

**JOINT POWERS AGREEMENT ESTABLISHING A SEPARATE PUBLIC
AGENCY TO OPERATE AND MAINTAIN A PUBLIC SAFETY
COMMUNICATION SYSTEM IN SONOMA COUNTY**

The purpose of this Joint Powers Agreement ("Agreement") is to create a separate public agency to operate, maintain and improve a public safety communication and data management system currently comprised of Computer Aided Dispatch ("CAD"), Records Management System ("RMS"), and Mobile Data Computing ("MDC") technology among the undersigned county, cities, districts, and other public entities, all of whom are collectively referred to in this Agreement as "Members".

RECITALS

WHEREAS, the Sonoma County Law Enforcement Consortium ("SCLEC") was formed effective July 1, 1997, for the purpose of securing grant funding to purchase an integrated, county-wide system of CAD/RMS/MDC technology through an agreement entitled, "County Wide Multi-Agency Agreement for Procurement of Computer Assisted Dispatch, Records Management Systems and Mobile Data Communications" (hereinafter, the "First Cooperative Agreement");

WHEREAS, the City of Santa Rosa, on behalf of the SCLEC, successfully obtained grant funding and subsequently purchased an integrated public safety communication system that provides CAD/RMS/MDC technology (hereinafter, the "SYSTEM") for its members;

WHEREAS, upon expiration of the First Cooperative Agreement, the members of the SCLEC entered into the "Second Cooperative Agreement for County Wide Multi-Agency Procurement of Computer Assisted Dispatch, Records Management Systems and Mobile Data Communications" (hereinafter the "Second Cooperative Agreement"), which continued to provide for the City of Santa Rosa to act as "Lead Agency" for the purpose of entering into and managing contracts on behalf of the SCLEC members, to apply for and administer the grant, and to bill the members for costs associated with purchasing and maintaining the SYSTEM;

WHEREAS, by its terms, the Second Cooperative Agreement had an initial four-year term, and thereafter was ongoing and continuing, unless or until it was amended or superseded; and

WHEREAS, the members of the SCLEC desire to continue to operate, maintain and improve the SYSTEM and add additional members by entering into a new agreement establishing a separate Joint Powers Authority entity pursuant to the provisions of Government Code Sections 6500, *et seq.* (hereinafter, the "JPA Act").

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Members and parties hereto agree as follows:

AGREEMENT

1. General Purpose of Agreement. The purpose of this Agreement is to set forth the terms and conditions under which the Members will operate, maintain and improve a public safety communication and data management system through a joint powers authority.

2. Effect of Previous Agreements. The Second Cooperative Agreement is hereby terminated and superseded, except that all financial obligations the parties incurred under that agreement (up to the Effective Date of this Agreement) continue to remain in full force and effect.

3. Joint Powers Authority Entity Created. Pursuant to the JPA Act, the Members create a public entity, separate and apart from the Members to this Agreement, to be known as the Sonoma County Public Safety Consortium ("SCPSC"). SCPSC shall assume such duties and responsibilities as are set forth herein.

4. Limitation of Joint and Several Liability. Except as provided in Government Code Section 895.2, the debts, liabilities, and obligations of the SCPSC shall not be the debts, liabilities, or obligations of any of its Members.

5. Powers and Duties.

a) Authority. The SCPSC shall have the powers common to its Members, including but not limited to: making and entering contracts; employing agents and employees; obtaining legal, financial technical, or other services; acquiring, holding, managing, transferring and/or disposing of property; incurring debts, liabilities and obligations in its own name; and the right to sue and be sued in its own name. Further, pursuant to Government Code Section 6504, the SCPSC is empowered, and by this Agreement required, to assess its Members fees to finance the operation of the SCPSC in the manner set forth in this Agreement. All such powers shall be exercised as necessary to further the nature and purpose of the SCPSC in the manner provided in the JPA Act, subject only to such restrictions as set forth in this Agreement and as imposed upon the Members in the exercise of similar powers.

b) Limitation on Authority. Notwithstanding the foregoing, the issuance of new SCPSC debt or increases in debt service payments required from Members must first be approved by the governing bodies of each affected Member before becoming effective.

6. Membership.

a) Members. Members of the SCPSC are the Cities of: Cotati , Petaluma , Rohnert Park, Santa Rosa, Sonoma, Town of Windsor, County of Sonoma, the Sonoma County Junior College District ("SRCCD"), and REDCOM, a joint powers authority agency , as

well as future members admitted to the SCPSC according to the provisions of this Agreement.

b) Application for Membership. Non-member public safety agencies located within the County of Sonoma may apply to the SCPSC to become a member. New members shall be admitted to the SCPSC upon a majority vote of the Board of Directors and upon approval of an amended budget (if deemed necessary to admit the new members). Each agency accepted as a new member shall be required to pay all required impact costs as well as sign a copy of this Agreement, or an acknowledgement that it is bound to all the terms and conditions herein.

c) Removal of Member. Any Member may be removed from the SCPSC for good cause, including but not limited to, failure to pay assessed fees, contributions or charges, failure to maintain training standards, failure to keep system secure, and/or improper release of information. Such removal can be effectuated only upon a supermajority vote (at least 2/3) of the Board of Directors after providing the affected Member with at least 30 days written notice of the intended removal and an opportunity to be heard. A Member removed from the SCPSC shall be subject to the financial obligations set forth in Sub-sections (i) through (iv) of Section 13(a).

7. Management Structure and Proceedings. All Members agree to work cooperatively to further the purpose of the SCPSC. The SCPSC shall be structured and operate as set forth below.

a) Board of Directors: There shall be a Board of Directors of SCPSC which shall be comprised of the City Manager from each city/town Member agency, the Sonoma County Administrator, an appointed representative of the REDCOM Board of Directors, and the President of the Sonoma County Junior College District, or their respective designees. The Board of Directors shall have the authority to take the following actions:

- i) Approve and adopt annual SCPSC budgets, and any modifications or amendments thereto;
- ii) Approve the addition or removal of member agencies;
- iii) Create and appoint ad hoc or single-purpose committees or workgroups, and delegate responsibilities thereto;
- iv) Adopt By Laws, and any modifications thereto, related to the conduct and administration of the Board of Directors, the operation of SCPSC, or delegation of duties;
- v) Acquire, construct, manage, maintain or operate any building, works or improvements;
- vi) Enter into contracts;

- vii) Hire agents, employees, or representatives;
- viii) Engage consultants or experts to provide advice or assistance;
- ix) Purchase, hold or dispose of property;
- x) Incur debts, liabilities or obligations in accordance with the terms and provisions of Section 12, below; and
- xi) Sue and be sued in the name of the SCPSC.

b) Oversight Committee: There shall be an Oversight Committee of SCPSC which shall be comprised of the Sheriff of the County of Sonoma, and either the Chief of Police or the Fire Chief from each of the city and district Members, and a representative from REDCOM, or their respective designees. New Members shall designate a representative to be a member of the Oversight Committee. The Oversight Committee shall have the collective authority to take any actions that are inherent in the public safety offices of the individual members of the Committee, and shall also have the authority to take the following actions:

- i) Administer the operation and business of SCPSC generally, including but not limited to, overseeing SYSTEM operations and managing contracts; and
- ii) Enter into contracts and Memoranda of Understanding (MOU's) within approved budget and purchasing authority that do not have long-term budget impacts, and as otherwise limited by the SCPSC By Laws.

c) Voting: Neither the Board of Directors nor the Oversight Committee shall take any action without a quorum present. A quorum shall consist of at least 51% of the total number of Members of the Board and Oversight Committee. Except as expressly authorized herein, all actions taken by the Board of Directors or Oversight Committee shall be by majority vote (at least 51%) of the total number of Members. Each Member of the Board of Directors and Oversight Committee shall have one vote. Members of the Board and Oversight Committee must be present to vote.

d) Meetings and By Laws. The Board of Directors shall hold meetings at least once a year. Additional meetings may be called by the chairperson on an as-needed basis. Minutes on actionable items shall be prepared and maintained. The Board of Directors shall adopt By Laws that shall address how to conduct its meetings, coordination and communication by and between the Board and the committees, and other business administration issues. SCPSC committees may similarly adopt By Laws for their own meetings and administration issues. All meetings of the Board of Directors or committees including, without limitation, regular, adjourned regular and special

meetings, shall be called, noticed and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code).

8. Appointed Agencies and Officers.

a) Lead Grant Agency. The City of Santa Rosa is appointed as the Lead Grant Agency of SCPSC for the sole purpose of complying with the auditing and other management/administrative requirements of the federal grant received from the United States Department of Justice, Office of Community Oriented Policing Services ("COPS"), which funds have already been fully expended in purchasing part of the CAD/RMS/MDC system. Each Member agrees to cooperate with and assist the City of Santa Rosa in any way necessary to respond to an audit of the COPS Grant. The City of Santa Rosa is entitled to compensation in connection with the services/expenses it provides as Lead Grant Agency, which shall be set by the Board of Directors.

b) Treasurer. The Auditor-Controller/Treasurer-Tax Collector of the County of Sonoma is appointed as the Treasurer for SCPSC pursuant to Government Code Section 6505, and shall take all such actions required therein and as otherwise required by law.

c) Auditor/Controller. The Board of Directors shall appoint one of its members (or designee) to be the Auditor/Controller for SCPSC pursuant to Government Code Sections 6505 and 6505.5, for the purposes of carrying out the actions required therein, including but not limited to, authorizing disbursement of SCPSC funds pursuant to the approval of the Board of Directors, and engaging the services of a certified public accountant or public accountant to perform an annual financial audit. The Auditor/Controller may, from time to time, designate another public employee or agent to act on his/her behalf with respect to the duties required herein.

d) Compensation for Officers. In accordance with Government Code Section 6505.5, the governing body(ies) of the same public entity(ies) as the Treasurer and/or Auditor/Controller shall determine charges to be made against SCPSC for the services of the Treasurer and/or Auditor/Controller, if any. Such charges, if any, will be applied to offset assessments/contributions due from such entity(ies).

9. Annual Financial Audit. The Auditor/Controller shall engage the services of a certified public accountant or a public accountant to perform a financial audit of SCPSC for each fiscal year of its operation. Such services may be donated by a member of the SCPSC, or may be engaged for hire. The annual financial audit shall not include an audit of operations, unless so designated by the SCPSC Board of Directors.

10. General System Support. The Board of Directors shall select and contract with a public or private entity to perform SYSTEM maintenance, improvement, and various support services. The entity performing General System Support for the SCPSC may be considered a third-party beneficiary under this Agreement if expressly set forth in the services contract.

11. Administrative Support. The Board of Directors may also delegate or contract for various other support services including, but not limited to, providing administrative staff support to the Board and/or any committees or sub-committees.

12. Fiscal Year and Annual Budget/Financing

a. Fiscal Year. The SCPSC's fiscal year shall be the twelve (12) month period commencing each July 1, except if the effective date of this Agreement is other than July 1, the first fiscal year shall be the short year commencing the effective date and ending the following June 30.

b. Annual Budget. The SCPSC shall operate only under an approved fiscal year budget as adopted by the Board of Directors. It may not operate at a deficit. Members shall pay for the entire operation of the SCPSC: the annual or modified/amended budget shall determine the total amount of assessment required to be paid by each Member. When determining assessments, the Board of Directors shall allocate all costs fairly and equitably among the Members, and should consider usage and System connections, among other factors, as allocation bases. Once adopted annually for each fiscal year, the total annual budget may only be increased by supermajority (2/3) vote of the Board of Directors. The Board of Directors shall approve the cost allocation methodology by January 15 for the following fiscal year, and shall thereafter adopt a preliminary annual budget no later than February 15 and a final budget in accordance with applicable state law.

c. Budget Elements. The Board of Directors, in adopting an annual budget, thereby fixes the assessments against the Members, which is binding thereon. The budget shall include, but is not limited to, the following components:

i) Operational and Maintenance Expenses. The costs of operating and maintaining the public safety CAD/RMS/MDC system, and the cost of services of the General System Support, shall be billed to the Members quarterly in accordance with and not to exceed the budget categories of expenditures as set forth in the annual Budget (or modifications/amendments thereof). Members shall pay SCPSC within thirty (30) days after receipt of such invoice. SCPSC may charge interest on any past due payments at the rate of interest paid by the County of Sonoma Treasurer/Tax Collector for County departments or public entities participating in the pooled funds account for the period of time for which the payment is past due. SCPSC may proceed with the offset process for any past-due payments in accordance with Government Code section 907.

ii) Capital Expenditures. Capital expenditures shall include the costs of original purchase of communications and computer equipment, hardware, software and other fixed asset items typically having a useful life of more than one (1) year, including equipment

improvements and additions, as opposed to replacement parts for ordinary maintenance during the useful life of the capital items. All costs associated with such purchase, such as installation, shall be capitalized. Replacement of equipment at the end of its useful life shall be a capital item. Capital expenditures shall be shared by the Members as determined by the Board of Directors, except capital expenditures which are incurred for and are unique to a minority of the Members, in which case such minority shall share the expense as determined by the Board of Directors.

13. Term of Agreement and Termination. This Agreement shall be deemed to go into effect on July 1, 2008 (the "Effective Date"), and shall continue in full force and effect until rescinded or terminated, as set forth below.

a) Termination of Individual Membership. Any Member may terminate its participation in this Agreement by giving written notice to the Board of Directors not less than one hundred twenty (120) days before the beginning of the next fiscal year, which termination shall be effective only on the beginning of the next fiscal year.

- i) If a Member terminates its participation in this Agreement, it shall pay its portion of costs for which it is responsible for paying up to the date of termination.
- ii) Upon termination of a Member's participation in this Agreement, the Board of Directors shall determine the terms and conditions pursuant to which each Member shall retain SYSTEM equipment or related assets acquired in connection with its participation in the SCLEC or the SCPSC, including determining whether any compensation is owed for contributions or costs. No terminating Member is entitled to receive refunds for monies paid to SCPSC, regardless of whether such monies have been allocated or not.
- iii) Liquidated damages shall be assessed against any Member terminating its participation in this Agreement based on the impossibility of determining the actual damages of such termination on the SCPSC and its members. Such liquidated damages shall be in an amount equal to one hundred twenty-five percent (125%) of all monies that the Member was obligated to pay to the SCPSC (or SCLEC) during the fiscal year immediately prior to the effective date of termination.
- iv) Any monetary obligations assessed under this section shall be due to be paid to the SCPSC within ninety (90) days after the effective date of termination.

b) Effect of Termination by Less than All Members. Termination of this Agreement by any Member shall not be construed as a completion of the purpose of this Agreement

and shall not require the repayment or return to the Members of all or any part of any contributions, payments, or advances made by the Members until this Agreement is rescinded or terminated as to all Members.

c) Termination of Agreement by All Members. At any time, this Agreement may be rescinded and terminated, and the SCPSC may be dissolved, by a unanimous vote of the Members or a vote of all but one of the Members (i.e., a single Member cannot prevent termination). In such an event, the remaining assets and liabilities of the SCPSC shall be apportioned among all Members according to the relative contributions made by those Members up to the point of termination, which shall be determined by the Board of Directors.

14. Consolidations, Divisions and Annexations of Members. Consolidations of Members with other Members or with non-member agencies, divisions of Members into two or more entities, and annexations of portions of Members shall have no adverse effect on the cost assessments of uninvolved Members. In the event that involved Members cannot reach an agreement with regard to adjusting cost assessments among themselves, and the Local Agency Formation Commission does not determine the cost assessments, the Board of Directors shall resolve the matter after considering and hearing the affected Members.

15. Insurance. The SCPSC shall be required to obtain insurance, or join a self-insurance program(s) in which one or more of the Members participate, appropriate for its operations. Any and all insurance coverages provided by the SCPSC, and/or any self-insurance programs joined by the SCPSC, shall name each and every Member to this agreement as an additional insured for all liability arising out of or in connection with the operations by or on behalf of the named insured in the performance of this Agreement. In addition, any insurance program shall include coverage for the General System Support services vendor contract, and the vendor shall be named as an additional insured. Minimum levels of the insurance or self-insurance program shall be set by SCPSC in its ordinary course of business.

The SCPSC shall also require all of its contractors and subcontractors to obtain appropriate insurance and to name the SCPSC as an additional insured by way of express endorsement.

16. Cooperation in Joint Defense If SCPSC and a Member are Defendants in a Lawsuit. The SCPSC and each Member shall cooperate in the defense of any claim or lawsuit arising from the performance of this Agreement or operation/maintenance of the SYSTEM in which both the SCPSC and a Member are sued. The required cooperation shall include, but not be limited to, the following:

- a) Mutual exchange of all relevant non-privileged documents without the need for subpoena or formal discovery;
- b) When considered to be in their mutual best interest, access to all employees with relevant knowledge of the subject matter for the purpose of interviewing those employees without the need for subpoena or formal discovery;

c) Early discussion between the SCPSC and a Member or Members in an attempt to reach an agreement as to the most cost-effective strategy for defense; and

d) Early discussion as to whether it would be cost effective for one of the defendants to assume the defense of the other defendant in the action in an effort to avoid duplication of attorney's fees.

17. Indemnity. The SCPSC and each of its Members agree to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release each other (including their respective supervisors, officers, agents, and employees) from and against any and all actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including themselves, resulting from their own respective negligence or willful misconduct arising out of or in connection with the performance of this Agreement. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Members hereto or their agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

18. Property Use and Ownership. Property owned by each of the Members and used in connection with the operations of the SCPSC shall continue to remain their own respective property throughout the term of this Agreement, unless the Member expressly transfers its ownership interests in such property to the SCPSC or another Member in writing.

19. Amendments to Agreement. Except for the admission or removal of a member, this Agreement may be amended only by a unanimous vote of the SCPSC Members. Any amendments to the Agreement shall be in writing and signed by all Members.

20. Notice of Creation. A notice of the creation of SCPSC as a Joint Powers Authority entity by this Agreement shall be filed by SCPSC with the Secretary of State, pursuant to Government Code Section 6503.5.

21. Notice. Any notice required or permitted to be given under this Agreement shall be in writing. Delivery of such notice shall be conclusively taken and sufficiently given forty-eight (48) hours after deposit in the United States Mail, return receipt requested, with the postage thereon fully prepaid. Such notices shall be mailed to the Member's principal place of business.

22. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The Members covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. The Members acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one Member in favor of the other. The Members further acknowledge that they have each had an

adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

23. No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement shall be construed to create and the Members do not intend to create any rights in third parties.

24. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members hereto.

25. Merger. This writing is intended both as the final expression of the Agreement between the Members hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856.

26. Counterparts. This Agreement may be signed in any number of counterparts, which collectively shall be considered the Agreement.

IN WITNESS WHEREOF, the Members hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the day and year identified below.