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10/2/10

MEMORANDUM OF UNDERSTANDING

BETWEEN

KITSAP COUNTY CENTRAL COMMUNICATIONS (9-1-1)

AND CLALLAM COUNTY

1. **THIS AGREEMENT**, made pursuant to RCW 39.34, and the authority set forth in RCW 10.93, is entered into this 12th day of OCT, 2010, by and between KITSAP COUNTY CENTRAL COMMUNICATIONS (9-1-1), a corporation of the State of Washington (hereinafter referred to as "CENCOM 911") and CLALLAM COUNTY, a political subdivision of the State of Washington (hereinafter referred to as "COUNTY"). This agreement sets forth the agreed upon procedures for management, accountability, direction, reporting and execution of the process, hereinafter referred to as the PSIC project.
2. **THE PURPOSE OF THIS AGREEMENT IS TO** memorialize the terms under which the COUNTY will allow CENCOM 911, on behalf of Kitsap County, to complete various COUNTY approved interoperability projects within the region. These installations are part of the Public Safety Interoperability Communications Grant (PSIC) awarded to Clallam County and funded by the National Telecommunications and Information Administration (NTIA) and administered through the U.S. Department of Homeland Security (DHS). The program is administered through the Washington State Military Department.

NOW, THEREFORE IT IS MUTUALLY AGREED THAT:

3. **SCOPE OF WORK:** The MOU defines the PSIC project scope of work and the responsibilities of the parties to the agreement
4. **INDEMNIFICATION:** Each party will defend, indemnify and hold harmless the other for liability stemming from its own intentional and/or negligent acts and/or omissions, but not those of the other, or based on claims arising out of the terms of this agreement.
5. **DURATION:** This Agreement shall be effective on the date signed and shall continue until September 30, 2011, subject to its other provisions.
6. **CONTACT PERSONS:** CENCOM 911 and the COUNTY will each appoint a representative who will be responsible for the administration of this Agreement. Unless otherwise designated in writing, the CENCOM 911 contact person will be the Director. The COUNTY contact person will be the PSIC Grant Coordinator.
7. **COMPENSATION AND MATCH:** The COUNTY, utilizing PSIC federal grant funding, will provide funding to CENCOM 911 in the amount of EIGHT HUNDRED NINETY SEVEN THOUSAND AND SEVEN HUNDRED EIGHTY EIGHT AND NO/100 DOLLARS (\$897,788.00) to complete the work identified in #2 above.

CENCOM 911 agrees to provide not less than 20% cash or in-kind non-federal match identified in the PSIC grant required for the total acquisition and deployment costs of the COUNTY approved interoperability projects.

CENCOM 911 will provide fully completed reimbursement and match forms in accordance with the terms and conditions of the attached Contract between Washington State Military Department and Clallam County (Contract Number E08-356) hereinafter referred to as "PSIC Contract". The PSIC Contract is identified as Exhibit A.

COUNTY will submit all completed forms to the Washington State Military Department for reimbursement. Upon receipt of payment from the Washington State Military Department, COUNTY will submit payment to CENCOM 911.

8. **TERMS AND CONDITIONS:** CENCOM 911 will comply with all terms, conditions, and requirements stated in the PSIC Contract. CENCOM 911 will submit project requests to COUNTY for approval. COUNTY will issue a "NOTICE TO PROCEED" on the specific project. CENCOM 911 will not be reimbursed for any projects that have not been approved by COUNTY.
9. **DISPUTE RESOLUTION:** In the event that a dispute arises under this agreement, it shall be determined in the following manner:

CENCOM 911 shall appoint a member to the Dispute Board. The COUNTY will appoint a member to the Dispute Board. CENCOM 911 and the COUNTY will jointly appoint a member to the Dispute Board. In the event CENCOM 911 and COUNTY are not able to jointly agree on a third member to serve on the Dispute Board, either party may petition the Superior Court for Clallam County to appoint a third member to the Dispute Board. The Dispute Board shall evaluate and adjudicate the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.
10. **SECURITY:** It is the intent of the parties that the PSIC project carried out under this MOU will be conducted at the unclassified level. No classified information will be provided or generated under this MOU. It is considered "Law Enforcement Sensitive."
11. **SEVERABILITY:** If any provision of this agreement or any provision of any law, rule, or document incorporated by reference into this agreement, shall be held invalid, such invalidity shall not affect the other provisions of this agreement which legally can be given effect without the invalid provision. To this end, the provisions of this agreement are declared to be severable.
12. **AGREEMENT ALTERNATIONS AND AMENDMENTS:** CENCOM 911 and the COUNTY may mutually amend this agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind CENCOM 911 and the COUNTY.
13. **TERMINATION:** Except as otherwise provided for in this agreement, either party may terminate this agreement upon thirty (30) days written notice. If this agreement is so terminated, the terminating party shall be liable only for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
14. **CENCOM 911 STAFF:** CENCOM 911 staff providing services under the terms of this Agreement shall be under the direct command and control of the CENCOM 911 Director or designee and shall perform the duties required by this Agreement in a manner consistent with CENCOM 911 policies and regulations, applicable federal, state and local laws, and the Constitutions of the State of Washington and the United States. The assignment of personnel to accomplish the purpose of this Agreement shall be at the discretion of the Director or designee.
15. **EQUIPMENT:** All equipment purchased by CENCOM 911 or furnished by CLALLAM for use by CENCOM 911 in accordance with this Agreement shall remain the property of CENCOM 911. CENCOM 911 shall be responsible for the maintenance of any and all equipment or systems installed under this Agreement. CENCOM 911 shall be responsible for providing the inventory of equipment as required in the PSIC Contract to CLALLAM.
16. **COMPLETE EXPRESSION:** This Agreement, and any written attachments or amendments thereto, constitutes the complete agreement of the parties and any oral representations or understanding not incorporated herein are excluded.
17. **ALL WRITINGS CONTAINED HEREIN:** IN WITNESS WHEREOF, CENCOM 911 and CLALLAM have signed this agreement as of the date and year written below:


Richard Kirton, Director

KITSAP COUNTY CENTRAL
COMMUNICATIONS (9-1-1)


W.L. Benedict, Sheriff
Clallam County Sheriff's Office

Date: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

J. W. Brown
Josh Brown, Chair

Date: 9/22/10

St Bauer
Steve Bauer, County Commissioner

Date: 9/22/10

Charlotte Garrido
Charlotte Garrido, County Commissioner

Date: _____

ATTEST BY:

Dana Daniel Pa

Opal Roberts, Clerk of the Board

Date: 9/22/10

Date: 9/27/10

Howard V. Doherty

Howard V. Doherty, Chair
Clallam County Commissioners

Date: 9/21/10 10/12/10

Approved as to Form:

Mark Nichols

Mark Nichols, Chief Deputy Prosecuting
Attorney

Date: 10-01-10

ATTEST BY:

Trish Holden, CMC¹⁵

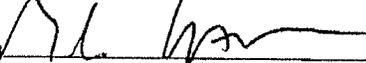
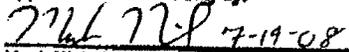
Trish Holden, CMC, Clerk of the Board

Date: 10/12/10

EXHIBIT A

CONTRACT # 11066-10-08
ORIGINAL 07/15/08

Washington State Military Department
CONTRACT FACE SHEET

1. Contractor Name and Address: Clallam County 223 East 4 th Street Port Angeles, WA 98362		2. Contract Amount: \$7,378,500	3. Contract Number E08-356 11066.08.001
4. Contractor's Contact Person, phone number: Patti Morris (360) 461-9008		5. Contract Start Date: October 1, 2007	6. Contract End Date: September 30, 2010
7. MD Program Manager/phone number: Jennifer Schaal (253) 512-7465		8. State Business License #: NA	9. UBI # (state revenue): 054-004-559
10. Funding Authority: Washington State Military Department (Department) and the U.S. Department of Homeland Security (DHS)			
11. Funding Source Agreement #: 2007-GS-H7-0003	12. Program Index # & OBJ/SUB-OJ 773PK, 773PC, 773PD, 773PG NZ	13. CFDA # & Title: 11.555 PSIC	14. TIN or SSN: 91-6001298
15. Service Districts: (BY LEGISLATIVE DISTRICT): 24 (BY CONGRESSIONAL DISTRICT): 6	16. Service Area by County(ies): Clallam County		17. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____
18. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Collaborative Research <input type="checkbox"/> A/E <input type="checkbox"/> Other _____		19. Contract Type (check all that apply): <input checked="" type="checkbox"/> Contract <input type="checkbox"/> Grant <input type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency	
20. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____		21. Contractor Type (check all that apply): <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER	
22. BRIEF DESCRIPTION: Funds from the National Telecommunications and Information Administration (NTIA) and administered through the U.S. Department of Homeland Security (DHS) for the Public Safety Interoperable Communications Grant Program are being provided for projects to enhance the interoperable communications capability of public safety agencies in responding to and recovering from disasters and incidents of terrorism.			
IN WITNESS WHEREOF, the Department and Contractor acknowledge and accept the terms of this contract and attachments hereto and have executed this contract as of the date and year written below. This Contract Face Sheet, Special Terms and Conditions, General Terms and Conditions, Statement of Work, and Budget govern the rights and obligations of both parties to this contract.			
In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) Applicable Federal and State Statutes and Regulations (b) Statement of Work (c) Special Terms and Conditions (d) General Terms and Conditions, and if attached, (e) any other provisions of the contract incorporated by reference.			
This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.			
WHEREAS, the parties hereto have executed this contract on the day and year last specified below.			
FOR THE DEPARTMENT:  Signature _____ Date 8-12-08 James M. Mullen, Director Emergency Management Division Washington State Military Department		FOR THE CONTRACTOR:  Signature _____ Date 8/15/08 Michael C. Chapman, Chair Board of Commissioners for Clallam County	
APPROVED AS TO FORM: Sara J. Finlay (signature on file) 9/12/2007 Assistant Attorney General		Approved as to form only by:  7-19-08 Mark Nichols Chief Deputy Prosecuting Attorney Clallam County	

Form 10/27/00 kdb

PEICIAL TERMS AND CONDITIONS

ARTICLE I -- COMPENSATION:

This is a fixed price, reimbursement contract. Within the total contract amount, travel, subcontracts, salaries and wages, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis unless otherwise provided in this contract. Any travel or subsistence reimbursement allowed under the contract shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended and in agreement with federal rates. Receipts and/or backup documentation for any approved budget line items including travel related expenses that are authorized under this contract must be maintained by the Contractor and be made available upon request by the Military Department.

Some flexibility to shift funds between/among budget categories is allowed as follows: Changes to the budget in excess of 10% will not be reimbursed without the prior written authorization of the Department. Budget categories are as specified or defined in the budget sheet of the contract.

Under the PSIC Grant Program the following applies:

Changes to the budget under 10% may be made between/among budget categories requiring a non-federal match, or between/among non-matched budget categories. Changes to the budget between matched and non-matched budget categories will not be reimbursed without the prior written authorization of the Department.

Requests for reimbursement of funds requiring a non-federal match must include documentation demonstrating the match amount and detail supporting the match source and type. Documentation must state that match funds are from non-federal sources. Match requirements can be met through cash or in-kind sources consistent with 15 CFR Parts 24.3 and 24.24.

ARTICLE II -- REPORTS:

In addition to the reports as may be required elsewhere in this contract, the Contractor shall prepare and submit the following reports to the Department's Key Personnel:

<u>Financial</u>	<u>#/Copies</u>	<u>Due Date</u>
Quarterly Invoices	1	Within 30 days following the end of the quarter in which the work was performed.

Invoices must be submitted no more often than monthly, but at least quarterly. Failure to submit invoices in a timely manner will cause the Department to hold all requests for equipment approval until invoices are submitted.

Final Invoice (shall not exceed overall contract amount)	1	No later than 30th day following the contract end date
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All contract work must end on the contract end date, however the Contractor has up to 30 days after the contract end date to submit all final billing.

<u>Technical</u>	<u>#/Copies</u>	<u>Due Date</u>
Progress Report	Electronic	Every other month, on the 15th of the month, for the duration of the contract period
Final Report	Electronic	September 30, 2010

ARTICLE III -- KEY PERSONNEL:

The individuals listed below shall be considered key personnel. Any substitution must be made by written notification to the Military Department.

CONTRACTOR:	MILITARY DEPARTMENT:
Patti Morris, Project Manager	Jennifer Schaal, Program Manager

ARTICLE IV -- ADMINISTRATIVE REQUIREMENTS:

The Contractor shall comply with OMB Circular **A-87**, Cost Principles for State, Local, and Indian Tribal Governments; OMB **A-102**, Grants and Cooperative Agreements with State and Local Governments; and **A-133**, Audits of States, Local Governments, and Non-Profit Organizations.

ARTICLE V -- ADDITIONAL SPECIAL CONDITIONS AND MODIFICATION TO GENERAL CONDITIONS:

1. Funds are provided by the National Telecommunications and Information Administration (NTIA) in agreement with the U.S. Department of Homeland Security (DHS) solely for the purpose of enhancing the interoperable communications capability of public safety agencies to respond to and recover from catastrophic incidents and incidents of terrorism. The Contractor shall use the funds to perform tasks as described in the Statement of Work and Budget portions of the Contractor's request for funding. Funding may not be used to replace or supplant existing public safety agency funding.
2. The Contractor shall provide a match of non-federal origin for all PSIC acquisition and deployment activities. Said match may be in the form of goods, services and in-kind services.
3. Contractor acknowledges that since this contract involves federal funding, the period of performance described herein will likely begin prior to the availability of appropriated federal funds. Contractor agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this contract prior to distribution of appropriated federal funds.

Contractor agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement or any type of payment if federal funds are not appropriated or are not appropriated in a particular amount.

4. The Contractor shall comply with all federal civil rights laws including Title VI of the Civil Rights Act of 1964, as amended. The Contractor is required to take reasonable steps to ensure persons of limited English proficiency have meaningful access to language assistance services in conducting all PSIC funded activities.
5. The Contractor shall ensure objective subcontractor performance and eliminate unfair subcontractor competitive advantage. Any subcontractors that developed, drafted or helped prepare PSIC Investment Justifications, specifications, requirements, statements of work, invitations for bid and/or requests for proposal shall be excluded from competing for such procurements.

ARTICLE VI -- EQUIPMENT MANAGEMENT:

All equipment purchased under this contract, by the Contractor or a Subcontractor, will be recorded and maintained in an equipment inventory system.

1. Upon successful completion of the terms of this contract, all equipment purchased through this contract will be owned by the Contractor, or a recognized subcontractor/subgrantee for which a contract, subgrant agreement, or other means of legal transfer or ownership is in place.
2. The Contractor, or a recognized subcontractor/subgrantee, shall be responsible for any and all operation, maintenance, replacement, and for the safe operation of the equipment, including all questions of liability.
3. The Contractor shall maintain equipment records that include: a description of the property; the manufacturer's serial number, model number, or other identification number; the source of the equipment, including the Catalogue of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the equipment and the percentage of federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the property.
4. Records for equipment shall be retained by the Contractor for a period of six (6) years from the date of the disposition, replacement or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the Contractor until all litigations, claims, or audit findings involving the records have been resolved.

5. The Contractor shall take a physical inventory of the equipment and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Contractor to determine the cause of the difference. The Contractor shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
6. The Contractor shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage or theft shall be investigated and a report generated.
7. The Contractor will develop adequate maintenance procedures to keep the property in good condition.
8. If the Contractor is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
9. When original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, disposition of the equipment will be made as follows:
 - a. Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the Contractor with no further obligation to the awarding agency.
 - b. Items of equipment with a current per-unit fair market value of more than \$5,000 may be retained or sold and the Contractor shall compensate the federal-sponsoring agency for its share.
10. As subgrantees of federal funds, the Contractor must pass on equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants, and subgrantees who receive pass-through funding from this contract.

ARTICLE VII – SUBRECIPIENT MONITORING:

The Department will monitor the activities of the Contractor from award to closeout and for the life of equipment purchased under this contract. The goal of the Department's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with federal and state audit requirements, federal grant guidance, applicable federal and state financial guides, as well as OMB Circular A-133 and A-122 where applicable.

Monitoring activities may include:

- review of performance reports;
- monitoring and documenting the completion of contract deliverables;
- documentation of phone calls, meetings, e-mails and correspondence;
- review of reimbursement requests to insure allowability and consistency with contract budget;
- observation and documentation of contract related activities, such as exercises, training, funded events and equipment demonstrations;
- on-site visits to review equipment records and inventories, verify source documentation for reimbursement requests and performance reports and verify completion of deliverables.

As subgrantees of federal funds, the Contractor is required to meet or exceed the monitoring activities, as outlined above, for all subcontractors, consultants, and subgrantees who receive pass-through funding from this contract.

ARTICLE VIII – ENVIRONMENTAL AND HISTORIC PRESERVATION

The Contractor shall ensure full compliance with FEMA's Environmental and Historic Preservation (EHP) Program. Information about these requirements can be found on FEMA's website at <http://www.fema.gov/plan/ehp/ehp-applicant-help.shtm>. Construction-based projects must comply with additional provisions of federal law, including, but not limited to, the National Environmental Policy Act (NEPA).

2. **SUBRECIPIENT MONITORING**

- a. The Department, as a Recipient and/or Pass-Through Entity, receives federal financial assistance under federal programs and is charged with maintaining compliance with federal and state laws and regulations regarding the monitoring, documentation, and auditing of subrecipient grant activities using federal financial assistance. Management and implementation guidelines for the federal programs ensure compliance with statutes, grant guidelines, the sub-award agreement, Office of Management and Budget (OMB) circulars (including OMB Circular A-133), subrecipient audits, and other guidance found in the Federal Register. The Department shall adhere to its Subrecipient Monitoring Policy and the Subrecipient Monitoring Procedures (WMD Policy number 00-025-05.)
- b. The Contractor shall perform under the terms of the contract and the Department has responsibility for reasonable and necessary monitoring of the Contractor's performance. The Department shall conduct contract monitoring activities on a regular basis. Monitoring is defined as any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract.

Monitoring involves prudent collection of information about Contractor operations and is not limited to site visits or the completion of formal reviews. Monitoring may include periodic contractor reporting to the Department, Department review of audit reports, invoice reviews, onsite reviews and observations, and surveys. Adequate documentation is essential for effective contract monitoring and will include copies of letters, meeting notes, and records of phone conversations as evidence that conscientious monitoring has occurred during the period of the contract. Subrecipient monitoring will occur throughout the year rather than relying solely on a once-a-year audit. The Contractor agrees to cooperate with all monitoring activities and to comply with reporting requirements.

The Department as the Recipient and/or Pass-Through Entity will conduct on-site visits as appropriate and required by contract for "for-profit" subrecipients, since the A-133 Single Audit does not apply to "for-profit" organizations.

3. **RECORDS, MONITORING AND AUDIT ACCESS**

- a. The Contractor shall cooperate with and fully participate in all monitoring or evaluation activities that are pertinent to this contract.
- b. Access to public records-The Contractor acknowledges that the Department is subject to the Public Records Act, Chapter 42.56 RCW, and that records prepared, owned, used or retained by the Department relating to the conduct of government or the performance of any governmental or proprietary function are available for public inspection and copying, except as exempt under RCW 42.56 or other statute which exempts or prohibits disclosure of specific information or records.
- c. The Contractor shall maintain all books, records, documents, data and other evidence relating to this contract and the provision of any materials, supplies, services and/or equipment under this contract herein, including, but not limited to, records of accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review and audit by personnel duly authorized by the Department, the Washington State Auditor's Office, and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other materials relevant to this contract and make them available for inspection, review or audit for six (6) years from the end date of this contract, date of final payment or conclusion of services performed under this contractor, whichever is later. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

- d. Contractor shall provide right of access to its facilities and records to the Department and any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

4. **SINGLE AUDIT ACT REQUIREMENTS (INCLUDING ALL AMENDMENTS)**

Non-federal entities as subrecipients that expend \$500,000 or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133-Audits of States, Local Governments, and Non-Profit Organizations (revised June 27, 2003, effective for fiscal years ending after December 31, 2003). Non-federal entities that spend less than \$500,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular No. A-133. Circular A-133 is available on the OMB Home Page at <http://www.omb.gov> and then select "Grants Management" followed by "Circulars".

Contractors required to have an audit must ensure the audit is performed in accordance with Generally Accepted Auditing Standards (GAAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement. The Contractor has the responsibility of notifying the Washington State Auditor's Office and requesting an audit. Costs of the audit may be an allowable grant expenditure.

The Contractor shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

Once the single audit has been completed, the Contractor must send a full copy of the audit to the Department and a letter stating there were no findings, or if there were findings, the letter should provide a list of the findings. The Contractor must send the audit and the letter no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

**Accounting Manager
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

In addition to sending a copy of the audit, the Contractor must include a corrective action plan for any audit findings and a copy of the management letter if one was received.

The Contractor shall include the above audit requirements in any subcontracts.

5. **RECAPTURE PROVISIONS**

In the event that the Contractor fails to expend funds under this contract in accordance with applicable state and federal laws and/or the provisions of this contract, the Department reserves the right to recapture funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

Such right of recapture shall exist for a period not to exceed six (6) years following contract termination or audit resolution, whichever is later. Repayment by the Contractor of funds under this recapture provision shall occur within 30 days of demand. The Department is required to institute legal proceedings to enforce the recapture provision.

6. **COMPLIANCE WITH APPLICABLE LAW**

The Contractor and all subcontractors shall comply with all applicable federal, state, tribal government, and local laws, regulations, and policies.

Further, the Contractor agrees not to enter into any arrangements or contracts related to this grant with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" which can be found at www.epls.gov.

13. **LIMITATION OF AUTHORITY -- "Authorized Signature"**

The signatories to this contract represent that they have the authority to bind their respective organizations to this contract. Only the assigned Authorized Signature for each party, or the assigned delegate by writing prior to action, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Authorized Signature(s).

14. **CONTRACTOR NOT EMPLOYEE – INDEPENDENT STATUS OF CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and/or employees or agents performing under this contract are not employees or agents of the Department in any manner whatsoever, and will not be presented as nor claim to be officers or employees of the Department or of the State of Washington by reason hereof, nor will the Contractor and/or employees or agents performing under this contract make any claim, demand, or application to or for any right, privilege or benefit applicable to an officer or employee of the Department or of the State of Washington, including, but not limited to, Worker's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the Contractor is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right.

If the Contractor is an individual currently employed by a Washington State agency, the Department shall obtain proper approval from the employing agency or institution. A statement of "no conflict of interest" shall be submitted to the Department.

15. **NONASSIGNABILITY**

This contract, the work to be provided under this contract, and any claim arising thereunder, are not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

16. **SUBCONTRACTING**

Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Department. Contractor shall use a competitive process in award of any contracts with subcontractors that are entered into after original contract award. All subcontracts entered into pursuant to this contract shall incorporate this contract in full by reference. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the Department for any breach in the performance of the Contractor's duties. The Military Department may request a copy of any and/or all subcontracts for work being completed under this contract.

17. **CONTRACT MODIFICATIONS**

The Department and the Contractor may, from time to time, request changes to the contract or grant. Any such changes that are mutually agreed upon by the Department and the Contractor shall be incorporated herein by written amendment to this contract. It is mutually agreed and understood that no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the parties hereto, shall not be binding.

18. **SEVERABILITY**

In the event any term or condition of this contract, any provision of any document incorporated by reference, or application of this contract to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this contract which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this contract are declared severable.

19. **ADVANCE PAYMENTS PROHIBITED**

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this contract. Contractor shall not invoice the Department in advance of delivery of such goods or services.

20. **TAXES, FEES AND LICENSES**

Unless otherwise provided in this contract, the Contractor shall pay for and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Contractor or its staff required by statute or regulation that are necessary for contract performance.

21. **TRAVEL AND SUBSISTENCE REIMBURSEMENT**

Unless the contract specifically provides for different rates, any travel or subsistence reimbursement allowed under the contract shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended. The Contractor may be required to provide to the Department copies of receipts for any travel related expenses other than meals and mileage (example: parking lots that do not provide receipts) that are authorized under this contract.

22. **GOVERNING LAW AND VENUE**

This contract shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this contract shall be the Superior Court of Thurston County, Washington.

23. **HOLD HARMLESS AND INDEMNIFICATION**

Each party to this contract shall be responsible for injury to persons or damage to property resulting from negligence on the part of itself, its employees, agents, officers, or subcontractors. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any third party.

24. **WAIVER OF DEFAULT**

Waiver of any default or breach shall not be deemed to be a waiver of any other or subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing signed by The Adjutant General or the Authorized Signature for the Department and attached to the original contract.

25. **DISPUTES**

The parties shall make every effort to resolve disputes arising out of or relating to this contract through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this contract, the parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute.

Both parties agree that this disputes process shall precede any action in a judicial or quasi-judicial tribunal. Nothing in this section shall preclude the parties from mutually agreeing to a different dispute resolution method in lieu of the procedure outlined above.

26. **ATTORNEY'S FEES**

In the event of litigation or other action brought to enforce contract terms, or alternative dispute resolution process, each party agrees to bear its own attorney's fees and costs.

27. **LOSS OR REDUCTION OF FUNDING**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Department may reduce its scope of work and budget or unilaterally terminate all or part of the contract as a "Termination for Cause", without providing the Contractor an opportunity to cure. Alternatively, the parties may renegotiate the terms of this contract under "Contract Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

28. **TERMINATION OR SUSPENSION FOR CAUSE**

In the event the Department, in its sole discretion, determines the Contractor has failed to fulfill in a timely and proper manner its obligations under this contract, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Contractor unable to perform any aspect of the contract, or has violated any of the covenants, agreements or stipulations of this contract, the Department has the right to immediately suspend or terminate this contract in whole or in part.

The Department may notify the Contractor in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Contractor an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Contractor's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Contractor an opportunity to cure, the Department shall notify the Contractor in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the contract may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Contractor, if allowed, or pending a decision by the Department to terminate the contract in whole or in part.

In the event of termination, the Contractor shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Contractor: (1) was not in default or material breach, or (2) failure to perform was outside of the Contractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

29. **TERMINATION FOR CONVENIENCE**

Notwithstanding any provisions of this contract, the Contractor may terminate this contract by providing written notice of such termination to the Department's Key Personnel identified in the contract, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this contract, the Department, in its sole discretion and in the best interests of the State of Washington, may terminate this contract in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the Contractor. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds. In the event of termination, the Contractor shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

30. **TERMINATION PROCEDURES**

In addition to the procedures set forth below, if the Department terminates this contract, the Contractor shall follow any procedures specified in the termination notice. Upon termination of this contract and in addition to any other rights provided in this contract, the Department may require the Contractor to deliver to the Department any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

STATEMENT OF WORK
Public Safety Interoperable Communications Program

INTRODUCTION: The Washington State Military Department (the Department) is responsible for programs designed to prepare and improve the State's ability to respond to a catastrophic disaster or terrorist attack. The Department has received funds from the National Telecommunications and Information Administration (NTIA) administered through the U.S. Department of Homeland Security (DHS) for the Public Safety Interoperable Communications Grant Program (PSIC). The Department is providing funds to public safety agencies for projects to enhance the interoperable communications capabilities in responding to catastrophic disasters or terrorist incidents.

Clallam County, as the Contractor, has been awarded **\$7,378,500** for its approved project: **Homeland Security Regions 1 and 2 Interoperability**, to complete a digital microwave transport; expand the Integrated Wireless Network Project 25 trunked communication system; upgrade the existing Radio Over Internet Protocol (RoIP) network in Homeland Security Region 2 and expand it to Homeland Security Region 1; close interoperability gaps; create multi-jurisdictional communications facilities; and increase interoperability coverage by 80%.

THE CONTRACTOR AGREES TO:

1. Perform project tasks, including: work with Washington State Patrol and all supporting agency stakeholders to identify system needs; perform assessments of current inventory and capability; perform system design; procure needed equipment; install systems; attend equipment and systems vendor training; perform final system testing to ensure system design specifications are met; and exercise with all supporting agency stakeholders.
2. Out of the \$7,378,500 contract total, pass-through no less than \$2,359,000 in project funding to Washington State Patrol (WSP) for WSP's portion of the Homeland Security Regions 1 and 2 Interoperability project. This pass-through funding must be obligated to WSP no less than sixty (60) days from the execution date of this Contract between the Military Department and Clallam County.
3. Plan and implement equipment purchases and other activities in accordance with PSIC Program Grant Guidance, which can be found at <http://www.ojp.usdoj.gov/odp/grantsprograms.htm>, as well as all subsequent policy changes. These requirements must be passed on to all of the Contractor's subcontractors, and monitored through periodic review of expenditures and equipment inventories.
4. Submit all intended equipment purchases to the Department for review and approval by the Washington State Committee on Homeland Security (CHS) Equipment Subcommittee prior to purchase.
5. Submit all intended construction and renovation projects to the Department for review and approval by DHS and NTIA prior to commencement of construction and renovation work.
6. Purchase equipment and ensure delivery, installation, testing and verification of satisfactory performance of all equipment prior to the end of the performance period. Purchase equipment through the Western States Contracting Alliance (WSCA) Washington State equipment procurement contracts, which can be accessed at <http://www.aboutwsca.org/welcome.cfm>. Purchases over \$1,000 in value which cannot be made through WSCA will be submitted to the Department for approval prior to purchase. This requirement must be passed on to all of the Contractor's subcontractors.
7. Mark, when practicable, any equipment purchased with grant funding, as follows: "Purchased with funds provided by the U.S. Department of Homeland Security."
8. Adhere to DHS requirements that sole source contracts over \$100,000 be reviewed and approved by the Department prior to execution of a contract. This requirement must be passed on to all of the Contractor's subcontractors. This requirement must be passed on to all of the Contractor's subcontractors.
9. Adhere to DHS requirements that all contracts with individual consultants charging an excess of \$450 per day, and not competitively bid, must be approved by the Department before the contract is executed. This requirement must be passed on to all of the Contractor's subcontractors. The Contractor is responsible for reviewing its subcontractors' consultant contract justifications.

10. Report progress on deliverables and advise the Department, in writing, of necessary adjustments to the content of the contract.
11. Report regular progress on deliverables to the Washington State Interoperability Executive Committee (SIEC) and the Department. Failure to meet all of the reporting deadlines in the Milestone Timeline will prohibit the Contractor from being reimbursed, and will put a freeze on the processing of equipment approvals, while reports are outstanding.
12. Adhere to all financial and procurement guidance, including competitive bid processes and other procurement requirements as documented in the Office of Grant Operations Financial Management Guide found at http://www.dhs.gov/xlibrary/assets/Grants_FinancialManagementGuide.pdf. Local and state procurement and contracting regulations take precedence over these requirements when local and state regulations are more stringent.
13. Demonstrate a cash or in-kind non-federal match of not less than 20% of the total Acquisition and Deployment costs as outlined in the Budget Sheet, Exhibit C attached.
14. Submit, at a maximum monthly and at a minimum quarterly, signed and approved invoice vouchers using the State's A-19 form and the Department's Reimbursement Spreadsheet form detailing the expenditures. These forms can be found at http://emd.wa.gov/grants/grants_shsgp.shtml. All requests for reimbursement for expenses requiring a non-federal match will include a statement demonstrating how match requirements are being met. Requests for reimbursement of equipment purchases will include copies of vendor invoices and packing slips. Requests for reimbursement not signed by the Contractor's proper authorizing authority, as indicated on the Signature Authorization Form, will be returned to the Contractor.
15. Ensure full compliance with National Incident Management System (NIMS) requirements. Information about compliance requirements can be found on FEMA's NIMS Integration Center (NIC) web site, http://www.fema.gov/emergency/nims/nims_compliance.shtm.

THE MILITARY DEPARTMENT AGREES TO:

1. Provide technical assistance, expertise and state coordination with DHS and NTIA where necessary.
2. Reimburse the Contractor within 45 days of receipt and approval of signed, dated invoice vouchers (State form A-19) and all documentation of expenditures as required.

Milestone Timeline
Public Safety Interoperable Communications Program

MILESTONE	TASK
October 1, 2007	Grant performance period begins.
June-July 2007	Contract execution.
August 15, 2008	Project Progress Report submitted.
August-September	Contract execution between Clallam County and WSP.
October 15, 2008	Project Progress Report submitted.
December 15, 2008	Project Progress Report submitted.
February 15, 2009	Project Progress Report submitted.
April 15, 2009	Project Progress Report submitted.
June 15, 2009	Project Progress Report submitted.
August 15, 2009	Project Progress Report submitted.
October 15, 2009	Project Progress Report submitted.
December 15, 2009	Project Progress Report submitted.
February 15, 2010	Project Progress Report submitted.
April 15, 2010	Project Progress Report submitted.
June 15, 2010	Project Progress Report submitted.
August 15, 2010	Project Progress Report submitted.
September 30, 2010	Final Report submitted.
September 30, 2010	Contract ends; all work ceases.
No later than October 30, 2010	All final invoices submitted for reimbursement.

BUDGET SHEET
FFY 2007 Public Safety Interoperability Program
Clallam County

TRAINING

<u>Subcategory</u>	
Salaries & Benefits	\$ 50,000
Goods & Services	\$ 2,215
Travel & Per Diem	\$ 5,500
Subcontractors/Consultants	\$ -
Other (Indirect)	\$ -
Total	\$ 57,715

Funding Source: 773PC

ACQUISITION

<u>Subcategory</u>	
Salaries & Benefits	\$ -
Goods & Services	\$ 9,930
Travel & Per Diem	\$ 4,500
Subcontractors/Consultants	\$ 380,000
Other (Indirect)	\$ -
Equipment	\$ 6,414,000
Total	\$ 6,808,430.00

Funding Source: 773PD

DEPLOYMENT

<u>Subcategory</u>	
Salaries & Benefits	\$ -
Goods & Services	\$ -
Travel & Per Diem	\$ -
Subcontractors/Consultants	\$ 194,000
Operations & Maintenance	\$ 221,355
Other (Indirect)	\$ -
Equipment	\$ -
Total	\$ 415,355

Funding Source: 773PG

Total Budget \$ 7,378,500

Total Match Requirement	\$ 1,805,946
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7,378,500
1,805,946

Notes:

- Expenditures may occur only within the categories and subcategories listed above. However, changes of up to 10% within matched (Acquisition and Deployment) and unmatched (Planning and Training) categories can be made without prior approval from the Department. Changes between matched and unmatched categories, or that exceed 10%, require the Contractor submit a budget change request to the Department for approval.
- G&T Grant program requirements affirm that federal funds will be used to supplement existing funds, and will **not replace (supplant)** funds that have been appropriated for the same purpose.

2015 7,378,500
1,805,946
2016 7,378,500
1,805,946