

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

September 13, 2022

FROM

SHANNON D. DICUS, Sheriff/Coroner/Public Administrator

SUBJECT

Non-Financial Wireless Communications Use and Maintenance Agreement with the Interagency Communications Interoperability System, Joint Powers Authority for Access to Radio Communications Network

RECOMMENDATION(S)

Approve the non-financial Wireless Communications Use and Maintenance **Agreement No. 22-838**, including non-standard terms, with the Interagency Communications Interoperability System, Joint Powers Authority, for access to its radio communications network for mutual aid and public safety operations for the term of September 14, 2022 through September 13, 2027. (Presenter: Kelly Welty, Chief Deputy Director, 387-0640)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

This agreement is non-financial in nature and as such, approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost).

BACKGROUND INFORMATION

San Bernardino County operates a public safety radio communications system that allows municipal and county law enforcement agencies to communicate with their dispatch centers, and amongst themselves when responding to calls for service. Many times, these agencies need to communicate with or respond to calls for assistance from emergency service provider agencies located outside the county's boundaries, on an immediate mutual aid basis, to coordinate and support emergency response activity using interoperable radio communications.

To improve interoperability communications between public safety agencies within the Los Angeles and San Bernardino counties, the Sheriff/Coroner/Public Administrator (Department) recommends entering into a Wireless Communications Use and Maintenance Agreement (Affiliate Agreement) with the Interagency Communications Interoperability (ICI) System, Joint Powers Authority (JPA).

The ICI System is a local government owned Land Mobile Radio (LMR) Network that hosts more than seventy regional public safety agencies in Los Angeles County, as a primary means of digital radio communications that can be accessed by all member agencies and their

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resources. The ICI System Network is fully interoperable, meaning all member entities can communicate directly with one-another throughout the entire operational area, including integration with adjoining radio systems.

This integration requires agencies that operate their own radio systems to enter into an Affiliate Agreement with the JPA in order to gain access to the ICI System. Approval of the recommended Affiliate Agreement will allow public safety agencies within San Bernardino County to communicate with interoperable radio communications with ICI System member agencies located in eastern Los Angeles County during emergency response activities.

The Affiliate Agreement includes terms that differ from the standard County contract and omits other County standard contract terms as follows:

1. Insurance: The Affiliate Agreement does not include the County's standard insurance terms as required pursuant to County Policy 11-07.
 - a. The County's standard contract language requires general liability (\$1,000,000 per occurrence), automobile (\$1,000,000 per occurrence), professional liability (\$1,000,000 per occurrence and \$2,000,000 aggregate), and cyber liability (\$1,000,000 per occurrence and \$2,000,000 aggregate) insurance.
 - b. Potential Impact: The County has no assurance that the ICI System's JPA will be financially responsible for claims that may arise from the County's access to the system, which could result in expenses to the County.
 - c. Justification: The Department believes that the benefit gained by accessing the ICI System during mutual aid operations outweighs any associated potential risk.
2. Indemnification: The Affiliate Agreement does not include a requirement for the ICI System JPA to indemnify the County for any claims, but requires indemnification from the County to the JPA for claims resulting out of the use of the ICI System.
 - a. Standard Term: The County standard contract indemnity provision requires the agency or contractor to indemnify, defend, and hold the County harmless from third party claims arising out of the acts, errors, or omissions of any person.
 - b. Potential Impact: The JPA is not required to defend, indemnify, or hold the County harmless from any claims, including indemnification for claims arising from the County's use or access to the ICI System.
 - c. Justification: The Department believes that the benefit gained by accessing the ICI System during mutual aid operations outweighs any associated potential risk.
3. Limitation of Liability: The Affiliate Agreement limits the JPA's liability to the maximum allowable by applicable law, but in no case its liability shall be higher than the amount paid by an Affiliate Member to the ICI System.
 - a. Standard Term: The County standard contract does not permit a contractor to limit its liability in performance of a contract or agreement.
 - b. Potential Impact: Claims could exceed the liability cap listed in the Affiliate Agreement leaving the Department responsible for the excess. However, there is no fee to be paid by the County or the Department to access the ICI System.
 - c. Justification: The Department believes the benefit gained by accessing the ICI System during mutual aid operations outweighs any associated potential risk.

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4. Warranty: The ICI System's JPA does not represent or warrant that the services will meet the County's requirements or that it will be uninterrupted, secure, or error-free.
 - a. Standard Term: There is no warranty requirement in the County standard contract. The County expects service providers to fully warrant the services they provide to the County.
 - b. Potential Impact: The County's use and access to the ICI System is solely at its own risk.
 - c. Justification: The Department believes the benefit gained by accessing the ICI System during mutual aid operations outweighs any associated potential risk.

5. Attorney's Fees: The Affiliate Agreement requires the prevailing party on any legal action related to the enforcement of any provision in the agreement, to be entitled to receive from the losing party all costs and expenses in such amount as the court may determine to be reasonable.
 - a. Standard Term: The County standard contract requires that each party to any legal action related to the agreement, bear its own costs and attorney fees, regardless of who is the prevailing party.
 - b. Potential Impact: Reasonable Attorney's fees and other costs incurred by the winning party of any legal action related to this agreement, may need to be paid by the County as ordered by a court.
 - c. Justification: The Department believes the benefit gained by accessing the ICI System during mutual aid operations outweighs any associated potential risk of paying reasonable Attorney's fees and other costs ordered by court.

The Department recommends approval of the Affiliate Agreement with the ICI System JPA, including non-standard terms, to increase the interoperability communications between the Los Angeles and San Bernardino counties' public safety agencies. The Agreement can be terminated by either party upon 60-calendar day advance notice.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Richard D. Luczak, Deputy County Counsel, 387-5455) on August 23, 2022; Risk Management (Victor Tordesillas, Director, 386-8621) on August 23, 2022; Innovation and Technology (Tim Trager, Division Chief, 388-5563) on August 22, 2022; Finance (Carolina Mendoza, Administrative Analyst, 387-0294) on August 25, 2022; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on August 26, 2022.

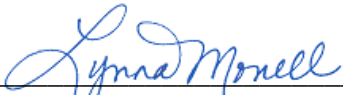
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Janice Rutherford
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 13, 2022



cc: Sheriff - Welty w/agree
Contractor - C/O Sheriff w/agree
File - w/agree
CCM 09/26/2022