

NGEN Boards. This may include but is not limited to required operational agreements, training, or upgrades of systems to comply with state or federal requirements.

- F. When requested by NGEN Executive Board, all Parties shall cooperate in seeking grants or supporting the acquisition of external funding such as grants or earmarks. If any portion of the System is funded with monies received by any Party pursuant to a contract with the State or Federal government, all Parties will comply, as required, with all the provisions of said contract, to the extent applicable to each Party. Upon request, the Party which is the grantee shall deliver a copy of said contract or grant or earmark documentation to any requesting Party at no cost to the requestor.

## **8. TERM AND RENEWAL OF THE AGREEMENT**

- A. The Effective Date of this Agreement shall be the date that all Parties have signed the Agreement, with the County signing last.
- B. The initial term of this Agreement shall be for five years plus the remainder of the fiscal year that the Agreement is executed and will automatically renew for successive periods of five years and prior to each renewal period the NGEN Boards shall review the Agreement to determine if any changes are necessary.
- C. Dissolution: The Agreement may be dissolved by an 80% vote of all Parties and will remain in effect for at least 24 months after the vote date.
- D. Voluntary Withdrawal.
- i. A withdrawing Party shall provide the NGEN Boards with written notice of intent to withdraw twenty-four (24) months before the effective date of withdrawal, a written timetable for withdrawal, and a description of the way the withdrawal will be conducted. Any withdrawal must be effective on the last day of a fiscal year. The withdrawing Party's plan for withdrawal shall minimize disruption to other Parties and Agencies. The withdrawing Party shall provide any other appropriate information requested by the NGEN Boards and County Staff, to allow the development of strategies to mitigate

disruption to the remaining Agencies.

- ii. Such withdrawing Party shall continue to fund its portion of the O&M budget pursuant to this Agreement for 24 months after issuance of its notice of withdrawal.
- iii. A withdrawing Party shall agree to a buy-out agreement to retire any financial obligations of the withdrawing Party. The Party will remain responsible for any services that will continue to be provided, such as the NGEN or other debt service Costs incurred in support of public safety radio communications systems assets.
- iv. A withdrawing Party that is a member of a NGEN Board shall notify the applicable appointing authority of its intention to withdraw at the same time that it notifies the other Parties of its withdrawal. If a withdrawing Party holds a seat on a NGEN Board representing other parties, that Party's seat shall be reassigned immediately upon receipt of the written notice to withdraw.
- v. A Party that has withdrawn from its participation in the System shall not be entitled to refund of any costs that it has incurred for the system through to the date of termination.

E. Termination for Cause. The County, in consultation with the NGEN Executive Board, may terminate the participation of any Party for cause, including a Party's failure to fully fund or fully pay budgeted costs, as well as any other breach of this Agreement (default). Cause for termination includes compliance with any requirement imposed upon the Parties as specified in this Agreement.

- i. The Termination for Cause process shall include the following steps:
  1. Written notice by the Monterey County Chief Information Officer or designee to the Party, with a copy to NGEN Executive Board members. Such notice shall advise the Party of the reason for possible termination. The notice shall further advise that the Party may cure its default within thirty (30) days of the notice and thereby avoid termination.



2. If the defaulting Party begins to cure such default, the thirty (30) day cure period will be extended by additional thirty (30) day extensions, for as long as the defaulting Party continues to diligently execute such a cure to completion.
  3. If the defaulting Party does not cure the default within thirty (30) days, termination of the defaulting Party shall be placed on the agenda for next NGEN Executive Board meeting. The NGEN Executive Board shall request in writing that the defaulting Party attend that meeting. The defaulting Party shall be asked to provide either a plan for curing its default or, a plan for withdrawal, as detailed below.
  4. If the NGEN Executive Board finds the defaulting Party's plan for curing its default unacceptable, the NGEN Executive Board may recommend to the County that it terminate the defaulting Party's participation in the NGEN system or to take other appropriate measures (e.g., lien).
  5. If the NGEN Executive Board decides to recommend termination of the defaulting Party from the NGEN system, the NGEN Executive Board shall provide written notice to the defaulting Party that it recommends to the County that services provided under this Agreement be terminated, effective twenty-four (24) months following the date of delivery of the notice. A copy of the written notice of recommended termination delivered to a defaulting Party shall be provided to County. The County retains final authority and discretion to terminate a defaulting party and to determine the date that services provided under this Agreement will be terminated.
  6. A Party terminated by the County for cause remains liable for its portion of all the System costs (O&M, Capital, and any other) up to the effective termination date, as well as applicable damages, collection costs, and interest.
- ii. The terminated Party forfeits all other rights. If the terminated Party holds a seat on the NGEN Executive Board, that seat shall be reassigned immediately upon termination.

F. In the event of withdrawal by, or termination of, a Party which is providing resources (such as frequency license, site, or other resources) to the benefit of the System, that resource shall be left intact and in service to the System and that Party shall negotiate in good faith with the County for continuing use of that resource.

## **9. ADDITION OF NEW PARTIES**

- A. Additional Future Parties. Any agency that is not a party to this Agreement on the effective date of this Agreement may become a Party upon completion of the steps detailed in the New Party Procedures posted on the NGEN website under “Policies and Procedures” which include: (a) the recommendation of the NGEN Operations Board; (b) the approval of the NGEN Executive Board; (c) payment of a Buy-In fee to be determined by the NGEN Executive Board, as well as future recurring O&M payments; and (d) execution of a written memorandum of agreement with the County subjecting the requesting organization to the terms and conditions of this Agreement.
- B. The NGEN Executive Board may recommend by majority vote, imposing one-time Buy-In fees upon new Parties to offset NGEN costs including, but not limited to, NGEN Capital project costs, operational costs, and contributions to the Reserve fund, for the benefit of the Parties. Use of Buy-In fees will be determined by the Executive Board.
- C. Under special circumstances, such as but not limited to manmade or natural disasters, acts of God, and acts of civil unrest, temporary access to the System may be provided to a non-member. This access may be recommended by the NGEN Operations Board or, if time does not permit, the Radio Manager, after consulting with the Emergency Communications Department, may approve non-member access and notify the NGEN Executive and NGEN Operations Boards.

## **10. BUDGET DEVELOPMENT PROCESS**

- A. The Radio Manager, in conjunction with ITD and ECD Finance, will establish a

budget process and each year develop proposed NGEN O&M and Capital budgets for the next fiscal year.

B. ITD shall provide next year budget proposals (O&M and Capital) to the NGEN Operations Board no later than February of each calendar year. Upon NGEN Operations Board recommendation, the next Fiscal Year budget will be presented by ITD to the NGEN Executive Board for approval. Final budget approval is the sole purview of the Monterey County Board of Supervisors.

C. The NGEN O&M Budget may be comprised of the following system related costs:

- i. ITD Labor for NGEN Systems Support: Labor required by ITD for support and maintenance of the System.
- ii. External vendor costs: Based upon actual NGEN related expenditures which are a pass through of cost.
- iii. Site Fees: Comprised of lease costs, utility costs, vendor costs, site specific labor, and overhead.
- iv. COWCAP: County-wide cost allocation plan charges. COWCAP will be charged to capture and bill the indirect costs incurred by the County which are associated with O&M of the System.
- v. Revenues collected from 3rd parties who are not parties to this Agreement.
- vi. Fully loaded staff time of County Departments as required.
- vii. Miscellaneous services and supplies costs.
- viii. Administrative fee from the Emergency Communications Department.
- ix. Reserve Funding.

D. The NGEN Capital Budget may be comprised of the following:

- i. System Upgrades: Hardware and software upgrades necessary to maintain

version currency and minimize operational and security risk to the system.  
See Section 14B.

- ii. Capital Projects: Planned projects required to improve, expand, or enhance radio sites, or the equipment therein.
- iii. System Architecture and Engineering Services: Design, analysis, and reporting performed by a qualified engineering firm.
- iv. Reserve Funding.
- v. COWCAP: County-wide cost allocation plan charges.
- vi. Administrative fee from the Emergency Communications Department.

E. All costs used in the budget development are subject to change on an annual basis and shall be reviewed annually as part of the budget process. Rate changes may only be due to NGEN Capital project, or operational costs for the benefit of the users including, but not limited to, True-up changes, current market vendor rates, Monterey County labor rate adjustments, and/or site fee adjustments which may include annual lease rate escalators (e.g., consumer price index), utility cost increases, maintenance cost increases, and/or labor rate increases.

F. The Emergency Communications Department maintains control of all NGEN funds (i.e., O&M and Capital). ECD is responsible for billing and fund management.

## **11. BILLING PROCESS**

- A. ECD will invoice each Party separately, either annually, biannually, or quarterly.
- B. Collections in excess of actual expenditures will be held by the County in the NGEN funds until approved for use by the NGEN Executive Board, Emergency Communications Director, and Board of Supervisors. Accumulation of interest

on NGEN fund balances can be used to offset NGEN Capital project and operational costs for the benefit of the Parties.

C. If a Party or Parties dispute payment owed to County, each Party shall notify County within 15 calendar days of its receipt of its invoice. This notice shall include sufficient details about the dispute for County to review and act. County shall provide any requested information within 15 calendar days. If County is unable to respond within 15 calendar days, the Party disputing the billing shall be relieved of any delinquency payment until 15 days after the information is provided.

D. Payments are due to within 30 days of the billing date.

E. Payments are considered late after 30 days of non-payment by Agencies and shall accrue a 5% penalty on any amount owed every 30 days until paid in full. If a Party does not pay the delinquent amount and any delinquency fee within ninety (90) calendar days from the Due Date, the County is authorized to withhold and offset from any lawful source whatsoever otherwise due to the Party, including the regular apportionment of property tax revenue, an amount sufficient to satisfy the delinquent amount and delinquency fees. County Agencies are subject to these delinquency fees.

## **12. TRUE-UP**

A. True-up is the radio device count for all agencies using either the P25 digital trunked system (Digital), the analog conventional system (Analog), or both.

i. Digital True-up: For Agencies with radio devices, including BPTT devices, that register to the P25 digital trunked system, their True-up is extracted from the NGEN Unified Administration System (UAS) and is verified by the Agency when the NGEN Executive Board approves a True-up to be performed.

ii. Analog True-up: For Agencies who have radio devices that exclusively use the analog conventional portion of the system and are not registered to the UAS, a manual inventory of those devices will be provided to the Radio Manager when the NGEN Executive Board approves a True-up to be

performed.

- iii. The True-up for both Digital and Analog should occur during the same cycle.
- iv. The true-up should occur every year at the direction of the NGEN Executive Board with recommendation from the NGEN Operations Board.

B. The NGEN Operations Board will review the combined (analog and digital) True-Up and make a recommendation to the NGEN Executive Board for approval. The NGEN Executive Board will review and take action on the True-Up no later than January of the year in which the True-Up is required. This approval shall determine if the True-Up will be used for billing in the following fiscal year.

C. Devices counted in the True-up include mobiles, portables, base stations, and broadband push-to-talk (BPTT) devices.

D. Devices not counted in the True-up include radio devices that are used exclusively for mutual aid, spares, and cache radios.

- i. Mutual-aid radios are those set aside for the sole use of providing interoperability to agencies outside of the NGEN coverage area.

- ii. Spare (or Cache) radios are those radios that are active in the UAS but designated, by name, as "Spare", or "Cache" to be used as necessary for specific events or in times of emergency.

E. Except in the case of replacement of an existing NGEN user device, if a Participating Agency elects to remove devices during the fiscal year, no credit or adjustment shall be made for that fiscal year and costs for that agency shall not be reduced based on those removed devices until the next annual billing cycle resulting from a new True-Up.

### **13. COST ALLOCATION**

A. NGEN O&M and NGEN Capital Fees are charged based on the following cost allocation variables and formulas:

- i.  $W$  = Weighting Factor (75%)
- ii.  $T_n$  = Count of Agency non-Fire Devices
- iii.  $FD$  = Unweighted Count of Fire Devices
- iv.  $T_f$  = Weighted Count of Agency Fire Devices (  $T_f = FD * W$  )
- v.  $D$  = Total Weighted Count for Party (  $D = T_f + T_n$  )
- vi.  $T$  = Total weighted Count of devices for All Parties (sum of all Agency D's)
- vii. O&M = Annual O&M Budget
- viii. CB = Annual Capital Budget
- ix. Annual Party O&M Fee  $FFFF = \frac{DDDD}{III} * 0000\&MMMM$
- x. Annual Party Capital Fee  $FFFF = \frac{DDDD}{III} * CCCCCCC$

**14. UPGRADES AND ENHANCEMENTS**

- A. Regular system upgrades shall be funded as established by the Executive board and billed to each agency in the Capital Fee, or as a special assessment, as determined by the Executive Board and incorporated into the Emergency Communications Budget as approved by the Board of Supervisors.
- B. Upgrades are planned, and projected changes made to NGEN infrastructure to ensure compliance or to improve upon previously existing features and operations of the System. To maintain the most cost-effective balance between current technology and the cost to keep the system updated, the current operational system release version should not fall farther than either three (3) versions behind the current vendor release, or five (5) years since the last system upgrade, whichever comes later.

- C. Enhancements are modifications made to NGEN services or systems that add specific functions or features not originally part of the System or the services requested and approved by the Member agencies. Acquisition and installation of system enhancements will be billed to the Agencies through the Capital Fee and shall be approved by the NGEN Executive board prior to implementation.
- D. If loans are required for future upgrades or enhancements the County will collaborate with the NGEN Executive Board and the County shall hold the loan as approved by the Board of Supervisors. A Debt Service Agreement may be entered into under separate cover.

## **15. RECORDS AND CONFIDENTIALITY**

- A. Confidentiality: County and the Parties and Agencies and their officers, employees, agents, and subcontractors shall comply with all federal, state, and local laws which provide for the confidentiality of records and other information. No Party shall disclose any confidential information, any confidential records, or other confidential information received from any Party to this Agreement or prepared in connection with the performance of this Agreement, unless the other Party specifically permits such disclosure of records or information. All requests for disclosure of confidential information shall be promptly transmitted to the owner of the information. Notwithstanding these duties of confidentiality, the Parties acknowledge that the Parties and the County are government agencies subject to the California Public Records Act, which requires disclosure of public records subject to exceptions. The Parties and the County will mutually cooperate to comply with the California Public Records Act disclosure obligations, consistent with these confidentiality obligations.
- B. Maintenance of Records: The County shall prepare, maintain, and preserve all reports and records that may be required by federal, state, or local rules and regulations related to services performed under this Agreement. The County shall maintain such records in accordance with the provisions of the County and ITD Record Retention policies. The Parties shall maintain such records in accordance with their records retention policies. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is



asserted, the County and the Parties shall retain such records until such action is resolved.

**16. COUNTY INDEMNIFICATION OF PARTIES AND PARTIES' WAIVER OF CLAIMS AGAINST THE COUNTY**

- A. County hereby agrees to indemnify and hold harmless each Party, its officers, agents, employees, and authorized volunteers from any and all claims, demands, judgments or decrees made or rendered against each Party, its officers, agents or employees by reason of any injury, death or damage suffered or sustained by any person or entity caused by, or alleged to have been caused by or arising out of the provision of the radio communications services by the County as set forth in this Agreement.
  
- B. Further, County, at its own cost, expense and risk, shall defend any and all suits, actions, or other legal proceedings arising from the provision of radio communications services by the County pursuant to this Agreement that may be brought or instituted by third parties against each Party, its officers, agents, employees, or authorized volunteers, and shall pay and satisfy any judgment or decree that may be rendered against each Party, its officers, agents or employees in any such suit, action, or other legal proceedings. Each Party agrees to promptly notify County of any suit, action, or other legal proceeding asserted against it by third parties which arises from the provision of emergency communications services as specified in this Agreement and each Party agrees to cooperate with County in the defense of such claims.
  
- C. In return for and in recognition of County's acceptance of liability, as set forth above, each Party agrees that it will not sue, make any demand, or claim, or otherwise prosecute or assert liability against the County for any claim, demand, judgment, or decree of any nature caused by or arising out of the provision of the radio communications services by the County set forth in this Agreement. This waiver of liability against the County by the Parties applies to claims, demands, judgments or decrees which are asserted by third parties and to claims, demands, judgments or decrees which could be asserted by the Parties against the County.

D. Survival of Indemnification and Waiver of Liability Obligations. The indemnification and defense obligations assumed by County and the waiver of liability against the County agreed to by the Parties, established above, shall survive the termination of this Agreement, the withdrawal of any Party from this Agreement, and the termination of any Party from this Agreement. These obligations and the waiver of liability shall extend to the expiration of the statute of limitations applicable to any claims arising from this Agreement and the provision of radio communications services pursuant to this Agreement.

## **17. INSURANCE**

A. Without limiting the foregoing indemnification, all Parties shall maintain in force at all times during the performance of this Agreement, a policy or policies of insurance as follows, and in the minimum limits of liability as stated herein:

- i. Comprehensive general liability, including but not limited to premises, personal injuries, products, and completed operations for combined single limit of not less than \$1,000,000 per occurrence.
- ii. Comprehensive automobile liability, including but not limited to property damage, bodily injury, and personal injuries for combined single limit of not less than \$1,000,000 per occurrence.
- iii. Workers' Compensation covering statutory requirements of the State of California and Employer's Liability of not less than \$1,000,000 per occurrence.

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

C. Except with respect to Workers' Compensation insurance, each Party maintaining commercial insurance or excess insurance shall provide an endorsement naming the County, its officers, agents, and employees as

additional insureds and shall provide that such commercial insurance is primary to any other commercial insurance maintained by the County; and the County shall, under any commercial insurance or excess insurance it maintains, provide an endorsement naming each Party, its officers, agents, and employees as additional insureds and shall provide that such commercial insurance is primary to any other commercial insurance maintained by each Party.

## **18. NON-DISCRIMINATION**

During the performance of this Agreement, Parties shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation. Parties shall in the performance of this Agreement fully comply with all federal, state, and local laws and regulations which prohibit discrimination.

## **19. GENERAL TERMS**

- A. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by all the Parties hereto; except for an Amendment of adding a new Party as described in Section 11 of this Agreement.
- B. 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.
- C. 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.
- D. Assignment. No Party may assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County upon the recommendation of the NGEN Executive Board. Any organization

wishing to participate in this system shall participate through this Agreement and may not participate through agreements with other participating agencies. Any such purported assignment is null and void.

- E. Compliance with Applicable Law. The Parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- F. 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.
- G. Heading. The section and paragraph headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- H. Time is of the essence. Time is of the essence in each and all of the provisions of this Agreement.
- I. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California. Venue of any dispute arising from this Agreement shall be in the Superior Court of California, in the County of Monterey.
- J. 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.
- K. 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.
- L. Authority. Any individual executing this Agreement on behalf of a Party represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such Party and to bind the Party to the

terms and conditions of the same.


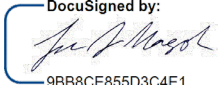


M. Integration. This Agreement, including the exhibits hereto, shall represent the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or Agreements, either written or oral, between the Parties as of the effective date hereof.

N. Change of Address. The mailing addresses, email addresses, phone numbers, and Party contacts may change, and it is the responsibility of the Parties to notify the County as specified in paragraph (O) within ten days of said change.

O. Notices. Notices required under this Agreement shall be emailed or delivered personally or by first-class, postage pre-paid mail as follows:

COUNTY OF MONTEREY
Chief Information Officer
1590 Moffett St
Salinas, CA 93905
831.759.6920

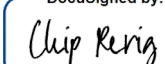
IN WITNESS WHEREOF, the COUNTY and each of the Agencies have caused this Agreement to be executed by their duly authorized representative as of the day and year written below.

<p>COUNTY OF MONTEREY:</p> <p>Name (printed) Eric A. Chatham</p> <p>Signature:  <small>DocuSigned by: Eric Chatham 747D862C7BD04AE...</small></p> <p>Date: 4/26/2023   3:41 PM PDT</p> <p>Chief Information Officer</p>
<p>Address: 1590 Moffett St. Salinas, CA 93905</p>
<p>COUNTY OF MONTEREY:</p> <p>Name (printed) Lee Ann Magoski</p> <p>Signature:  <small>DocuSigned by: Lee Ann Magoski 9BB8CE855D3C4E1...</small></p> <p>Date: 4/26/2023   1:11 PM PDT</p> <p>Director of Emergency Communications</p>
<p>Address: 1322 Natividad Rd. Salinas, CA 93906</p>
<p>APPROVED AS TO FORM:</p> <p>Name (printed) Samuel Beiderwell</p> <p>Signature:  <small>DocuSigned by: Samuel Beiderwell 61542069561440E...</small></p> <p>Date: 4/25/2023   1:04 PM PDT</p> <p>Deputy County Counsel</p>
<p>APPROVED AS TO FISCAL PROVISIONS:</p> <p>Name (printed)</p> <p>Signature:  <small>DocuSigned by: Jennifer Forsyth 4E7E657875454AE...</small></p> <p>Date: 4/25/2023   4:40 PM PDT</p> <p>Auditor-Controller</p>

Parties (one per page)

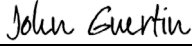
Big Sur Fire Duly Authorized Representative	
Name (printed)	<del>Matthew Harris</del> Matthew Harris
Signature:	 <small>2BB0C1EB262E448...</small>
Date:	3/2/2023   8:34 AM PST
Title	Fire Chief
Email: mharris@bigsurfire.org	

Parties (one per page)

City of Carmel-by-the-Sea Duly Authorized Representative	
Name (printed)	<b>Chip Rerig</b>
Signature:	 <small>DocuSigned by: 3B6A69EEECAD41A...</small>
Date:	2/16/2023   12:02 PM PST
Title	City Manager
Email: <a href="mailto:crerig@ci.carmel.ca.us">crerig@ci.carmel.ca.us</a>	



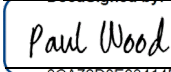
Parties (one per page)

City of Del Rey Oaks Duly Authorized Representative	
Name (printed)	<b>John Guertin</b>
Signature:	 <small>88E8F598E76C45F...</small>
Date:	3/2/2023   11:53 AM PST
Title	City Manager
Email: <a href="mailto:jguertin@delreyoaks.org">jguertin@delreyoaks.org</a>	

Parties (one per page)

City of Gonzales Duly Authorized Representative	
Name (printed)	Trevin Barber
Signature:	 <small>D6C9B7144DCC40B...</small>
Date:	2/27/2023   8:15 AM PST
Title	City Manager
Email: tbarber@ci.gonzales.ca.us	

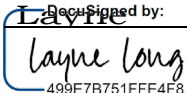
Parties (one per page)

City of Greenfield Duly Authorized Representative	
Name (printed)	<b>Paul Wood</b>
Signature:	 <small>0CA72D8E83414E0...</small>
Date:	3/9/2023   2:17 PM PST
Title	City Manager
Email: pwood@ci.greenfield.ca.us	

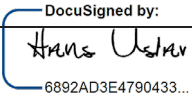
Parties (one per page)

City of King Duly Authorized Representative	
Name (printed)	<u>Steve Adams</u> <small>DocuSigned by:</small>
Signature:	<u>Steve Adams</u> <small>E4D7F46D23F1430...</small>
Date:	<u>2/16/2023   1:55 PM PST</u>
Title	City Manager
Email: sadams@kingcity.com	

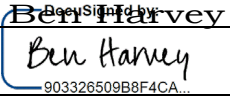
Parties (one per page)

City of Marina Duly Authorized Representative	
Name (printed)	_____ Signed by: <u>g</u>
Signature:	 499E7B751FFF4E8
Date:	3/3/2023   12:34 AM CST
Title	City Manager
Email: llong@cityofmarina.org	


Parties (one per page)

City of Monterey Duly Authorized Representative	
Name (printed)	<u>Hans Uslar</u>
Signature:	 6892AD3E4790433...
Date:	<u>4/4/2023   2:41 PM PDT</u>
Title	<u>City Manager</u>
Email: <a href="mailto:uslar@monterey.org">uslar@monterey.org</a>	

Parties (one per page)

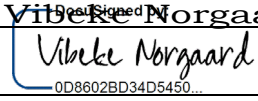
City of Pacific Grove Duly Authorized Representative	
Name (printed)	<del>Ben Harvey</del>
Signature:	 <small>903326509B8F4CA...</small>
Date:	3/2/2023   9:46 AM PST
Title	City Manager
Email: bharvey@cityofpacificgrove.org	

Parties (one per page)

City of Salinas Duly Authorized Representative	
Name (printed)	<u>Steve Carrigan</u>
Signature:	 <small>04396AF44903419</small>
Date:	<u>2/16/2023   12:29 PM PST</u>
Title	City Manager
Email: SteveCa@ci.salinas.ca.us	
Email: SteveCa@ci.salinas.ca.us	



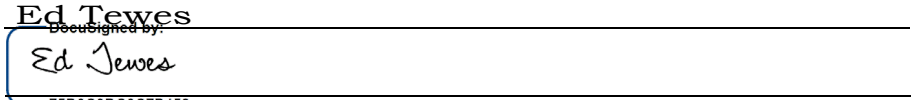
Parties (one per page)

City of Sand City Duly Authorized Representative	
Name (printed)	<del>Vibeke Norgaard</del>
Signature:	 <small>0D8602BD34D5450...</small>
Date:	2/16/2023   11:39 AM PST
Title	City Manager
Email: citymanager@sandcityca.org	

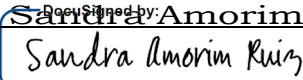
Parties (one per page)

City of Seaside Duly Authorized Representative	
Name (printed)	<b>Jaime M. Fontes</b>
Signature:	 <small>C21D05F36B2C452...</small>
Date:	2/16/2023   10:18 AM PST
Title	City Manager
Email: citymanager@ci.seaside.ca.us	

Parties (one per page)

City of Soledad Duly Authorized Representative	
Name (printed)	Ed Tewes
Signature:	 <small>DocuSigned by: Ed Tewes 75D0C9DC0C7B453...</small>
Date:	3/2/2023   3:49 PM PST
Title	Interim City Manager
Email: <a href="mailto:etewes@cityofsoledad.com">etewes@cityofsoledad.com</a>	

Parties (one per page)

California State University Monterey Bay Duly Authorized Representative	
Name (printed)	<del>Sandra Amorim Ruiz</del> Sandra Amorim Ruiz
Signature:	 65B5712B5CF042E
Date:	2/21/2023   2:06 PM PST
Title	Director of Procurement and Contract Services
Email: samorimruiz@csumb.edu	

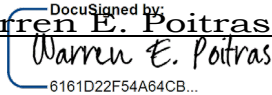
Parties (one per page)

Mid-Coast Fire Brigade Duly Authorized Representative	
Name (printed)	<b>Cheryl Goetz</b>
Signature:	 DocuSigned by: AFB3D7997AFB496...
Date:	3/2/2023   8:51 PM PST
Title	Fire Chief
Email: firechief@midcoastfirebrigade.org	

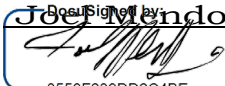
Parties (one per page)

Monterey Peninsula Airport District Duly Authorized Representative	
Name (printed)	<del>Michael</del> LaPier
Signature:	 <small>60A2DD7CAD69416</small>
Date:	3/2/2023   4:55 PM PST
Title	Executive Director
Email: mike@montereyairport.com	

Parties (one per page)

Monterey County Regional Fire District Duly Authorized Representative	
Name (printed)	<u>Warren E. Poitras</u>
Signature:	 6161D22F54A64CB...
Date:	<u>4/1/2023   11:05 AM PDT</u>
Title	<u>President of the Board</u>
Email: <a href="mailto:info@weddingphotographercarmel.com">info@weddingphotographercarmel.com</a>	

Parties (one per page)

North County Fire Protection District Duly Authorized Representative	
Name (printed)	DocuSigned by: <b>Joel Mendoza</b>
Signature:	 8558F239DD2C4BE
Date:	3/2/2023   9:55 AM PST
Title	Fire Chief
Email: joel.mendoza@ncfpd.org	