

NGEN Operations Board

NGEN Operations Board Action Item 23-004

Date: November 16, 2023

Presented by: Alex Zheng **On behalf of:** County of Monterey ITD

Request: Approve and recommend the NGEN Executive Board approve the NGEN Mutual-aid and Interoperability Agency Radio Use Agreement, which will be used as an agreement template and required for any NGEN mutual-aid radio partner to operate their radios on the NGEN's proprietary P25 radio system for the purposes and on the terms and conditions specified in the agreement.

Summary/Discussion:

During large-scale events, both planned and unplanned, the need for support from other agencies is a common practice. The need to communicate between the host agency and the supporting agencies is generally supported through the use of a pre-planned group of radio channels, frequencies and talkgroups. This interoperability is commonly referred to mutual aid communications. Mutual-aid and interoperability radio enhances the ability of law enforcement agencies to communicate on common frequencies during emergencies and other special operations.

Public safety personnel across the state of California are supported by a variety of land mobile radio (LMR) systems in various frequency bands. This separation by radio systems and frequency bands is overcome by technology standards, cross band patching systems and prior planning by public safety officials. The best practice is that these preplanned channels, frequencies, talkgroups be programmed in each radio, so that in the event that interoperable or mutual aid communications is required, the user's radio will be capable of accessing the necessary channels, frequencies and talkgroups.

This agreement defines responsibilities of both Monterey County Next Generation Radio Network (NGEN) and mutual-aid partners regarding mutual-aid radio setup and usage. It serves as part of the NGEN mutual-aid standard operating procedures. A draft version of Mutual-aid and Interoperability Radio Use Agreement is attached for Board to discuss and consider (see attachment 8). Once the agreement is approved and adopted, all NGEN mutual-aid radio partner agencies are expected to sign this agreement.

Staff Recommendation:

County staff recommends the NGEN Operations Board to approve and recommend the NGEN Executive Board approve a NGEN Mutual-aid and Interoperability Agency Radio Use Agreement, which will be required for any NGEN mutual-aid radio partner to operate their radios on the NGEN’s proprietary P25 radio system for the purposes and on the terms and conditions specified in the agreement.

Fiscal Impact: Adding additional radios to the NGEN system consumes NGEN system resources and increase staff workload and is not fair to other participating NGEN agencies. Requesting agencies must be held accountable for their use of the NGEN system resources.

Effect(s) of Failure to Approve Request and/or caveats: Without this agreement, NGEN mutual-aid radio set up will be done without a consistent process.

Operations Board Action

Modification to requested action: Yes X No

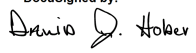
Board directed that the termination clause in the agreement updated with the following languages:

“25. Termination. Either party may terminate this Agreement for any reason at any time upon 10 days written notice to the other party. Access to any talkgroup may be terminated immediately with a written request by the chief executive of a NGEN user agency who is a primary user of the talkgroup.”

This action item was unanimously approved and supported by the board.

Vote Date 11/16/2023

Motion by Dave Hober 2nd Guillermo Mixer Approved: Yeas X Nays

DocuSigned by:


/s/ Chair Dave Hober

Yeas: Unanimous

Nays:

NGEN Mutual-aid and Interoperability Agency Radio Use Agreement

The County of Monterey, a political subdivision of the State of California, in its capacity as the administrator of the Next Generation Radio System (“NGEN” or “Grantor”) and _____ (“Grantee”) enter into this Agreement by which Grantor provides to Grantee permission to operate Grantee’s radios on the NGEN’s proprietary P25 radio system for the purposes and on the terms and conditions specified in this Agreement.

1. **Term of the Agreement.** This Agreement shall become effective on the date it is fully executed by all parties and shall remain in effect for nine years unless sooner terminated pursuant to Section 25 of this Agreement.
2. **Purpose.** This Agreement is for the purpose of radio mutual-aid and interoperability required in the field for Grantee’s authorized personnel to communicate with Members and Participants of NGEN with whom its personnel work on a regular and recurring basis.
3. **Authorized Personnel.** Only Grantee’s personnel are authorized to use the programmed radios and transmit on the NGEN talkgroups and channels under this Agreement. Grantee shall not allow any unauthorized personnel to use those radios, talkgroups or channels.
4. **Authorized Use.** Grantee’s authorized personnel may use the NGEN talkgroups and channels only (1) when working with NGEN Members or Participants units on or during joint operations, (2) during Priority 1 circumstances as defined in the CLEMARS system priority guidelines – disaster and extreme emergency operations for mutual aid and interagency communications, and (3) during Priority 2 circumstances as defined in the CLEMARS system priority guidelines - emergency or urgent operations involving imminent safety of life or protection of property. With the prior approval of NGEN Operations Board, Grantee may also use the NGEN talkgroups and channels for training purposes on joint trainings with NGEN Members or Participants.

5. Talkgroups and Channels. This Agreement authorizes Grantee and its authorized personnel to access and transmit only on the following talkgroups and channels:

- A. Mutual-aid and interoperability digital channels

- County Wide 1
- County Wide 2
- County Wide 3
- County Wide 5
- County Wide 6
- County Wide 7
- County Wide 8
- County Wide 9
- County Wide 10
- County Wide 11
- County Wide 12
- County Wide 13
- County Wide 14
- County Wide 15
- County Wide 16

- B. Mutual-aid and interoperability analog channels

- County Wide 4

- C. Other channels as approved by NGEN Operations Board and NGEN member agencies who own the channels.

Encrypted channels require AES 256 encryption.

6. Radio Capabilities. Grantee must obtain its own radios capable of operation on a Phase 2 Digital TDMA P25 system with the most current version upgrade installed in order to access talkgroups on Grantor's System. FDMA Radios will not be permitted.
7. Radio System Maintenance and Upgrades. Grantor may perform periodic system upgrades and/or decommission parts of the radio systems. Grantor will make best effort to ensure the system is backward compatible with Grantee's radios, however Grantor cannot guarantee that the Grantee's radios will be supported

through the life of the Agreement.

8. Radio Programming. Grantee shall provide any radios to be used under this Agreement to County of Monterey Radio Shop ("Radio Shop") to program, apply firmware upgrades as needed, perform radio alignment, and authorize the radios to function on NGEN system. Grantee agrees to pay upfront all charges and costs of the Radio Shop for programming and performance validation of these radios. The process requires that the Radio Shop provide an invoice to perform the work, and Grantee shall submit payment to the Radio Shop before the Radio Shop programs the radios. The process requires that the Radio Shop complete the programming and performance tests within 30 days of receipt of payment by Grantee or delivery by Grantee of the radios to the Radio Shop, whichever is later. Grantee shall be responsible for all maintenance and repair costs on its radios used under this Agreement.
9. Mutual-aid and Interoperability Request Form, Letter of Intent and Radio Identification Sheet. Grantee shall provide the Radio Shop with a completed Mutual-aid and Interoperability Request Form with a signed letter of intent (LOI). Grantee shall provide a completed Radio Identification Sheet for each radio used under this Agreement, so Grantor can properly track transmissions and radio IDs of Grantee's subscriber units and personnel accessing Grantor's network. A blank Mutual-aid and Interoperability Request Form and Radio Identification Sheet are attached to this Agreement as Exhibit A and Exhibit B and incorporated by reference as if fully set forth herein. When the personnel Grantee has assigned to a programmed radio under this Agreement change, Grantee shall provide an updated Radio Identification Sheet to the Radio Shop responsible for the programming within 15 calendar days of the change, providing information on the authorized personnel currently assigned to the radio.
10. Radio Limit. This Agreement authorizes Grantee to configure up to a maximum of ____ radios for use on the NGEN channels, authorized by NGEN Operations Board.
11. Lost or Stolen Radio. In the event a radio programmed for access to the NGEN channels is lost or stolen, Grantee shall immediately, and in any event no later than 24 hours, contact the NGEN and advise them of the six or eight digit radio

number assigned to the lost or stolen radio for deactivation from the systems. If the radio is subsequently found, Grantee shall notify the same and the radio may be enabled again for operation on the NGEN.

12. Radio Identification. The process requires that when the Radio Shop programs a radio for Grantee, the Radio Shop designate and log that radio call sign. Grantee must ensure its personnel identify themselves on the radio channel using the predetermined call sign.
13. Patching Prohibited. Grantee shall not permit its personnel to use frequency bridging equipment, a dispatch console or any other mechanism to “patch” or link any NGEN talk groups to any other system, channel, sub-system or communications bridging equipment.
14. Communication Over Radio. Grantee agrees that its personnel will use plain speech when communicating on NGEN talk groups and plain speech when using California Mutual Aid frequencies. In the event of inappropriate language or behavior, or misuse of the radio system by any of Grantee’s personnel, Grantor may revoke and disallow that individual from using NGEN system and channels, or may terminate this Agreement and disallow all of Grantee’s radios from use within its system. If this should occur, Grantor shall notify Grantee in writing of this revocation prior to deactivation.
15. Disabling Radios. Grantor may disable a Grantee radio temporarily or permanently in Grantor’s sole discretion. Examples of when Grantor may determine to disable a radio include, but are not limited to, (1) if the radio is malfunctioning, (2) if Grantee’s authorized personnel assigned to that radio is using the radio in violation of this Agreement, or (3) if the radio is in any way interfering with the Grantor’s communications.
16. CLETS Transactions Prohibited. Grantee will not run or request to run any CLETS transactions through Grantor. Should Grantee require a CLETS transaction, it will switch to its primary channel to request the transaction through its agency ORI.
17. Access to NGEN Recordings. If Grantee seeks access to NGEN recordings regarding radio transmissions, it shall submit a written request to the Monterey

County Radio Shop. The request shall specify the CAD or incident number (if known), the date and location of the incident, and the name, phone number and address of a Grantee contact for the request who is authorized to obtain the information. Grantee agrees to treat any unredacted material as confidential, to the extent permitted by law and to use any records it obtains only be used for official Grantee purposes.

Notices. Unless otherwise specifically provided herein, all notices and other communications shall be in writing, addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via email:

Radio Shop Manager
Information Technology Department, County of Monterey
855 E. Laurel Dr, Building D, Salinas, CA 93901
Email: fccmgr@co.monterey.ca.us
Office: (831) 796-1463

From time to time any party may designate a new address or recipient for notice for purposes of this Section 18 by written notice to the other party.

18. Contact Information. Each party shall provide the other party with a list of appropriate contact personnel for notices and notifications under this Agreement. Each party is responsible for updating the list to ensure it is current.

19. Indemnification. Grantee agrees to protect, and hold harmless Grantor and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with Grantee's use of NGEN's radio channels under this Agreement, performance under the Agreement by Grantee, Grantee's agents, officers, employees, subcontractors, or independent contractors hired by Grantee. The only exception to Grantee's responsibility to protect, defend, and hold harmless Grantor, is due to the sole negligence of Grantor. This hold harmless Agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a

limitation upon the amount of indemnification to be provided by Grantee.

This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the Grantee to indemnify the Grantor shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

20. No Guaranty or Warranty of Performance. Grantor does not guarantee or warranty that the NGEN will function completely or properly for Grantee. Grantor assumes no responsibility or indemnity for any radio calls that lost, dropped or unable to be made under any radios used under this Agreement. Grantee assumes all liability for the failure of the NGEN to complete, initiate or continue any radio call.

21. No Assignment or Subcontracting. Grantee may not subcontract or assign any rights, duties or obligations under this Agreement. Any agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

22. Independent Agencies. None of the provisions of this Agreement are intended to create, and none shall be deemed or construed to create, any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of the Agreement. Neither party nor its employees is an employee of the other party; nor is either party or its employees entitled to any of the benefits and protections afforded to employees of the other party. The parties to this Agreement shall have no authority, express or implied, to act on behalf of any signatory in any capacity whatsoever as an agent. The parties shall have no authority, express or implied, pursuant to this Agreement to bind each other to any obligation whatsoever. The parties agree that the provisions of this Agreement are not intended to directly benefit any third party, and shall not be enforceable by any person or entity not a party to this Agreement. This Agreement is not intended to confer any legal rights or benefits on any person or entity other than the parties to this Agreement.

23. Proprietary or Confidential Information of NGEN and Third Parties. Grantee understands and agrees that in accessing and using the NGEN talkgroups and

channels under this Agreement, Grantee may have access to private or confidential information that may be owned or controlled by NGEN or to which NGEN has authorized access, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to NGEN or to third parties. Grantee agrees that all information disclosed by NGEN to Grantee or to which Grantee has access by virtue of this Agreement shall be held in confidence and used only in performance of the Agreement.

24. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
25. Termination. Either party may terminate this Agreement for any reason at any time upon 10 days written notice to the other party. [Access to any talkgroup may be terminated immediately with a written request by the chief executive of a NGEN user agency who is a primary user of the talkgroup.](#)
26. Entire Agreement. This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 24, "Modification of Agreement."
27. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
28. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for any litigation relative to the formation, interpretation and performance of this Agreement shall be in Monterey County, CA.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the dates specified herein.

COUNTY OF MONTEREY - GRANTOR

Eric Chatham
Chief Information Officer
Information Technology Department, County of Monterey
Signature: _____
Date: _____

GRANTEE

Agency: _____
Contact : _____
Position: _____
Signature: _____
Date: _____

Exhibit A. Mutual-aid and Interoperability Request Form

1. Name and Address of Requesting Agency:
2. Agency Point of Contact with Contact Information:
3. Purpose for Requesting Access (attach a signed agency letter)
 - a. Purpose for Access (Mutual Aid, Jurisdiction Assistance, etc.):
 - b. Agency/Jurisdiction to access:
4. Type of Access:
 - a. Talkgroup(s) to Access:
 - b. Transmit, Receive, Encrypted:
 - c. Transmit, Receive:
 - d. Monitor via Radio:
 - e. Monitor via Scanner:
 - f. Be On:
5. Number of Users
 - a. Command:
 - b. Field:
 - c. Administrative:

Exhibit B. Radio Identification Sheet

Radio Make, Model, Bands:

Radio Serial #:

Call Sign:

Agent Assigned:

Agent Badge Number:

To be completed by Monterey County Radio Shop

Date programmed:

Radio ID #:

Radio Alias:

DRAFT