CITY OF
HAYWARD
HEART OF THE BAY

Council Technology Application Committee

February 17, 2012

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CITY COUNCIL TECHNOLOGY APPLICATION COMMITTEE
SPECIAL MEETING
FEBRUARY 17, 2012
CONFERENCE ROOM 4A
3:00 PM – 4:00 PM

CALL TO ORDER

ROLL CALL

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council Committee on items not listed on the agenda. The Committee welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Committee is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

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1. Approval of Minutes of November 16, 2011…

   DRAFT Minutes - 11-16-11

2. Bay Area Regional Interoperable Communications System (BayRICS) Update

   Staff Report
   Attachment I BayRICS JPA
   Attachment II Motorola Site Access Agreement
   Attachment III Alameda County Site Access Agreement

3. Chairperson Henson EBRCSA Update (verbal)

COMMITTEE MEMBER ANNOUNCEMENTS AND REFERRALS

ADJOURNMENT

NEXT REGULAR MEETING – APRIL 18, 2012, 4:30 PM

****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website.*

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CITY OF
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Council Technology Application Committee (CTAC)

Meeting Minutes of November 16, 2011

Members Present: Olden Henson, Bill Quirk, Mark Salinas

Staff: Clancy Priest, Kelly Morariu, Joe Ochinero, Michael Loconte

Guests: Simon Wong, Tri City Voice

Public Comments: Technology Services Director, Clancy Priest, requested a special committee meeting for December concerning Bay Web and BayRics which we plan to bring to Council in January. The committee was informed that the CAD/RMS project "Go Live" date has been postponed, it was supposed to happen yesterday and has been postponed to the week of January 9th. The reasons for the postponement are "Technical". There were some technical issues they were addressing up until the last minute. Due to some of the issues, it was a consensus that we wait until January. There is a software patch or upgrade that is occurring in mid-December and a number of the issues that we were looking at are being addressed in this patch. Everyone came to the same conclusion that they should wait and let this patch occur in mid-December, then do a month of testing and then we'll "Go Live". The reason for this is because we don't want to see any problems occur when the "Go Live" is there. Something will be sent out to the Council either tonight or tomorrow.

1. **Approval of Minutes:**

   Minutes of October 19, 2011 Approved

2. **Website Update:**

   Technology Services Director, Clancy Priest, informed the Committee about the prototype and the positive feedback he received and would like their opinion as well. The City's Webmaster, Joe Ochinero, explained that in his research the public is more interested in the topical aspects of a website than the departments represent. The Technology Services Director, Clancy Priest received feedback from the committee members. Ideas for various background colors, icon names/buttons, search features within the website and posting agenda/event items were discussed. The City Clerk's Office will probably be the "Guiding Light" for posting agenda and event items on the Website and were given admin rights to manage the agenda items. We're going to proceed with this type of framework with some refinements, but, this is basically the type of framework we're going to release. We should be able to get this released by the January time frame.

3. **Geographical Information Systems (GIS) Update:**

   Technology Services Director, Clancy Priest gave the committee a GIS update. The committee requested that something be brought forward with the history and background on the GIS in the City. He shared with the committee that this is the third GIS System that he's been involved with and was built from the ground on up. This GIS System was also one of the most successful and going since

about 1998. Over the 10 plus years, there were many leaps and bounds on how the System was constructed and we've seen how the GIS System has improved. Over 10 years ago, the Council allocated within the Technology Services Capital Improvement Program (CIP) $500,000 to get it off the ground and without that we would not be where we're at today. The return we're receiving from the GIS and the efficiencies and effectiveness of the organization has well paid for itself. We've made some improvements with some of the photography and data that we laid into the GIS. Over a 10 year period, a total of about $700,000 - $800,000 has been spent on the product and were getting a great return on what we spent. We have a number of items that we'll be looking at in the future. Our GIS Coordinator, Michael Loconte has been involved with this since the beginning, he's done a great job consolidating.

Member comments: None

Next Meeting: December 19, 2011 @ 4:00pm

Meeting adjourned at 5:42pm

CITY OF
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____2____

DATE: ~~February 15, 2012~~ February 17, 2012

TO: Council Technology Application Committee

FROM: Technology Services Director

SUBJECT: Bay Area Regional Interoperable Communications System (BayRICS) Update

RECOMMENDATION

That the Committee reviews and discusses this report and recommends to the full Council that the City join the BayRICS Joint Powers Agreement (JPA) and signs a Site Access Agreement with the Motorola Corporation.

SUMMARY

The Bay Area Regional Interoperable Communications System (BayRICS) is an initiative of the Bay Area Urban Area Security Initiative (UASI). This project will provide a 4th Generation Long Term Evolution (4G LTE) broadband system to the ten Bay Area Counties within the UASI group on a secure system separate from the commercial cellular system with dedicated Public Safety.

Although the project has the ability to address genuine concerns by various Public Safety agencies for communication needs, there are both technical issues and questions about possible fiduciary liabilities in the future. Taking into account the outlined pros and cons, staff recommends the City join the project to help facilitate the proposed system and further the interoperability initiative in the Bay Area. Should the project become unsustainable in the future, the City will have the right to withdraw from the Authority.

There is an on-going responsibility for a member who commits sites to the project through a site use agreement, the member will be expected to keep those sites available and in use even if the member exits the JPA. If the member cannot keep the site available or find an alternate, the ex-member may be subject to a penalty. The proposed sites in Hayward are the Walpert Ridge Towers, Garin Water Tank Tower, Hesperian Tower, Fire Station 2, and Fire Station 8. With the exception of the two Fire Stations, these sites are currently in use, have multi-jurisdictional equipment in place, and will be maintained regardless of BayRICS.

BACKGROUND

The Bay Area Urban Area Security Initiative (UASI) was established because of the terrorist attacks on 9/11. A significant criticism that came out after those tragic events was the inability of first

responders to communicate effectively amongst one another. The nation has since focused on the importance of interoperable communications and how it enhances the abilities of first responders to combat terrorism, and to respond to and recover from disasters.

The Bay Area Regional Interoperable Communications System (BayRICS) was established by the ten Bay Area counties and three core cities (San Francisco, Oakland, and San Jose) in 2006 through the creation of a strategic plan with the goal of providing voice and data interoperability throughout the Bay Area region. The region consists of ten Bay Area Counties (Alameda, Contra Costa, Marin, Napa, Santa Cruz, Sonoma, Solano, San Mateo, Santa Clara, and San Francisco) and the three core cities (San Francisco, Oakland and San Jose).

Bay Area Wireless Enhanced Broadband (BayWEB) is the broadband/internet component of BayRICS. BayWEB would build out a 193-site public safety broadband network and a companion public access system for the Bay Area. The network would utilize existing infrastructure within the region to build-out a 4th Generation Long Term Evolution (4G LTE) broadband system on a segment of the 700 MHz spectrum, which was recently made available by the Federal Communications Commission (FCC).

The existing infrastructure to be utilized includes investments, such as communications towers, shelters, fiber optic cable, and microwave systems, owned by the participating cities and counties. This system will provide a faster, more efficient and affordable broadband data solution for public safety entities in the region. The system will be used to transmit and receive mission-critical data and would not replace the current systems used for voice communications.

The system will use 4G LTE technology that is the new standard for the commercial cell phone industry. The use of this technology for public safety is a new national standard and believed to afford significant economies of scale for government users. The system is being built to an international 3rd Generation Partnership Project (3GPP) standard that precludes vendors from the sale of proprietary devices and expands the opportunity for competition. This standard, a collaboration between groups of telecommunications associations, to make a globally applicable third generation (3G) mobile phone system.

Public Safety agencies for the first time will have access to Broadband capabilities solely dedicated to Public Safety use that will reduce the possibility of being disconnected and/or getting busy signals during a major disaster. While BayRICS is one of the first systems of its kind being installed in the country, there are currently 21 other systems under construction leading the way for the development of a nation-wide public safety broadband network. The BayRICS infrastructure is designed to be scalable, which means other regions have the ability to join and share in some of the operational costs, which may reduce the eventual overall cost to operate the system.

During the final quarter of 2009, Congress appropriated approximately $5 billion to the Department of Commerce to administer, through the National Telecommunications and Information Administration (NTIA), a Broadband Stimulus grant program called the Broadband Technology Opportunity Program (BTOP). The primary purpose of these stimulus funds was to create jobs and build broadband networks for the benefit of underserved communities, with an emphasis on public safety services.

In Round Two of the BTOP grant program, the General Manager of the UASI consulted with the Bay Area public safety agencies, through their appointed representatives, and a grant strategy was proposed that would require the applicant, a private partner, to assume the technical and fiscal risk (up to 30%) for the grant/project. At that time, participants concluded there was not capacity for a 30% match for the grant and there was not a government entity that was willing to take on the fiscal risk of the entire project (value envisioned at $150M).

The Bay Area UASI interoperability team, consulting with appropriate legal counsel from the City of San Francisco, developed a competitive process to select a private partner for the BTOP grant. A multi-jurisdictional team was appointed by agencies desiring to partner on the BTOP grant to select the private partner. No public employees with a previous employment history with any potential responders to this competitive process were allowed to participate in the selection process for the private partner (including the UASI management team).

Motorola was selected as the private partner and applicant for the BTOP grant. Alameda County Sheriff Gregory Ahern, representing the region as the Region 2 mutual aid coordinator, signed the grant as the executive sponsor. Motorola was ultimately awarded a $52 million dollar grant that requires a $22 million dollar match. As the system design has developed, the cost to complete the system has risen to close to $100 million dollars. Motorola has committed to provide the at least $26 million in additional funding needed to complete the project. The scope of the project originally included both a public safety and public access. The Public Access component is being removed due to rejection of site build out for that part of the project by some entities. This project scale reduction may reduce the NTIA grant amount. It is conceivable that grant funds of this magnitude will not be available again in the near future, if ever, to develop a regional capability like BayRICS.

The NTIA grant has been awarded to Motorola but the application is currently being reviewed for possible reduction. The grant amount may be reduced because of the removal of the Public Access system within the project and depending upon the number of site participants once all site access agreements have been finalized.

DISCUSSION

A joint powers agreement has been developed that outlines the governance and requirements for agency participation (Attachment I). The agreement has been vetted by several attorneys representing jurisdictions within the region, and the final agreement is now in the process of adoption by agencies within the region.

The agreed upon governing board has nineteen members representing the three core cities, the ten counties, the State, an at-large seat, and four seats established to represent the cities within the UASI planning hubs. Alameda and Contra Costa counties represent one of the planning hubs and are referred to as the "East Bay Cities" hub. The agreement stipulates that the representative and alternate will be selected by the City Managers' associations within the planning hub region. The agreement also identifies a process to establish startup and ongoing contributions from the member agencies with each member agency required to pay $24,500 per year to support administrative,

legal, and other authorized costs incurred by the Authority. In the case of the planning hubs, each one is responsible for paying the $24,500 initial membership fee and subsequent annual membership fee (of not less than $24,500) per City/per year within the hub. The fees for Alameda County cities will be paid by the East Bay Regional Communications Systems Authority (EBRCSA) (of which Hayward is a member) now and in the future.

The East Bay Cities group includes thirty-three of the thirty-four cities within the two counties, as Oakland has its own seat on the Board. Of those thirty-three cities, thirty-one are members of the East Bay Regional Communications Systems Authority (EBRCSA), including the City of Hayward. The EBRCSA Board approved the funding and has paid the BayRICS Authority on behalf of the East Bay Cities.

The grant guidelines require that the system ultimately be turned over by Motorola to BayRICS. Having direct control over system loading and operational parameters will allow the public safety users an opportunity to directly control the system operations, as opposed to the current system where public safety agencies have no control. Public Safety agencies today rely on older slower technology to provide secure data capabilities; the 4G LTE technology will provide state of the art speed and graphics capabilities for first responders that will be separate from the commercial/consumer network.

Concerns

The timeline required by the National Telecommunications and Information Administration (NTIA) for use of the ARRA funding awarded to Motorola, Inc. has resulted in a decision on the part of the BayRICS JPA Board to proceed with a Build Own Operate Maintain (BOOM) agreement before all of the technical and financial information is available to be able to adequately judge the likely functionality and/or the costs/benefits of the proposed system. Similarly, system technical requirements have been included in the draft BOOM agreement in advance of Motorola providing the information required to evaluate the proposed design and technical specifications. This was done in an attempt to anticipate what the JPA will require in terms of system performance and reliability.

A number of possible participating entities within the ten Bay Area counties that comprise the BayRICS operating have voiced reservations about the proposed project. They have either chosen to not participate or have modified their participation.

Potential Technical Deficiencies of Proposed BayWEB System

The rationale for justifying BayWEB, a separate public safety broadband system, was that historically existing commercial broadband systems are not designed to be mission critical, do not provide priority to public safety operations, and may be impaired during major emergencies/disasters when systems are over utilized by customers. Therefore, technical system design goals for BayWEB should have included a system that would be resilient, have adequate capacity and would provide reliable coverage and throughput. Unfortunately, some entities feel the current preliminary BayWEB system design falls far short of these core objectives. Concerns include:

- *Deficiencies in coverage and system "robustness"*
- *Insufficient capacity*
- *Minimal performance guarantees*
- *Redundancy in critical systems*

The BayRICS JPA Board has appointed a Technical Advisory Committee to evaluate and report to the Board concerning technical issues with the project and recommendations to address any project difficulties.

Financial Risks in Proposed System Funding Plan and BOOM Agreement.

The BOOM Agreement with Motorola specifies that the Authority and its members are not required to make minimum user commitments. If a Member commits no users, it will incur no user or device charges, and will not require back office connectivity or other related costs. The Draft System Funding Plan assumes a "pass-through" model, in which all JPA administrative costs that exceed the total amount of annual member fees collected would be passed on to user agencies as a surcharge added to the base user fee paid to Motorola. Moreover, costs of customer service, billing, invoicing and roaming allocated to the Authority would also be passed on to end users. Finally, and perhaps most significantly, the costs of any additional sites beyond those that were accepted by November 18, 2011, including related site remediation, would also be allocated to end users.

There are several significant cost components that are not incorporated into the Draft Plan. JPA staff has indicated that because these costs are unknown, it is not possible to put them in the Plan. These costs include:

- *Requirement for the JPA to provide backhaul:* The proposed BOOM agreement makes the JPA responsible for providing the central backhaul transport network (CBTN) infrastructure, which allows for the transportation or “backhaul” of data to the various sites.

- *Likely need to acquire and remediate additional sites:* As discussed above, the design of the current system does not allow for a sufficient number of sites to provide reliable, strong coverage over the system area.

- *Invoicing and billing:* The JPA will be required to assume all responsibility for invoicing and billing users; in addition, the BOOM agreement makes the JPA the primary point of contact for all customer service issues.

- *Roaming within and outside of the intended system coverage area:* Potentially, users would be required to pay the monthly system’s user charge (Motorola's charge plus a JPA surcharge to cover the costs).

- *Refresh of the BayWEB and central backhaul transport network (CBTN) systems:* The current system funding plan excludes lifecycle replacement ("refresh") costs until year ten or later.

Staff recommends that the City continue to be involved with the JPA, since the purpose of the JPA is greater than the BayWEB project, and is intended to foster regional public safety interoperability. The City is a member of the EBRCSA, which will continue fund the annual membership subscription fee of $24,500, reflective of holding a seat on the Board of Directors. As mentioned above, these concerns are being further explored by technical committees. The City can choose to withdraw from the JPA if these concerns cannot be address in a manner acceptable to staff and the Council. Staff will continue to monitor these discussions and provide regular updates to CTAC and the Council as necessary.

FISCAL IMPACT

The next step is to have seven cities within the East Bay Cities group adopt the JPA agreement. Given that initial funding has been provided by the EBRCSA, there is no financial impact on Hayward to join at this time. There is a $24,500 per year fee required by participating agencies in the future, which EBRCSA has committed to pay.

The draft Build, Own, Operate and Maintain (BOOM) agreement with Motorola, Inc. for the BayWEB project has significant unknown current and future costs for users of the system, including the provision of backhaul, the creation of a billing and customer service function, roaming and the augmentation of the system coverage and capability. At JPA Board meetings, there has been discussion of the JPA investing additional capital to build out the system to an acceptable degree of functionality. While grant funding would be preferable, should it be secured, there is also the potential for a bond or for JPA members to be asked to contribute from their own resources.

The system funding plan includes a project cost of $400 per site per month for utilities. However, the full cost of each site utilities is not known because it is yet unclear as to exactly what equipment each site will contain. Under provisions currently included in the site access agreement, the JPA will reimburse the City $400 per month per site and the City would be required to pay anything in excess of that, which excess, if any, is not expected to be substantial.

In addition, should the BayRICS JPA desire to use City sites, the estimated costs of permitting, NEPA, and CEQA may be substantial. Staff recommends that City sites be provided to the JPA under a "no cost to the City" provision. A “no cost” provision will protect the City from the site cost and hold the project accountable for any site costs, other than utilities as described above.

Should the BayRICS JPA desire to use City sites, staff believes it is appropriate to not charge the JPA for the lease of the sites, but to require the JPA to pay any one-time remediation as well as ongoing operations and maintenance costs, except utilities, for use of the sites. Motorola, Inc. has indicated that it will pay for one-time capital costs for remediation of the sites prior to installation of equipment. However, Motorola will not pay for any costs involved in permitting or environmental compliance (CEQA), or any ongoing costs for leasing or utilities.

Systems Funding Plan

The Systems Funding Plan was considered pivotal to the establishment of the JPA. This long-range plan was required by the JPA Agreement to include the costs of construction, on-going operation and maintenance, and technical and administrative support of the BayWEB system or any other systems that the JPA would own or control. The Systems Funding Plan is required in order to allow members to determine the systems' capability, data speeds, functionality, features, cost, financing, and the expected impacts on the individual members. Members were given 90 days after the draft plan was distributed to provide input to the Board, after which time the Board had to take action to adopt, revise or reject the plan. The draft plan was distributed to the JPA Board on October 18, 2011, to initiate the 90 day review period required under the Agreement. The JPA Board adopted the Systems Funding Plan on January 19, 2012.

NEXT STEPS

With the concurrence of CTAC, staff will request the City Council approves the City joining the BayRICS JPA (Attachment I) as one of the seven cities and approves the Motorola Site Access Agreement at the February 21, 2012 Council meeting.

Staff also recommends that the Council authorizes the City Manager to sign the Site Access Agreement between the City and Motorola, Inc. as modified by the County of Alameda (Attachment III). The Site Access Agreement is the document that will authorize the Motorola Corporation to access the five designated City sites to make improvements for equipment and. This agreement also will have a “no cost” provision as stated above. The agreement will also prohibit the build-out of the Public Access part of the system to prevent an unfair advantage to Motorola in the competitive 4G LTE market.

Prepared and Recommended by: Clancy Priest, Technology Services Director

Approved by:

_____

Fran David, City Manager

Attachments:	Attachment I:	BayRICS JPA Agreement
	Attachment II:	Site Access Agreement
	Attachment III:	Alameda County Site Access Agreement

JOINT POWERS AGREEMENT TO ESTABLISH THE BAY AREA REGIONAL INTEROPERABLE COMMUNICATIONS SYSTEM (BayRICS) AUTHORITY

THIS JOINT POWERS AGREEMENT (this "Agreement"), dated for convenience of reference as of May 2nd, 2011, is made among the public agencies that are the signatories to this Agreement.

Each public agency executing this Agreement is referred to individually as a "Member," and collectively as "Members."

This Agreement is made with reference to the following facts and circumstances:

A. The Members wish to develop and establish a regional, interoperable public safety broadband communications system and other advanced information systems for interoperable public safety communications (collectively, the “Public Safety System”).

B. The Members further wish to develop and establish a wireless broadband system for public access with a focus on provision of affordable broadband service for community anchor institutions (“Public Access System,” and together with the Public Safety System, the “Systems”). Community anchor institutions include public libraries, schools, parks and recreation districts, health care facilities, local governmental facilities, community centers, and members of the public in the Bay Area, as defined below.

C. The Bay Area UASI Approval Authority allocated federal Urban Areas Security Initiative grant funds to establish and develop a regional interoperable public safety digital microwave communications system for the Bay Area (“BayLOOP”), which will support regional public safety voice and data systems that are intended to become part of the Public Safety System.

D. The Members wish to work cooperatively in developing these Systems for use within the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, Santa Clara, Santa Cruz, San Mateo, Solano, and Sonoma (collectively, the “Bay Area”), and have determined that working in concert is in the region’s public interest, as doing so would provide the most effective and economical interoperable communications and broadband architecture for all participating public entities and agencies.

E. The Members are committed to cooperatively addressing the challenges of sustaining and managing shared interoperability assets and projects specific to voice and data communications, while looking for opportunities to enhance interoperability and increase the effectiveness and resiliency of existing and emerging technologies.

F. The Members are committed to complying with all applicable Federal Department of Homeland Security guidelines and Federal Communications Commission (“FCC”) rules to promote national interoperability of the Public Safety System, including the development of the regional, standards-based, multi-vendor Public Safety System.

G. The Members have the authority to enter into this Agreement under the Joint Exercise of Powers Act, California Government Code Section 6500 *et seq*. (the "Act").

ACCORDINGLY, in consideration of the recitals and mutual obligations of the Members as set forth below, the Members agree as follows:

ARTICLE I - GENERAL PROVISIONS

1.01 Purpose.
This Agreement creates a local governmental entity to exercise the powers shared in common by its Members to engage in regional, cooperative planning and coordination of governmental services, and to develop the Systems and other communications and data system projects that promote interoperability in the Bay Area or are otherwise consistent with the goals of this Authority. The Members seek to create a structure and process to resolve technical and operational issues in the development, operation and management of such Systems; identify funding mechanisms for the Systems; and anticipate and address future advanced information and communications needs. Such purposes are to be accomplished, and the Members' common powers exercised, as set forth in this Agreement.

1.02 Creation of Authority.
Under the Act, the Members create a public entity to be known as the "Bay Area Regional Interoperable Communications System ("BayRICS") Authority" (hereinafter the "Authority"). The Authority shall be a public entity separate and apart from the Members. The geographic jurisdiction of the Authority is all territory within the Bay Area that includes the geographic boundaries of the Members, with the exception of the State of California; however, the Authority may undertake any action outside those geographic boundaries as is legal, necessary and incidental to accomplishing its purpose.

1.03 Eligibility for Membership; Membership.
To be eligible to be a Member in the Authority, an agency or entity must meet the following requirements: (1) be a public agency, as defined by the Act; and (2) have jurisdiction in the Bay Area.

(a) **Initial Membership:** Prior to and for a period of sixty days after the Effective Date (hereinafter the "Initial Membership Period"), an eligible public agency may become an initial Member of the Authority as follows: (1) delivering to the Authority's Secretary a duly approved and executed copy of this Agreement; and (2) paying the Initial Membership Fee as specified in Section 5.01(a).

(b) **Subsequent Membership:** Eligible public agencies that seek membership after the expiration of the Initial Membership Period, may become Members of the Authority as follows: (1) delivering to the Authority's Secretary a duly approved and executed copy of this Agreement; (2) paying the Subsequent Membership Fee as specified in Section 5.01(b); (3) obtaining the express approval of the Authority's Board of Directors (the "Board") to become a Member; and (4) complying with any further requirements mandated by the Board. Admission of Members after the Initial Membership Period shall not require amendment to this Agreement. The Secretary shall keep a historical roster of Members and their dates of admission and withdrawal.

1.04 Initial Members Entitled to Appoint Directors.

(a) Each Appointing Authority identified in subsections 1 through 14 of Section 2.01 is entitled to appoint a Director to the Board only if the public agency which that official or body represents becomes a Member of the Authority within the Initial Membership Period. Appointing Authorities of public agencies identified in subsections 1 through 14 of Section 2.01 which become Members after the Initial Membership Period may be permitted to appoint Directors to sit on the Board only if such appointment authority is expressly approved by the Board.

(b) Each Appointing Authority identified in subsections 15 through 18 of Section 2.01 is entitled to appoint a Director to the Board only if the required number of cities for that Regional City Group, as set forth in the applicable Exhibit A through D, become Members of the Authority within the Initial Membership Period. If the required number of cities within a Regional City Group do not become Members during the Initial

Membership Period, such Regional City Group shall lose its right to appoint a Director to the Board. The Appointing Authorities identified in subsections 15 through 18 of Section 2.01 which attain the required number of Member cities after the Initial Membership Period may be permitted to appoint Directors to sit on the Board only if such appointment authority is expressly approved by the Board.

1.05 Effective Date; Term.
This Agreement shall become effective, and the Authority shall come into existence, on the date on which; (a) at least ten of the nineteen public agencies representing the Appointing Authorities identified in Section 2.01 have fulfilled the requirements of Section 1.03(a) for Initial Membership; and (b) those Appointing Authorities have notified the Secretary of their appointment of a Director and Alternative Director (the "Effective Date"). The Secretary shall designate in writing the Effective Date, and provide written notice of the Effective Date to all Members, Bay Area counties, and cities specified in Exhibits A through D. The failure of the Secretary to designate the Effective Date or provide written notice shall not invalidate this Agreement. The Agreement shall continue from the Effective Date until terminated as provided in Section 6.04.

ARTICLE II - BOARD OF DIRECTORS.

2.01 Composition of the Board.
The Authority shall be governed and administered by the Board, which shall consist of a maximum of nineteen Directors selected by the following appointing authorities (each an "Appointing Authority" and, collectively, the "Appointing Authorities") in writing, as authorized pursuant to the terms of this Agreement:

1. The Mayor of the City of Oakland, California;
2. The Mayor of the City of San Francisco, California;
3. The Mayor of the City of San Jose, California;
4. The Board of Supervisors of the County of Alameda, California;
5. The Board of Supervisors of the County of Contra Costa, California;
6. The Board of Supervisors of the County of Marin, California;
7. The Board of Supervisors of the County of Napa, California;
8. The Board of Supervisors of the County of San Francisco, California;
9. The Board of Supervisors of the County of San Mateo, California;
10. The Board of Supervisors of the County of Santa Clara, California;
11. The Board of Supervisors of the County of Santa Cruz, California;
12. The Board of Supervisors of the County of Solano, California;
13. The Board of Supervisors of the County of Sonoma, California;
14. The Governor of the State of California;
15. The incorporated cities within the geographic area of Alameda and Contra Costa Counties and listed in Exhibit A attached hereto (referred to herein as the "East Bay Cities");
16. The incorporated cities within the geographic area of San Mateo County and listed in Exhibit B attached hereto (referred to herein as the "West Bay Cities");
17. The incorporated cities within the geographic area of Santa Clara and Santa Cruz Counties and listed in Exhibit C attached hereto (referred to herein as the "South Bay Cities");
18. The incorporated cities within the geographic area of Marin, Napa, Sonoma, and Solano Counties and listed in Exhibit D attached hereto (referred to herein as the "North Bay Cities" and together with the East Bay Cities, the West Bay Cities, and the South Bay Cities, collectively, the "Regional Cities Groups" and each, a "Regional City Group"); and
19. Seat at Large to be determined by the Board.

2.02 Appointment of Directors.

(a) Except as provided in Section 1.04, each of the officials or bodies listed in subsections 1 through 14 in Section 2.01 above shall appoint one Director and one Alternate Director to the Board when the public agency that official or body represents becomes a Member. Such officials or bodies shall make reasonable efforts to make the appointments within fifteen days of the date when the agency that official or body represents becomes a Member.

(b) Except as provided in Section 1.04, each of the Regional Cities Groups listed in subsections 15 through 18 in Section 2.01 above may appoint one Director and one Alternate Director to the Board, when the required number of the cities in the applicable Regional City Group (that specific number set forth on the bottom of the applicable Exhibit A-D) have (i) each delivered to the Secretary a duly approved and executed copy of this Agreement, and (ii) paid one Initial Membership Fee per Section 5.01 on behalf of such Regional City Group. Each of the Directors and Alternate Directors appointed by a Regional City Group shall be from one of the incorporated cities within such Regional City Group that has become a Member, and shall represent the interests of all the cities in its Regional City Group. Each Regional City Group shall make reasonable efforts to appoint its Director and Alternate Director within fifteen days of the date it has satisfied the requirements of subsections (i) and (ii) of this subsection 2.02(b). The City Managers representing the Member cities within a Regional City Group will determine which city will represent the Regional City Group, determine how the Member cities will provide input to the chosen representative Director and Alternate Director, and how the Member cities will share and pay the Initial Membership Fee and the Annual Fee thereafter. Those cities identified in subsections 1 through 3 in Section 2.01 are excluded from participating in, or affecting the membership calculations of any Regional City Group.

(c) The Board may select a Member or group of Members not otherwise represented on the Board as the Appointing Authority for the Seat at Large under subsection 19 in Section 2.01 (the "At Large Appointing Authority"). The At Large Appointing Authority shall appoint one Director and one Alternate Director to the Board. The Appointing Authority shall make reasonable efforts to appoint its Director and Alternate Director within fifteen days of the date it receives notice of its designation as the At Large Appointment Authority from the Board.

(d) The Appointing Authority shall promptly provide written notice to the Secretary of the appointment or removal of a Director or Alternate Director. Within seven days of the Secretary's receipt of such notice, the Secretary shall notify all Members of the current number of duly appointed Directors and provide such notice at the beginning of any Board Meeting.

(e) At the time of appointment and for the duration of service, Directors and Alternate Directors shall be officers or employees of Members.

(f) The term of office of each Director and Alternate Director shall be until a successor has been appointed, except for the At Large Seat which shall be a two year term.

(g) An Alternate Director may act in his or her Director's absence and shall exercise all rights and privileges of a Director.

(h) Each Director and each Alternate Director shall serve at the pleasure of the Appointing Authority and the Appointing Authority may remove the Director or Alternate Director at any time without notice or cause.

(i) All Directors and Alternate Directors shall serve without compensation. The Board may authorize, through the bylaws, reimbursement of reasonable and necessary expenses incurred by Directors or Alternate Directors upon review of supporting documentation.

(j) Each Appointing Authority shall authorize its Director and Alternate Director to take all actions necessary to conduct the business required by the Authority in a timely manner.

2.03 General Purpose of Board.

The general purpose of the Board is to:

(a) Coordinate information and address the needs, requirements, and resources of Members regarding the development and operation of the Authority, to ensure the goals and objectives of the Systems are fulfilled;
(b) Provide structure for administrative and fiscal oversight of the Authority;
(c) Identify and pursue funding sources for the Authority and Systems approved by the Authority;
(d) Set appropriate policies for the Authority and the Systems;
(e) Educate Members on advanced technologies in communications and information systems that may help them do their work more efficiently and with cost savings;
(f) Maximize the use of available resources; and
(g) Oversee all advisory committee activities.

2.04 Specific Responsibilities of the Board.

The specific responsibilities of the Board shall be as follows:

(a) Approve contracts with commercial companies, contractors, or subcontractors or other entities regarding development, operation, maintenance and expansion of the Systems or other projects duly approved by the Authority;
(b) Approve and revise as necessary an administrative funding plan (the "Administrative Funding Plan") for the Authority to operate and fulfill its obligations under this Agreement;
(c) Specify the Subsequent Membership Fee and the Annual Membership Fee, per Section 5.01;
(d) Approve and revise, as necessary, a systems funding plan (the "Systems Funding Plan") regarding the construction and on-going operation, maintenance and ownership of the Systems;
(e) Before the beginning of each Fiscal Year (as defined in Section 7.03), adopt, in its sole discretion, either an annual or a multi-year budget for the Authority;
(f) Ensure strict accountability of all funds and reports of all receipts and disbursements;
(g) Contract for, or employ, necessary and sufficient administrative, technical, support and other staff, consultants and contractors, and provide for necessary direction, management and oversight for all staff, consultants and contractors;
(h) Adopt personnel rules and regulations if employing staff;
(i) Adopt rules for procuring supplies, equipment and services;
(j) Adopt rules for the disposal of surplus property;
(k) Identify the needs and requirements of Members, as well as subscribers of the Systems;
(l) Establish Systems priorities;
(m) Establish long-range plans for the Systems;
(n) Establish procedures for Systems implementation, monitoring and maintenance;
(o) Adopt and revise, as necessary, an appropriate and cost effective maintenance plan for the Systems;
(p) Adopt and revise, as necessary, Systems operating policies and procedures, as well as technical and maintenance requirements;
(q) Conduct and oversee System audits at intervals not to exceed three years;
(r) Adopt bylaws, rules and regulations as necessary for the purposes of this Agreement; provided that nothing in the bylaws, rules and regulations shall conflict with this Agreement or the Act;
(s) Establish fees for Members and Non-Members to access and use the Systems. The Board shall ensure that such fees for Members are less than fees for non-members of the Authority for comparable services;
(t) Represent the Authority in external communications; and
(u) Discharge other duties consistent with the purposes of this Agreement as appropriate or required by statute.

2.05 Startup Responsibilities.
The Authority shall have the duty to do the following within the timeframe specified below or, if no timeframe is specified, within a reasonable time not to exceed one year from the Effective Date:

(a) To use its best efforts to establish within two months of the Effective Date advisory committee(s) in accordance with Section 3.09;
(b) To use its best efforts to establish within two months of the Effective Date a website for posting agenda and other notices and information about the Authority and Board.
(c) To use its best efforts to develop and adopt within one month of the Effective Date an Administrative Funding Plan for the Authority to operate and fulfill its obligations under this Agreement;
(d) To use its best efforts to develop and adopt expeditiously, as described in Section 5.02, a Systems Funding Plan specifying a means or formula for funding the design, construction, operation, maintenance, expansion, and lifecycle replacement of any systems that further the purposes of this Authority. A Systems Funding Plan shall include but is not limited to the following: (i) the design, construction, operation, maintenance, expansion and lifecycle replacement costs of the Systems; (ii) specification as to how site costs and/or site remediation (*e.g.*, electrical, air conditioning, backup generators, and power) of specified antenna sites by jurisdiction shall be paid; (iii) the estimated costs to be borne by the Authority should ownership of the Systems later be transferred to the Authority; (iv) good faith estimates of costs and types of devices that will be able to operate on the Public Safety System; (v) monthly user fees for the Systems; and (vi) identification of additional funding sources, if necessary;
(e) During the eighty days following the Effective Date, to negotiate any contracts with commercial companies, contractors, subcontractors or entities that specify the timing and sequencing of construction of the Systems consistent with the functional specifications, and other business terms related to the Systems, including but not limited to development, operation and maintenance of the Systems. In any agreement with a contractor or entity, the Authority may not bind or commit any Member to incur any financial obligation or provide any resources to the Systems (*e.g.*, use of a communications site, use of communications fiber over which the Member has control or ownership) or to participate in use of the Systems without that Member's written authorization. This Section 2.05(e) is subject to the restriction set forth in Section 5.02 prohibiting the Authority's approval of any agreement relating to any System until the Board has approved a Systems Funding Plan.
(f) To contract for, hire or otherwise retain an Executive Director for the Authority, to administer the Authority. The Board shall specify in the bylaws or personnel rules the responsibilities, duties and authority of the Executive Director.
(g) To use its best efforts to develop and adopt, within eighty days, bylaws and other governance documents for the Authority;
(h) To secure administrative office space, equipment, and furnishings as necessary;
(i) To encourage other governmental and quasi-governmental entities and agencies, including but not limited to the state and federal government, other neighboring counties, and special districts, to participate in the Systems;
(j) To develop policies and procedures for the voluntary transfer and/or sharing of assets from Members; and
(k) To evaluate the need for, acquire and maintain insurance as deemed necessary by the Board to protect the interests of the Authority, the Members, and the public.

2.06 Meetings of the Board.

(a) Regular Meetings. The Board shall approve a schedule for its regular meetings provided, however, that the Board shall hold at least one regular meeting quarterly. The Board shall

fix the date, hour and location of regular meetings by resolution and the Secretary shall transmit a copy of the resolution to each Member.

(b) Special Meetings. Special meetings of the Board may be called by the Chair or as provided for in the bylaws.

(c) Call, Notice and Conduct of Meetings. All meetings of the Board shall be noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 *et seq*. As soon as practicable, but no later than the time of posting, the Secretary shall provide a copy of the posted agenda to each Member, Director and Alternate Director.

(d) First Meeting. The Board shall make reasonable efforts to convene its first meeting no later than fifteen days after the Effective Date.

2.07 Minutes.

The Secretary shall prepare minutes of all Board meetings and as soon as practicable after each meeting, and shall make the draft minutes available to each Director, Alternate Director, the Members and other interested parties upon request. The Board shall approve the minutes at the next regularly scheduled meeting.

2.08 Voting; Weighted Voting.

All voting power of the Authority shall reside in the Board, and shall be subject to the following terms and conditions:

(a) Each Director shall have one vote; an Alternate Director may vote in place of, and only in the absence of, that Alternate Director's Director.

(b) Each Director or Alternate Director (as applicable) must be physically present at a meeting to vote; no absentee ballot or proxy is permitted.

(c) Except as otherwise expressly set forth in this Agreement (including without limitation Sections 2.09, 4.02, 6.04 and 7.02), the Board is authorized to adopt and apply weighted voting methods for approval of items brought before the Board under the following conditions:

i. The Board may utilize weighted voting only if it has previously adopted weighted voting criteria and methodologies in the Authority's bylaws;

ii. Weighted voting will be the exception, rather than the norm, for the Authority to conduct business;

iii. Board items that involve expenditure or commitment of the Authority's funds or other resources must exceed $500,000 in value to be subject to weighted voting;

iv. A Director must expressly move and call for a weighted voting method on a particular item pending before the Board, which motion must be seconded by at least one other Director;

v. The call for such weighted vote must be made before or after any vote but prior to moving to the next agenda item or the end of the Board meeting, whichever is earlier; and

vi. Any Board item subject to a weighted voting method shall first be approved by a vote of the quorum of the Board (as provided in Section 2.09), followed by a weighted vote. Board items subject to weighted voting must be approved by both a regular quorum vote of the Board as well as a weighted vote of the Board to be approved.

2.09 Quorum; Votes

A majority of the Directors duly appointed to the Board, as described in Section 2.02, as of any Board meeting date (taking into consideration the loss of any Board seats as provided in Section 6.01(e)) shall constitute a quorum of the Board for the transaction of business. For example, if ten Directors have been duly appointed to the Board on the date of its first meeting, a quorum is six or more Directors, and, if at a subsequent Board meeting date, fourteen Directors have been duly appointed, a quorum is eight or more Directors. If there is less than a quorum present at a

meeting, no Board action can be taken, and the Secretary may adjourn such meeting. The affirmative vote of at least a quorum is required to take any action by the Board.

2.10 No Personal Liability of Directors.
Under the Act, no Director or Alternate Director shall be personally liable for any debts, obligations or liabilities of the Authority or on any bonds issued by the Authority, nor subject to any personal liability or accountability by reason of the Authority's incurrence of debts, obligations or liabilities or issuance of bonds.

ARTICLE III – OFFICERS, EMPLOYEES AND ADVISORY COMMITTEES

3.01 Chairperson; Vice-Chairperson.
At the first regular meeting of the Board, the Board shall elect a Chairperson and Vice-Chairperson from among the Directors. The initial Chairperson and Vice-Chairperson shall serve until the end of the first Fiscal Year (as defined in Section 7.03 of this Agreement). Then, at the first regular meeting of each Fiscal Year, the Board shall elect a Chairperson and Vice-Chairperson to serve a one year term. If the Chairperson or Vice-Chairperson resigns from or is otherwise unable to perform the duties of the office, or his or her represented agency ceases to be a Member, then at the next regular meeting of the Board held after the vacancy or inability to serve occurs or as soon as practicable thereafter, the Board shall elect a new Chairperson or Vice-Chairperson, as applicable, to serve the balance of the term.

The Chairperson, or the Chairperson's designee, shall sign all contracts and other agreements on behalf of the Authority, and the Chairperson shall perform such other duties as the Board may require. The Chairperson shall approve the agenda for all Board meetings, preside over Board meetings, and call special meetings of the Board outside of the regular meeting schedule. The Chairperson may establish committees of the Board in addition to the advisory committees specified in Section 3.09.

If the position of Chairperson is vacant or the Chairperson is otherwise unable to serve, the Vice-Chairperson shall sign contracts or other agreements, and perform all of the Chairperson's duties until the Board elects a new Chairperson.

3.02 Treasurer.
At its first meeting, the Board shall appoint a Treasurer of the Authority, which shall be the treasurer of one of its Members. To the extent permitted by the Act, the Board may change, by resolution, the Treasurer of the Authority.

The Treasurer shall be the depository, shall have custody of the accounts, funds and money of the Authority from whatever source, and shall have the duties and obligations set forth in the Act. For grants awarded to Members or third parties for use with the Systems, the Treasurer will work with the Member or third party to put in place appropriate fiscal controls to meet any grant requirements.

3.03 Auditor.
At its first meeting, the Board shall appoint an Auditor of the Authority who shall be of the same public agency as the Treasurer to comply with Government Code Section 6505.5. To the extent permitted by the Act, the Board may change, by resolution, the Auditor of the Authority.

The Auditor shall perform the functions of auditor for the Authority and shall have the duties and obligations set forth in the Act. As required by the Act, the Auditor shall make or cause an independent annual audit of the accounts and records of the Authority by a certified public accountant or public accountant, in compliance with generally accepted auditing standards. A

report of the financial audit will be filed as a public record as provided in Government Code Section 6505.

3.04 Legal Counsel.
At its first meeting, the Board shall retain legal counsel for the Authority.

3.05 Secretary to the Authority.
At its first meeting, the Board shall appoint a Secretary to provide administrative support to the Authority. If this Agreement assigns duties to the Secretary and no Secretary has yet been appointed, the Office of the Alameda County Sheriff shall perform the duties of the Secretary until a Secretary has been appointed by the Board. To the extent permitted by the Act, the Board may change, by resolution, the Secretary of the Authority. The person serving as the Secretary shall not also serve as a Director.

The Secretary shall perform the duties required under this Agreement. The Secretary shall maintain a current list of Members and contact information for notices under Section 7.01.

3.06 Bonding of Persons Having Access to Property.
Pursuant to Government Code Section 6505.1, the Board shall designate the public officer or officers or person or persons who have charge of, handle, or have access to any property of the Authority, and shall require such individuals to file an official bond in an amount fixed by the Board.

3.07 Executive Director; Other Employees.
The Board shall appoint an Executive Director, who shall administer the Authority and report to the Board. The Board shall have the power by resolution to appoint and employ other officers, employees, consultants and independent contractors as may be necessary to carry-out the purpose of this Agreement.

3.08 Privileges and Immunities from Liability.
All of the privileges and immunities from liability, applicable to the activities of officers, agents or employees of a public agency when performing their respective functions shall apply to the officers, agents or employees of the Authority to the same degree and extent while performing any of the functions and other duties of such officers, agents or employees under this Agreement. None of the officers, agents or employees directly employed by the Authority shall be deemed, by reason of their employment by the Authority, to be employed by the Members or subject to any of the requirements of the Members.

3.09 Advisory Committees.
The Board shall establish advisory committees including a Technical Advisory Committee, the primary purpose of which will be to review and recommend to the Board policies and procedures related to Systems performance, maintenance and other technical issues, and which shall be established at the first Board meeting. The Board may establish additional advisory committees to meet the needs of the Authority. The Board shall make reasonable efforts to establish membership of the Technical Advisory Committee and any other committees, and any offices required by the committees. The committees shall be subject to the Ralph M. Brown Act (California Government Code Section 54950 et seq.), and the chairperson of the committees shall report back to the Board of Directors as specified in the bylaws.

ARTICLE IV – POWERS

4.01 General Powers.
The Authority shall have the powers common to the Members and that are necessary or convenient to accomplishing the purposes of this Agreement, subject to the restrictions set forth in Section 4.04.

4.02 Power to Issue Bonds
The Authority shall have the power, with a two-thirds super majority vote of all Directors, to issue bonds as specified under the Act.

4.03 Specific Powers.
The Authority is authorized, in its own name, to perform all acts necessary for the exercise of the foregoing powers, including, but not limited to, any or all of the following:

(a) To make and enter into contracts, including but not limited to, agreements for the purpose of acquiring real and/or personal property, equipment, employment and professional services, and including agreements with Members;
(b) To make and enter into contracts with wholesalers, subscribers, users, or resellers that desire to utilize the Systems for their broadband and other communications needs and entities that desire to utilize the Systems only for mutual or automatic aid;
(c) To plan and conduct environmental review and other analyses in connection with its plans, and design buildings, facilities or communication improvements of any kind;
(d) To acquire, construct, manage, maintain, or operate telecommunications systems or service and to provide the equipment necessary to deliver public services;
(e) To acquire, construct, manage, maintain or operate any building, works or improvements;
(f) To acquire, hold, lease, or dispose of property, both real and personal;
(g) To apply for and hold FCC waivers or licenses to frequencies, and to enter spectrum lease agreements;
(h) To employ or engage contractors, agents, legal counsel, or employees;
(i) To sue and be sued;
(j) To apply for, receive and utilize grants and loans from federal, state or local governments or from any other available source in order to pursue the purposes of the Authority;
(k) To accept donations;
(l) To incur debts, liabilities and obligations, provided that no debt, liability or obligation of the Authority shall constitute a debt, liability or obligation of the individual Members;
(m) To impose, levy, collect or cause to be collected, or to receive and use, communication impact or development fees on new residential, commercial, and industrial development, but only upon the express approval of the affected Member jurisdiction and as otherwise authorized by local, state, and federal law;
(n) Under Government Code Section 6509.5, to invest any money that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, under Section 53601 of the California Government Code;
(o) To carry on technical and other investigations of all kinds necessary to further the purposes of the Authority; and
(p) To promulgate, adopt, and enforce any rules and regulations, as may be necessary and proper to implement and effectuate the terms, provisions, and purposes of this Agreement.

4.04 Restriction on Exercise of Powers.
Under Sections 6508 and 6509 of the Act, all common powers exercised by the Authority shall be exercised in a manner consistent with, and subject to, the restrictions and limitations upon the exercise of such powers as are applicable to the County of Alameda, a California charter county.

4.05 Limited Liability of the Authority.
Consistent with Government Code section 6508.1, the debts, liabilities and obligations of the Authority shall be limited to the assets of the Authority and shall under no circumstances be the debts, liabilities and obligations of any of the Members. A Member may (but has no obligation to) separately contract for or assume responsibility in writing for specific debts, liabilities, or obligations of the Authority. In furtherance of this Section, the Authority shall indemnify the Members as provided in Section 7.16 below.

ARTICLE V – CONTRIBUTIONS; ACCOUNTS AND REPORTS; FUNDS

5.01 Initial, Subsequent and Annual Membership Fees.
The Authority may use the funds generated by fees charged to its Members to support administrative, legal, and other authorized costs incurred by the Authority.

(a) **Initial Membership Fee.** To become a Member of the Authority within the Initial Membership Period, each eligible public agency shall pay an Initial Membership Fee as specified below (each such fee, as applicable, the "Initial Membership Fee").

i. Each public agency identified in subsections 1 through 14 in Section 2.01 shall pay an Initial Membership Fee to the Authority of Twenty Four Thousand Five Hundred Dollars ($24,500) as a condition of appointing its Director and Alternate Director

ii. Each Regional Cities Group identified in subsections 15 through 18 in Section 2.01 shall pay a single Initial Membership Fee to the Authority of Twenty Four Thousand Five Hundred Dollars ($24,500) for the group as a whole, which will enable each of the cities within the Regional City Group to obtain membership status upon satisfying the other requirements of this Agreement. If an eligible city has paid an Initial Membership Fee of Five Thousand Dollars ($5,000.00) because the required number of cities within its Regional City Group did not become Members within the Initial Membership Period, its payment shall be credited toward the applicable Regional City Group's Subsequent Membership Fee, as defined in Section 5.01(b).

iii. Except as otherwise set forth above, public agencies eligible to become Members, but not specifically identified in subsections 1 through 14 in Section 2.01 shall pay an Initial Membership Fee to the Authority of Five Thousand Dollars ($5,000.00) as a condition of becoming Members.

(b) **Subsequent Membership Fee.** Each eligible public agency applying to become a Member after the Initial Membership Period, whether or not identified in Section 2.01, shall pay a Subsequent Membership Fee as a condition to becoming a Member (each such fee, as applicable, hereinafter a "Subsequent Membership Fee"). The Board shall determine the amount of each Subsequent Membership Fee, but in no event shall it be less than the Initial Membership Fee the public agency would have been required to pay to become a Member within the Initial Membership Period.

(c) **Annual Fee**. Each Member shall pay an Annual Fee, by not later than July 1st of each Fiscal Year to maintain membership in the Authority (each such fee, as applicable, hereinafter, the "Annual Fee"). The Board shall set each Annual Fee in an amount not to exceed the Initial Membership Fee or Subsequent Membership Fee, as the case may be, paid by the respective Member; however, the Board may adjust the Annual Fee each Fiscal Year to reflect changes in the Consumer Price Index. The Board shall round the adjusted Annual Fee to the nearest whole dollar. A Member is not required to pay its first Annual Fee if the Member paid its Initial or Subsequent Membership Fee, as applicable, within six months of its first Annual Fee due date.

5.02 Adoption of Systems Funding Plan.

(a) A goal of the Authority is to develop the Systems Funding Plan as specified in Sections 2.04(d) and 2.05(d). The Board shall not approve any agreement for construction of or relating to any Systems until the Board has approved a Systems Funding Plan.

(b) Before the Board may consider adopting the Systems Funding Plan, it shall distribute the proposed Systems Funding Plan to the Members under Section 7.01. The proposed Systems Funding Plan shall be accompanied by a description of the Systems, and information to allow Members to determine the Systems' capability, data speeds, functionality, features, cost, financing and the expected impacts on individual Members. The Board shall designate a period, which shall not be less than ninety days, during which Members may provide comments to the Board regarding the proposed Systems Funding Plan. After the comment period has expired, the Board may:

(c) Adopt the Systems Funding Plan as proposed;

  i. Revise the Systems Funding Plan to address some or all of the Member comments;

  ii. Reconsider the Systems Funding Plan at a later date; or

  iii. Reject the Systems Funding Plan.

(d) The Board shall give notice to Members under Section 7.01 within five days of adoption of the Systems Funding Plan (the actual date such notice is provided to members, the "Systems Funding Plan Notice Date"). The notice shall include a copy of the adopted Systems Funding Plan and the date by which Members may withdraw pursuant to Section 6.01(a).

(e) If the Board decides to exercise its option under Section 5.02(b)(ii) to revise the Systems Funding Plan to address Member comments and the Board adopts a revision that changes any Member's financial obligation from the previous version of the Systems Funding Plan, the thirty day time period specified in Section 6.01(a) for withdrawal from the Authority shall automatically be extended to ninety days from the Systems Funding Plan Notice Date.

5.03 Additional Contributions; Disproportionate Impact.

The Board shall not require Members to provide any additional contributions to the Authority of any kind or nature whatsoever, for any purpose. Except as otherwise expressly set forth in this Agreement, the Board is not authorized to require Members to provide funds, resources, equipment or personnel in order to maintain membership in the Authority, maintain a Director's seat on the Board, and/or participate in the Systems. Members have the ability to provide additional contributions to the Authority, but only upon approval of their governing authorities. In addition, the Board shall not take any of the following actions without the express approval of the affected Member(s):

(a) Require any Member to adopt any tax, assessment, fee or charge;

(b) Require any Member to expend its resources, or utilize its property or equipment in a particular fashion, as part of a project or similar action taken by the Authority; and/or

(c) Approve a project or similar action without taking into consideration whether that action would disproportionately and negatively impact any Member based on objective and quantifiable factors.

The provisions of this section shall not affect the ability of the Authority to charge user fees or other costs associated with a Member's use of the Systems.

5.04 Accounts and Reports.

The Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any bonds issued by the Authority, or by the State Controller or the United States Government. The books and records of the Authority in the hands of the Treasurer shall be open to inspection at all reasonable times by duly appointed representatives of the Members. The

Treasurer, within 180 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members.

5.05 Funds.
The Treasurer shall receive, have custody of and/or disburse Authority funds in accordance with the laws applicable to public agencies and generally accepted accounting practices, and shall make the disbursements required by this Agreement in order to carry out any of the purposes of this Agreement.

5.06 Use of Spectrum.
It is the Authority's intent to operate a regional interoperable public safety broadband communications system on any radio spectrum that the FCC authorizes for public safety use, specifically including spectrum licensed to the Public Safety Spectrum Trust in the 700 MHz frequency (763-768/793-798 MHz) from the FCC for use by public safety and any other spectrum upon which the FCC allows public safety operation by the Authority in the future. It is the Authority's intent to maximize dedicated public safety spectrum in order to obtain high levels of communications reliability during major disasters, major events, or other emergencies. The Authority is authorized to apply for any FCC spectrum licenses or leases that are appropriate for public safety operation for the Bay Area region. For the Public Access System, unlicensed spectrum shall be used to provide this service consistent with FCC rules and regulations.

5.07 Operational and Technical Policies.
The Authority may set forth operational and technical policies for appropriate usage of the Systems so that the Systems are operated in a manner that permits usage by all Members in a fair and reasonable manner. Such operation and technical policies shall be developed by the Technical Advisory Committee and approved by the Board after review.

5.08 System Components
The Systems will be comprised of components that may include, but are not limited to, radio sites and facilities, microwave and fiber backhaul, base station equipment, antennas, evolved packet core network(s), network management systems, ancillary network components and end-user equipment (the "System Components"). Members may provide System Components to the Authority through written agreements signed by both the Member and the Authority. Such agreements shall at a minimum specify the following with respect to the System Components being provided, if known: (a) detailed descriptions and locations; (b) possession and ownership; (c) operation, maintenance and upgrade requirements; (d) parameters regarding use of and access to the particular System Components; (e) provisions addressing the Member's removal or discontinued shared use of System Components from the Systems; and (f) provisions to excuse a loss of use of System Components through a change in circumstances that make it impossible or impracticable for a Member to continue to provide System Components previously used in the Systems. Any such agreement regarding Systems Components shall be consistent with the provisions of Section 6.01(d).

5.09 Non-Member Use of Systems.
Public entities or agencies that are not Members of the Authority may use the Authority's Public Safety System on a usage fee basis as subscribers; however users of public safety spectrum must comply with any federal laws or FCC regulations limiting use to public safety entities. Public entities, public agencies, community anchor institutions and other retail users may purchase service from the Authority's Public Access System from such System's wholesalers, resellers or other distribution channels approved by the Authority. The Board shall adopt rules and reasonable rates for this use of the Systems in a fair and nondiscriminatory manner.

ARTICLE VI – WITHDRAWAL AND TERMINATION

6.01 Withdrawal by Members.

Members may withdraw from the Authority as follows:

(a) Within thirty days of the Systems Funding Plan Notice Date, as such period may be extended pursuant to the provisions in Section 5.02(d) ("Initial Withdrawal Period"), a Member shall submit written notice to the Chairperson and Secretary of its withdrawal from the Authority, which withdrawal notice shall be effective immediately. Such withdrawing Member will not incur any additional financial obligations as a result of membership in the Authority during such Initial Withdrawal Period; provided, that the initial Annual Fee or any Annual Fee paid by such withdrawing Member prior to withdrawal will not be returned.

(b) After the Initial Withdrawal Period, a Member that did not provide System Components (except end-user equipment) shall provide to the Chairperson and Secretary written notice of its withdrawal from the Authority which withdrawal notice shall be effective immediately; provided, that any Annual Fee already paid will not be returned to such withdrawing Member;

(c) After the Initial Withdrawal Period, a Member that provided System Components (except end-user equipment) shall provide to the Chairperson and Secretary twelve months advance written notice of its withdrawal from the Authority, which withdrawal shall be effective at the end of the notice period or earlier as permitted by the Board; provided, that any Annual Fee already paid will not be returned to such withdrawing Member

(d) If withdrawing under Section 6.01(c), a Member that provided System Components shall be required to pay a withdrawal payment. Such withdrawal payment shall be determined through a good faith negotiation between the withdrawing Member and the Authority, and shall be in an amount approved by the Board. The purpose of the withdrawal payment is to require the Member to cover the Authority's actual and direct expenses reasonably related to the withdrawal including, but not limited to, equipment relocation fees, leasing, and permit fees relating to System Components that the Member had dedicated to supporting the Systems, as well as related administrative costs and professional services fees. The withdrawing Member may mitigate this withdrawal payment by entering into an agreement for the Authority's continued use of the Member's assets, as described in Section 6.03. If the parties are unable to reach an agreement on the amount of the withdrawal payment, the parties shall mutually choose a neutral third party who shall be authorized to make such a determination and resolve the matter.

(e) If a withdrawing Member is an Appointing Authority to the Board, such Member shall lose its appointing authority and seat on the Board as of the date such Member gives notice of its withdrawal.

(f) If the withdrawing Member is a City within a Regional City Group, and the withdrawal of that Member reduces the number of Members in that Regional City Group below the threshold required to appoint a Director, as specified in Section 2.01 and the applicable Exhibit A through D for that Regional City Group, then such Regional City Group shall lose its Appointing Authority and seat on the Board effective as of the date the Member gives notice. If one or more additional cities from within such Regional City Group become Members of the Authority, such that the required number of cities within that Regional City Group are Members for purposes of appointing a Director, as specified in the applicable Exhibit A through D, the Regional City Group shall regain its ability to appoint a Director to the Board.

6.02 Financial Liabilities of Withdrawing Members.

Except as otherwise provided in Section 5.02:

(a) A withdrawing Member shall remain liable for all financial liabilities incurred during its membership in the Authority; however, except for the Annual Fee required per Section

5.01(c) paid for the year in which the withdrawal notice is given, the Member shall not be liable for any new financial liabilities incurred after submitting written notice of its withdrawal, including but not limited to future Annual Fees.

(b) The Authority and the withdrawing Member may negotiate a buy-out agreement for early termination of membership to retire any ongoing financial obligations the Member shares with the Authority.

6.03 Retention of Assets by Withdrawing Members.
Any System Component(s) that a withdrawing Member provided to the Authority shall remain the sole asset of that Member unless the Member and the Authority otherwise agree. If requested by the Authority, a withdrawing Member shall consider options for the Authority's continued use of such Member's System Component(s). Acceptance of any option is at the sole discretion of the withdrawing Member. Also, the use by the Authority of the withdrawing Member's System Component(s) shall be terminated upon the effective date of withdrawal, unless otherwise agreed between the Authority and Member.

6.04 Termination of Authority; Disposition of Authority Assets.
If at any point there are fewer than ten Directors on the Board, then the Board shall determine, at least once annually, whether the Authority is able to continue to fulfill its purpose and obligations required by this Agreement. In such a circumstance, the Board may recommend termination of this Agreement and dissolution of the Authority to the Directors' respective public agencies. The Authority may be terminated by a two-thirds super-majority vote of Directors and upon written consent from their respective public agencies. Upon termination of this Agreement and dissolution of the Authority, and after payment of all obligations of the Authority, the Board shall distribute Authority assets, including real or personal property, in proportion to the contributions made by Members. The Board may sell or liquidate Authority property and shall distribute the proceeds thereof in proportion to the contributions made by Members.

Any System Component(s) provided by a Member to the Authority shall remain the asset of that Member and shall not be subject to distribution under this section.

ARTICLE VII – MISCELLANEOUS PROVISIONS

7.01 Notices.
Any notice required or permitted to be made under this Agreement shall be in writing and shall be delivered in the manner prescribed in this Section 7.01 at the address set forth below such party's signature block to this Agreement. The parties may give notice by:

(a) Personal delivery;
(b) E-mail;
(c) U.S. Mail, first class postage prepaid;
(d) "Certified" U.S. mail, postage prepaid, return receipt requested;
(e) Facsimile.

At any time, by providing written notice to the Secretary, any party may change the place, facsimile number or e-mail for giving notice. All written notices or correspondence sent in the described manner will be deemed given to a party on whichever date occurs earliest:

(a) The date of personal delivery;
(b) The third business day following deposit in the U.S. mail, when sent by "first class" mail;
(c) The date on which the party or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by "certified" mail; or
(d) Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment

of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent on the next business day of the recipient.

7.02 Amendment.
This Agreement may be amended upon a two-thirds supermajority vote of the Members and a unanimous vote of the Board and execution of such amendment by each of the Members approving such amendment and each of the Members seated on the Board. However, this Agreement shall not be amended, modified or otherwise revised, changed or rescinded, if such action would:

(a) Materially and adversely affect either the rating of bonds issued by the Authority, or bondholders holding such bonds; or
(b) Limit or reduce the obligations of the Members to make, in the aggregate, payments which are for the benefit of the owners of the bonds.

7.03 Fiscal Year.
The Authority's Fiscal Year shall be July 1 to June 30.

7.04 Consents and Approvals.
Any consents or approvals required under this Agreement shall not be unreasonably withheld.

7.05 Incorporation of Act.
The provisions of the Act, as it may be amended from time to time, which are required to be included in this Agreement, are incorporated into this Agreement by reference.

7.06 Enforcement of Authority.
The Authority is authorized to take any or all legal or equitable actions, including, but not limited to, injunction and specific performance, necessary or permitted by law to enforce this Agreement.

7.07 Severability.
If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were, to any extent, adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

7.08 Successors.
This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assignees of each Member.

7.09 Assignment.
No Member shall assign any rights or obligations under this Agreement without the prior written consent of the Board.

7.10 Governing Law.
This Agreement is made and will be performed in the State of California, and as such California substantive and procedural law shall apply. Venue for any litigation under this Agreement shall be within any jurisdiction that constitutes or includes active Members at the time of litigation within the State of California.

7.11 Headings.
The section headings in this Agreement are for convenience only and are not to be construed as modifying or governing the language of this Agreement.

7.12 Counterparts.
This Agreement may be executed in counterparts.

7.13 No Third Party Beneficiaries.
This Agreement, including the obligations of the Authority described in this Agreement, are not intended to benefit any party other than the Authority and its Members, except as expressly provided otherwise in this Agreement. No agency that is not a signatory to this Agreement shall have any rights or causes of action against any party to this Agreement as a result of that party's performance or non-performance under this Agreement, except as expressly provided otherwise in this Agreement.

7.14 Filing of Notice of Agreement or Amendment.
Within thirty days after the Effective Date of the Agreement or any amendment to the Agreement, the Secretary shall prepare and file notices as required by Government Code Section 6503.5. The Secretary shall also file a copy of the Agreement or any amendment to the Agreement with the Controller as required by Government Code Section 6503.6.

7.15 Conflict of Interest Code.
The Board shall adopt a conflict of interest code as required by law.

7.16 Indemnification.
The Authority shall defend, indemnify and hold harmless each Member (and each Member's officers, agents, and employees, successors and assigns) from any and all liability, including, but not limited to, claims, losses, suits, injuries, damages, costs and expenses (including, without limitation, attorney's fees and consequential damages), of every kind, nature and description, (collectively, "Losses") directly or indirectly arising from or as a result of: (i) any accident, injury to or death of any person or loss or damage to property that may be directly or indirectly caused by the acts or omissions of the Authority or its officers, employees or agents; (ii) any act of the Authority or its agents, servants, employees or officers in the observation or performance of any of its responsibilities under this Agreement, or any failure by the Authority to perform any such responsibilities; and/or (iii) any actions or inactions of Members taken as a result of their membership in the Authority. Notwithstanding the foregoing, the Authority shall not be required to indemnify any Member against any Losses that are caused by the negligence or willful misconduct of such Member seeking indemnification or any of their respective officers, agents, employees, successors or assigns.

7.17 Dispute Resolution/Legal Proceedings.
Disputes regarding the interpretation or application of any provision of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Members and/or the Authority.

7.18 Non-Waiver.
No waiver of the breach or default of any of the covenants, agreements, restrictions, or conditions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Agreement. No delay or failure in exercising any right, power or remedy in the event of breach or default of this agreement shall be construed as a waiver thereof, or acquiescence therein.

7.19 Complete Agreement.
This Agreement constitutes the full and complete agreement of the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

IN WITNESS WHEREOF, each Member has caused this Agreement to be duly approved, executed and delivered, as follows:

City of Oakland

_____

Signature

_____

Name/Title

1 Frank Ogawa Plaza
Attention: Mayor
Oakland, CA 95609-2259
Email:
Fax:

City of San Francisco

_____

Signature

_____

Name/Title

1 Carlton B. Godlett Place, Room 200
Attn: Mayor
San Francisco, CA 94102
Email:
Fax:

City of San Jose

_____

Signature

_____

Name/Title

200 East Santa Clara Street
Attention: Mayor
San Jose, CA 95113-1905
Email:
Fax:

County of Alameda

_____
Signature

_____
Name/Title

Attention: County Administrator
1221 Oak Street
Oakland, CA 94612-4222
Email:
Fax:

County of Contra Costa County

_____

Signature

_____
Name/Title

County of Contra Costa County
651 Pine Street, 11th Floor
Attn.: County Administrator
Martinez, CA 94553
Email:
Fax:

County of Marin

_____
Signature

_____
Name/Title

3501 Civic Center Drive, Suite 325
Attn: County Administrator
San Rafael, CA 94903
Email:
Fax:

County of Napa

_____
Signature

_____
Name/Title

1195 Third Street, Suite 310
Attn: County Executive Officer
Napa, CA 94559
Email:
Fax:

County of San Francisco

_____
Signature

_____
Name/Title

1 Carlton B. Godlett Place, Room 200
Attn: Board of Supervisors
San Francisco, CA 94102
Email:
Fax:

County of San Mateo

_____
Signature

_____
Name/Title

400 County Center
Attention: County Administrator
Redwood City, CA 94063
Email:
Fax:

County of Santa Clara

_____
Signature

_____
Name/Title

70 West Hedding Street, 11th Floor
Attn: Chief Administrative Officer
San Jose, CA 95110
Email:
Fax:

County of Santa Cruz

_____
Signature

_____
Name/Title

701 Ocean Street, Room 520
Attn: County Administrative Officer
Santa Cruz, CA 95060
Email:
Fax:

County of Solano

_____
Signature

_____
Name/Title

675 Texas Street, Suite 6500
Attn: County Administrator
Fairfield, CA 94533
Email:
Fax:

County of Sonoma

_____
Signature

Veronica Ferguson, County Administrator _____
Name/Title

575 Administration Drive, Suite 104A
Attn: County Administrator
Santa Rosa, CA 95403
Email: vaferguson@sonoma-county.org
Fax: (707) 565-3778

State of California

_____

Signature
_____
Name/Title

California Technology Agency
Attention: Secretary
Attention: Director, Public Safety Communications Division
1325 J Street, Ste 1600
Sacramento, CA 95814
Email:
Fax:

Exhibit A

List of East Bay Cities

Alameda County Incorporated Cities

1) Alameda
2) Albany
3) Berkeley
4) Dublin
5) Emeryville
6) Fremont
7) Hayward
8) Livermore
9) Newark
10) Piedmont
11) Pleasanton
12) San Leandro
13) Union City

Contra Costa County Incorporated Cities

1) Antioch
2) Brentwood
3) Clayton
4) Concord
5) Danville
6) El Cerrito
7) Hercules
8) Lafayette
9) Martinez
10) Moraga
11) Oakley
12) Orinda
13) Pinole
14) Pleasant Hill
15) Richmond
16) San Pablo
17) San Ramon
18) Walnut Creek

Seven of the thirty one East Bay Incorporated Cities becoming Members of the Authority allows this group to hold one Board seat under subsection 15 in Section 2.01.

Exhibit B

List of West Bay Cities

San Mateo County Incorporated Cities

1) Atherton
2) Belmont
3) Brisbane
4) Burlingame
5) Colma
6) Daly City
7) East Palo Alto
8) Foster City
9) Half Moon Bay
10) Hillsborough
11) Menlo Park
12) Millbrae
13) Pacifica
14) Portola Valley
15) Redwood City
16) San Bruno
17) San Carlos
18) San Mateo
19) South San Francisco
20) Woodside

Five of the twenty West Bay Incorporated Cities becoming Members of the Authority allows this group to hold one Board seat under subsection 16 in Section 2.01.

Exhibit C

List of South Bay Incorporated Cities

Santa Clara County Incorporated Cities

1) Campbell
2) Cupertino
3) Gilroy
4) Los Altos
5) Los Altos Hills
6) Los Gatos
7) Milpitas
8) Monte Sereno
9) Morgan Hill
10) Mountain View
11) Palo Alto
12) Santa Clara
13) Saratoga
14) Sunnyvale

Santa Cruz County Incorporated Cities

1) Capitola
2) Santa Cruz
3) Scotts Valley
4) Watsonville

Four of the eighteen South Bay Incorporated Cities becoming Members of the Authority allows this group to hold one Board seat under subsection 17 in Section 2.01.

Exhibit D

List of North Bay Incorporated Cities

Marin County Incorporated Cities

1) Belvedere
2) Corte Madera
3) Fairfax
4) Larkspur
5) Mill Valley
6) Novato
7) Ross
8) San Anselmo
9) San Rafael
10) Sausalito
11) Tiburon

Napa County Incorporated Cities

1) American Canyon
2) Calistoga
3) Napa
4) St. Helena
5) Yountville

Sonoma County Incorporated Cities

1) Cloverdale
2) Cotati
3) Healdsburg
4) Petaluma
5) Rohnert Park
6) Santa Rosa
7) Sebastopol
8) Sonoma
9) Windsor

Solano County Incorporated Cities

1) Benicia
2) Dixon
3) Rio Vista
4) Suisun City
5) Vacaville
6) Vallejo

Seven of the thirty-one North Bay Incorporated Cities becoming Members of the Authority allows this group to hold one Board seat under subsection 18 in Section 2.01.

SITE ACCESS AND USE AGREEMENT
For Public Safety System

This Site Access and Use Agreement ("Agreement") is made as of Feburary __, 2012 ("Effective Date"), by and between Motorola Solutions, Inc. ("Motorola") and the City of Hayward ("Public Entity"). Motorola and Public Entity are herein referred to individually as a "Party" and collectively as "Parties."

RECITALS

A. WHEREAS, Motorola intends to enter into (or has entered into) a Build, Own, Operate and Maintain Agreement ("BOOM Agreement") with the BayRICS Joint Powers Authority ("JPA") regarding a regional, interoperable public safety broadband communications system ("Public Safety System") for the Bay Area Wireless Enhanced Broadband System or "BayWEB");

B. WHEREAS, Public Entity is a member of the JPA. Whether or not Public Entity is a member of the JPA, it may request and receive from Motorola a copy of the BOOM Agreement once it becomes effective if a copy is not otherwise available from the JPA;

C. WHEREAS, Public Entity intends to allow certain properties it owns or that are under its control to be accessed and used by Motorola in BayWEB, both in advance of the execution of the BOOM Agreement between Motorola and the JPA and thereafter during the entire term of the BOOM Agreement (as defined in Section 3.11 of the BOOM Agreement);

D. WHEREAS, the JPA requested that Motorola rather than the JPA enter into this Agreement with Public Entity, as well as other similar site agreements with other public entities in the region, for BayWEB, but that the JPA will assist Motorola in the performance of its duties under this Agreement;

E. WHEREAS, the Parties acknowledge that the JPA has a legitimate interest and need for a copy of this Agreement, all amendments to it, and all non-confidential and significant documentation that is prepared by a Party in the performance of its duties under this Agreement and provided to the other Party;

F. WHEREAS, the Parties desire and intend to enter into this Agreement whereby Public Entity will grant to Motorola the right to enter onto, have access to, and use on a continuous and uninterrupted basis certain properties, referred to herein as "Sites" or a "Site", to do all things and in any manner that are reasonable or necessary for Motorola's proper deployment, ownership, operation and maintenance of BayWEB, except as otherwise specified in this Agreement. As used in this Agreement, the term "Site" means a facility, such as a tower or building, at, on or in which Equipment or Software will be installed as part of the Public Safety System, excluding the LTE core and aggregation sites at backhaul locations unless they are specifically included on the List of Sites (Exhibit A); and

G. WHEREAS, BayWEB is funded in large part by a grant to Motorola from the Department of Commerce ("DOC") under its Broadband Technology Opportunities Program ("BTOP"), which is administered by the National Telecommunications and Information Administration ("NTIA"), Award Number NT10BIX5570089 (the "BTOP Grant'), plus a significant financial "match" from Motorola.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Compliance with BTOP Grant Requirements. Because Motorola has certain obligations under the BTOP Grant, both Motorola and Public Entity will perform their respective duties under this Agreement in a manner that promotes and ensures compliance with all applicable requirements of the BTOP Grant, including the Special Award Conditions, as such requirements may be amended by NTIA. The BTOP Grant and Motorola's contractual commitments to the NTIA provide for this Public Safety System and a "Public Access System." However, the Parties agree that Motorola shall install only the equipment for the Public Safety System, and not the Public Access System, at the Sites. All of Public Entity's duties in this Agreement pertaining to Sites apply to the Public Safety System. Motorola intends delete the Public Access System from the BayWEB project scope and from the BTOP Grant commitments.

2. Right of Entry, Access, and Use. Subject to the terms and conditions set forth in this Agreement, Public Entity hereby grants to Motorola, its contractors and consultants, a nonexclusive, nontransferable right of entry onto the Sites which are owned by Public Entity or under Public Entity's control, as described with more particularity on **Exhibit A**, attached hereto and incorporated herein, subject to all existing but not subsequent leases, subleases, licenses, easements, encumbrances and claims affecting such Sites, for Motorola to (i) enter onto the Sites, (ii) have access to the Sites, and (iii) use the Sites on a continuous and uninterrupted basis during the term of this Agreement to perform its duties under this Agreement and the BOOM Agreement, and to do all things and in a manner that are reasonable or necessary for Motorola to engineer, remediate, deploy (including installing equipment) , test, own, operate and maintain BayWEB at the Sites. Without limiting the generality of the preceding sentence, Motorola's rights include the following: Motorola (and its contractors or consultants) may perform work on, at or concerning the Sites to select, design, evaluate and qualify the Sites for use in BayWEB; if the Site is not qualified in its current condition, to remediate the Sites as is reasonable or necessary for use as a BayWEB Site in accordance with Site remediation/construction drawings approved by the Public Entity, which approval shall not unreasonably be withheld or delayed; and to use the Sites for the installation, testing, operation, and maintenance of equipment (such as antennas and other communications network infrastructure equipment) that is part of BayWEB. In exercising its rights as described in this section, Motorola will reasonably consult on material matters with Public Entity's "point of contact" whose name and contact information will be provided to Motorola and kept current by Public Entity. No other work shall be conducted on the Sites or that affect the Sites without the prior written consent of Public Entity.

2.1. As used herein, the term "non-exclusive" means Public Entity or others may have concurrent use of a Site so long as that concurrent use does not interfere with Motorola's rights under this Agreement; however, if Motorola remediates and improves a Site, Motorola will have exclusive use of the Site improvement only unless otherwise agreed in writing by the Parties and the exclusive use shall be strictly limited to the area improved and not to the entire Site. For example, if Motorola remediates and improves a Site by installing a monopole so that BayWEB equipment may be installed, then Motorola will have exclusive use of the monopole and Public Entity may not install or allow the installation of any other equipment on the monopole without Motorola's prior written consent. Public Entity currently contracts/licenses with third parties for the use of some Sites, and these third parties have contractual rights to modify and sometimes expand their equipment and use of the Sites, and Motorola agrees that they may do so if they do not interfere with Motorola's use of the Sites or its exclusive use of the Site improvements.

2.1.1. If the Public Entity (on its own behalf or on behalf of a third party who currently uses the Site under contract with Public Entity) requests to make use of the Site improvement, then Motorola will consult with the Public Entity to determine whether the requested use would interfere or impede Motorola's ability to satisfy its obligations under the BOOM Agreement including its Service Level commitments or the BTOP Grant requirements, or would cause Motorola to incur additional costs. If after review, the Parties conclude the requested change does not interfere with or impede Motorola's ability to satisfy its obligations under the BOOM Agreement including its Service Level commitments or the BTOP Grant

requirements, then Motorola (i) may agree to the requested change, or (ii) may conditionally agree to the requested change if the Public Entity agrees to pay a quoted price caused by any additional costs required for the proposed use and the requested change will be treated as enhanced Site Remediation Work as more fully described below in Section 3. Concerning this last choice, the Public Entity will, within five (5) business days after receipt of Motorola's quoted price, either (1) agree to pay the quoted price, in which case the Parties will execute a written amendment to this Agreement (or a separate agreement) which will include the Public Entity's agreement to pay the quoted price, or (2) will reject the quoted price, in which case the use request from the Public Entity is deemed withdrawn. Unless that amendment or agreement provides to the contrary, payment of the quoted price will be due within thirty (30) days of the Public Entity's receipt of an accurate and complete invoice which will be sent promptly after the execution of the amendment or agreement. Depending on the nature and scope of the requested change, the Parties may agree to payment milestones rather than a single invoice. Motorola shall not unreasonably withhold consent to allow such uses if the proposed uses are otherwise acceptable under this section.

2.2. As used herein, the term "non-transferable" excludes any transfer by Motorola to the JPA or its approved designee, to a Motorola affiliated or successor company, or to any other entity if that transfer is required by the Department of Commerce or the NTIA. Motorola will provide reasonable notice to the Public Entity if such transfer is mandated.

2.3. As used herein, the Site qualification process is described as follows: throughout the term of this Agreement, Public Entity will provide to Motorola all available records, structural, environmental or other analytical reports (including R56 compliance reports), photographs, drawings, certifications, relevant lease agreements and other information in Public Entity's possession concerning each Site, and concerning the issue of whether the Site is in "installation ready" condition. Motorola understands that Public Entity may not have any R56 certifications on County owned Sites. Motorola understands that Public Entity is a large county entity and will require reasonable time to assemble any requested documents. Public Entity understands that the BayWEB project schedule is heavily influenced by the BTOP Grant deadlines, and that Sites could become disqualified and dropped from the project if information is not provided promptly.

2.3.1. The term "installation ready" means (i) the Site is accessible, available, ready and suitable for Motorola to install the intended BayWEB equipment at the Site consistent with Motorola's design requirements as described in the BOOM Agreement. Motorola acknowledges that, as of the Effective Date, Public Entity is providing the Sites to Motorola in their "AS IS, WITH ALL FAULTS" CONDITION, and that, as provided in Section 3 Site Remediation, Motorola is solely responsible for putting the Sites into installation ready condition (but not for maintaining the Sites in this condition).

2.3.2. Site design requirements include but are not limited to: (i) Site access by authorized personnel of Motorola and its subcontractors; (ii) the Site is accessible by vehicle; (iii) the Site has available tower or other space to install the BayWEB equipment , and for Motorola to perform its related installation, testing, operation, maintenance and other services; (iv) the Site has available, adequate and accessible electrical power (including electrical outlets, distribution, equipment and connections); (v) if applicable, the Site has adequate telephone or other communication lines (including modem access and adequate interfacing and networking capabilities); (vi) the Site has, if applicable, adequate wind and ice loading capabilities; (vii) the Site has adequate air conditioning if the Site is inside a building requiring air conditioning for the proper operation, use and maintenance of the Equipment or Software; (viii) the Site is in full compliance with all necessary construction and building permits, zoning requirements or variances, licenses, and any other governmental (including FCC and FAA) approvals, and with all environmental laws and regulations; (ix) the Site has structural integrity and is in full compliance with all applicable and reasonable safety and security requirements, including grounding and applicable industry and OSHA

standards; and (x) the Site has other physical characteristics as may be reasonably requested by Motorola, including compliant with R-56 standards.

2.3.3. In interpreting clause (viii) above, the Parties acknowledge Special Award Condition number 12 of the BTOP Grant Award Documents (Exhibit T to the BOOM Agreement), which in pertinent part requires demonstrated compliance with the National Historic Preservation Act of 1966 and with all other applicable federal, state, and local environmental laws and regulations, and agree that a Site must be in demonstrable compliance with Special Award Condition number 12 to be installation ready. Further, Special Award Condition number 12 requires Motorola to complete any required consultations with the State Historic Preservation Office ("SHPO") and the appropriate federally recognized Native American tribes and to comply with all conditions placed on the project as a result of the consultation processes. The Parties agree that if Motorola's compliance with conditions placed on the project as the result of the consultation processes affects the Sites, then they will take all actions that are reasonable and necessary to make the Sites conform to such conditions. Further, Special Award Condition number 12 requires Motorola to notify the NTIA within 24 hours of receipt of any notices of foreclosure; notices for continuing consultation received from the SHPO, Tribal Historic Preservation Officer, USFWS, or other consulting party; or notices of noncompliance received from consulting authorities or regulatory agencies. Public Entity agrees to provide promptly to Motorola any such notices that it receives.

2.4. Before installing the BayWEB equipment at a Site, Motorola will inspect the Site and conduct analysis, testing as needed, and other due diligence activities concerning the Site and will provide a written report that advises Public Entity of any apparent deficiencies or non-conformities with Motorola's requirements. The report and advice given by Motorola to Public Entity concerning Sites will be without any warranty from Motorola or any liability to Motorola except as otherwise provided in Section 3 concerning the payment for Site Remediation Costs. Public Entity may rely upon Motorola's advice to the extent that it in its sole discretion considers such reliance to be appropriate. Public Entity may at its expense employ other consultants, contractors or experts to advise it on any issues concerning a Site. A Site that has no uncorrected deficiencies or non-conformances is "qualified" for Motorola's use in connection with BayWEB.

2.5. After a Site is qualified, Public Entity will not modify and will not allow another party to modify the Site (including adding to or changing equipment installed at or connected to the Site) that would negatively affect BayWEB without first receiving Motorola's prior written consent which will not be unreasonably withheld or delayed. Notwithstanding the provisions of this section, Public Entity shall be permitted to allow equipment changes necessitated by any pre existing agreements with third parties, but no others, so long as they do not negatively affect BayWEB. Moreover, Public Entity retains all rights to lease or enter into partnerships on its property if, and only if, the installed equipment does not interfere with the operation of Motorola's equipment.

2.6. Motorola, by the acceptance of this Agreement and use or occupancy of the Sites, has not acquired any title or property interests in or to the Sites or real property wherein the Sites are located, except as otherwise stated herein and except further that Motorola owns the improvements to the Sites that are the result of the Site Remediation Work and are paid for with Site Remediation Costs described in Section 3 below. However, when the term of this Agreement expires, title and ownership of the Site improvements will transfer to Public Entity or Public Entity's designee. Also, as stated in Section 5.5 of the BOOM Agreement, Motorola and the JPA intend for Motorola to transfer the System (including the equipment installed at the Sites) to the JPA or its designee. Motorola may use the Sites only as provided in this Agreement, and Motorola does not have any right or claim to the continued use of the Sites beyond that specifically given in this Agreement.

3. Site Remediation Work and Costs. As used herein, the term "Site Remediation Work" means the work that is reasonable or necessary as determined by Motorola in consultation with Public Entity for the Site to be made into "installation ready" condition, and the term "Site Remediation Costs" means the capital costs that are reasonable or necessary as determined by Motorola in consultation with Public Entity for Motorola to perform the Site Remediation Work. During the Site qualification process, Motorola might determine that Site Remediation Work is needed for the Site to become qualified. Motorola (or in some cases the JPA under its duties described in the BOOM Agreement, particularly Section 3.2.4) and not Public Entity will pay for Site Remediation Costs, except that if Public Entity wishes for the Site Remediation Work to be performed in a manner that enhances the Site beyond Motorola's needs and if the Parties agree that Motorola will perform the enhanced Site Remediation Work, then Public Entity will pay for the capital costs of such enhancements. Public Entity and not Motorola will pay for all other Site related costs and expenses, including Site operating costs such as permitting, Site maintenance, security, electricity and other utilities, lease payments, property taxes, and the like.

4. Leased Sites. If any Site is not owned by Public Entity but is "controlled" by Public Entity by means of a lease or other form of legal right, then Site qualification for those "Leased Sites" will be conditioned upon Public Entity's ability to obtain from the owner of that Leased Site and any person or entity with an intermediary right a written and signed acknowledgement of this Agreement and Motorola's rights under this Agreement. Public Entity must provide that signed acknowledgment by February 14, 2012, or as soon as possible thereafter. If Public Entity has not provided the signed acknowledgement by that date, then Motorola and Public Entity will promptly meet and confer to discuss whether the Leased Site should be disqualified. If Public Entity has not provided the signed acknowledgement by February 29, 2012, then Motorola may disqualify the Leased Site by giving notice to Public Entity and the Parties will amend this Agreement to delete the disqualified Leased Site. Public Entity will prepare the acknowledgement form, subject to Motorola's reasonable approval of the form and content. Alternatively, such person or entity may insert and sign its acknowledgment beneath the signature block of this Agreement.

4.1. If a Leased Site becomes disqualified under the paragraph immediately above, Motorola, Public Entity, and the JPA may agree before May 31, 2012, upon an alternative available Site as a substitute for the disqualified Leased Site, provided the NTIA approves the substitution and agrees the BTOP Grant funds may be used for applicable work and equipment for the substitute Site. If so approved and agreed, Motorola shall retain responsibility for Site Remediation Costs concerning the substitute Site, provided that the total Site Remediation Costs for all Sites do not exceed the BayWEB project's Site Remediation Costs budget. Notwithstanding the preceding sentence, absent Motorola's negligence, Motorola may request that Public Entity reimburse Motorola for any Site Remediation Costs that Motorola expended at the original but disqualified Leased Site. If Motorola makes this request, Public Entity may either reimburse Motorola for such expended costs or, alternatively decline the request and Motorola will be excused from any obligations to Public Entity to add the substitute Site and from any obligations under this Agreement (or the BOOM Agreement) related to the deleted disqualified Leased Site.

4.2. Motorola, its contractors and consultants shall, to the extent applicable, comply with the terms and conditions of the Lease agreements for Leased Sites. Public Entity will provide to Motorola by February 14, 2012, a written copy of all applicable terms and conditions of the Lease agreements for Leased Sites. If Motorola is unable or unwilling (exercising its reasonable judgment) to comply with the terms and conditions of the Lease Agreement, then Motorola may disqualify the Site.

5. Term. The term of this Agreement shall begin on the Effective Date and continue for the entire duration of the BOOM Agreement (as defined in Section 3.11 of the BOOM Agreement). Public Entity acknowledges that the BOOM Agreement provides for a future transfer of BayWEB by Motorola to

the JPA or its designee. At the time of such transfer, Public Entity will allow the JPA to have a reasonable time (not to exceed six months) to negotiate its own site access and use agreement with Public Entity, or remove the BayWEB equipment from the Sites and restore the Sites to good condition reasonable wear and tear excepted. Public Entity is not responsible to pay for any relocation of the Equipment that Motorola installs at the Sites upon the expiration of the term of this Agreement.

6. Use of Sites to Minimize Adverse Impacts on Sites. Motorola shall use the Sites in accordance with the procedures set forth on **Exhibit C**, attached hereto and incorporated herein, if any, and shall use all reasonable efforts to minimize any adverse impacts to any other users of the Sites, and Public Entity shall use all reasonable efforts to minimize any adverse impacts to Motorola from its or another's use of the Sites.

6.1 If significant and measureable interference occurs at a Site between (i) the equipment provided by Motorola for this System and (ii) existing licensed communications equipment on the Site that is properly operated and maintained and that is operated by Public Entity or another party, then Motorola and Public Entity will promptly meet and confer to determine the cause of the interference. If the cause of the interference is malfunctioning equipment provided by Motorola for this System, then Motorola will promptly take all actions that are reasonable and necessary to correct its malfunctioning equipment and eliminate the significant and measureable interference, including temporarily ceasing operation of its malfunctioning equipment at the Site if the corrective measures take longer than twenty-four (24) hours from Motorola's receipt of notice of the significant and measureable interference. If the cause of the interference is Public Entity's or another party's malfunctioning equipment, then Public Entity will promptly take all actions that are reasonable and necessary to correct its malfunctioning equipment and eliminate the significant and measureable interference or will cause the other party to take such corrective measures. If the interference is not caused by a Party's malfunctioning equipment, the Parties shall meet and confer immediately to resolve the issue.

7. Accessing Sites. Motorola and its subcontractors or consultants shall access and conduct its activities on the Sites in accordance with the procedures set forth on **Exhibit C**, attached hereto and incorporated herein. In addition, Motorola and its subcontractors or consultants shall at all times conduct their activities on the Sites in a safe, neat and orderly fashion; minimize any dust and noise in conformance with neighborhood and governmental standards; and promptly remove any and all garbage and/or debris on the Sites resulting from Motorola's activities under this Agreement. Public Entity may not impose unreasonable special conditions or limitations on access to and use of the Sites or Motorola's performance of the work.

8. Results of Site Evaluation. For the limited purpose of furthering the performance of this Agreement, it might become necessary or desirable for a Party to provide Confidential Information to the other Party.

8.1. The terms "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

8.2. The Parties will use reasonable efforts to avoid sharing Confidential Information with each other. However, during the term of this Agreement, if a Party provides the other with Confidential Information, the following applies. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement. Motorola acknowledges that Public Entity is a public agency that is subject to document requests pursuant to the California Public Records Act and Freedom of Information Act, if applicable ("Acts"). Public Entity shall notify Motorola within five (5) business days of receiving a request under the Acts for any records which would constitute Motorola's Confidential Information and to the extent allowed by law, Public Entity shall apply exceptions to disclosure of the Motorola's Confidential Information that are applicable under the Acts. If a suit is filed with respect to any such request, Public Entity will cooperate in any action to intervene filed by Motorola. Notwithstanding any provision in this Agreement to the contrary, Motorola will indemnify and hold harmless Public Entity for any and all costs and attorney fees awarded to a prevailing plaintiff arising out of a suit brought by the prevailing plaintiff which result from Public Entity's actions, taken at Motorola's request, in compliance with this provision in protecting Motorola's Confidential Information from public disclosure.

8.2.1. Public Entity acknowledges that the BTOP Grant requires Motorola to report on various matters concerning BayWEB and the grant funded project, and agrees that any disclosures that Motorola reasonably makes in support of its reporting or other BTOP Grant compliance responsibilities shall not be a breach of this Agreement. Public Entity further acknowledges that the BTOP Grant application contains Motorola's confidential and trade secret information. Notwithstanding any provision suggesting the contrary, Motorola has no duty to provide the full BTOP Grant application to Public Entity or any other party.

9. Compliance with Laws; Environmental Review; Permitting and Zoning. Each Party will comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments with respect to its permitted activities on the Sites, including but not limited to laws and regulations relating to the disposal of hazardous materials. Motorola and Public Entity will be jointly responsible for zoning and permitting activities, and both Parties will support the zoning and permit applications and processes as expeditiously as possible. Motorola shall prepare and submit permit and zoning applications in Motorola's name. Motorola also will provide construction drawings and other information as is reasonable or necessary. In support of Motorola's zoning and permitting activity, as described more fully below, Public Entity will provide reasonable assistance concerning permit applications, including any necessary assistance reasonably requested by Motorola in the preparation and submission of permit and zoning applications. Public Entity shall attend permit and zoning hearings together with Motorola representatives when reasonably requested by Motorola. Public Entity shall be responsible for any permit and zoning fees and costs that are not waived.

9.1 Building Permits and Zoning Permits. Motorola will submit to Public Entity's environmental and permitting point of contact set forth on **Exhibit C**, as related only to the Sites listed on **Exhibit A,** all building permit applications and zoning applications (each in Motorola's name), final design and engineering plans, final contract plans, and final specifications for the Sites, and is responsible for obtaining building permits in its name. However, it shall be the sole responsibility of Motorola to submit the permit and zoning applications to the appropriate authority at the Public Entity or other jurisdiction, where necessary. Notwithstanding that many of the Sites are not located in Public Entity's jurisdiction, Public Entity will assist with processing all building permits, approvals, and entitlements necessary for the Public Safety System, based on the building permit applications, zoning applications, and plans and specifications submitted by Motorola.

10. Insurance. During the term of this Agreement, Motorola will obtain and maintain at its expense insurance as described in **Exhibit D**, which is attached hereto and incorporated herein. Promptly after the execution of this Agreement, Motorola will provide to Public Entity a Certificate of Insurance (standard Acord form) evidencing this insurance. The Commercial General Liability policy will include as additional insureds, "The BayRICS Authority and each State and local government within the State of California that provide Sites for the BayWEB project." Insurance afforded by the additional insured blanket endorsement shall apply as primary insurance to any other insurance available to the Additional Insureds with respect to any claims arising out of this Agreement, and such insurance shall apply separately to each insured against whom claim is made or suit is brought. The insurance provided by Motorola under this Agreement is not intended to and does not limit or qualify Motorola's other obligations under this Agreement. All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VIII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager. In addition, Motorola will cause any contractor(s) and/or consultant(s) employed by Motorola to work at the Sites to comply with similar insurance requirements as reasonably determined by Motorola's Insurance Department in coordination with its insurance brokers and advisors.

11. Indemnification.

11.1. Motorola will indemnify, defend, and hold harmless the Public Entity, and its employees, agents, and officers (and the applicable lessor or sublessor if a Site is leased or subleased to Public Entity and that lease or sublease contractually obligates Public Entity to require entities like Motorola who enter onto the Site to indemnify the lessor or sublessor) from and against any claims, loss, damage, and liability for damages, costs, and expenses (including, without limitation, reasonable attorneys' fees actually) incurred by Public Entity as a result of any negligent or intentionally wrongful acts or omissions of Motorola or any of its agents, employees, consultants, or contractors in connection with performing the work under this Agreement. These indemnification and hold harmless obligations include, without limitation, any claims resulting from injury to or death of any person or persons (including any users of the Sites), or injury to any property, including equipment and vehicles, arising out of any negligent or intentionally wrongful action or inaction by Motorola on the Sites. If Motorola is responsible for damage to a Site or Sites under this Section 9, the Parties will meet and confer to determine whether Motorola, Public Entity, or another party shall repair the damage. The indemnification obligations in this section shall survive the termination or expiration of this Agreement.

11.2 Public Entity will indemnify, defend, and hold harmless Motorola, and its contractors or consultants, and their employees, agents, and officers (and the applicable lessor or sublessor if a Site is leased or subleased to Public Entity) from and against any claims, loss, damage, and liability for damages, costs, and expenses (including, without limitation, reasonable attorneys' fees actually) incurred by an indemnified party as a result of any negligent or intentionally wrongful acts or omissions of Public Entity

or any of its agents, employees, consultants, or contractors in connection with this Agreement. These indemnification and hold harmless obligations include, without limitation, any claims resulting from injury to or death of any person or persons (including any users of the Sites), or injury to any property, including equipment and vehicles, arising out of any negligent or intentionally wrongful action or inaction by Public Entity on the Sites. The indemnification obligations in this section shall survive the termination or expiration of this Agreement.

12. Limitation of Liability. Motorola's total liability under this Agreement will be limited to the direct damages recoverable under law, but not to exceed the "Cap Amount." The term Cap Amount shall mean $300,000 multiplied by the total number of Sites being provided by this Public Entity. The first sentence of this Section 14 does not apply to Motorola's liability for (i) personal injury, death, damage to tangible property, or (ii) Motorola's intentional torts or gross negligence. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT. If (i) a third party sues Public Entity for damages caused by the negligent or intentionally wrongful acts or omissions of Motorola or any of its agents, employees, consultants, or contractors in connection with performing the work under this Agreement, (ii) that third party is awarded damages by a court or in binding arbitration, and (iii) Public Entity actually pays those damages to the third party, this Section 14 will not apply to those damages. To clarify, the purpose of the preceding sentence is to reflect the agreement of Motorola and Public Entity that as between them, damages paid by Public Entity as described in the preceding sentence will be characterized as direct damages even if they are characterized as indirect damages as between Public Entity and the third party. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

13. Default and Termination.

13.1. If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default unless a Force Majeure causes the failure. The term "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots). The non-defaulting Party may assert a default claim by giving the defaulting Party a written and detailed notice of default ("Notice of Default"). Except in the case of Public Entity's default which has a material adverse effect on the Public Safety System and immediate relief is necessary to protect public safety, the defaulting Party will have thirty (30) days after receipt of the Notice of Default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan that is acceptable to the non-defaulting Party. The non-defaulting Party must act reasonably in determining whether a cure plan is acceptable and must make good faith and collaborative efforts to agree upon a mutually acceptable cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the cure plan.

13.2. If a defaulting Party fails to cure the default as provided above in Section 13.1, unless otherwise provided in this Agreement or unless otherwise agreed in writing, the non-defaulting Party may resort to any available legal or equitable remedy, including termination of any unfulfilled portion of this Agreement and recovering from the defaulting Party damages recoverable under applicable law but subject to Section 14 below. Notwithstanding the preceding sentence, Public Entity acknowledges that termination of the Agreement would result in undue financial hardship to Motorola because Motorola has incurred substantial costs under or relating to the BOOM Agreement and this Agreement (including paying Site

Remediation Costs). Based on this acknowledgement, Public Entity agrees that it may not terminate this Agreement for Motorola's uncured default if monetary damages are an adequate remedy. Public Entity agrees further that even if monetary damages are not an adequate remedy, it may not terminate this Agreement for Motorola's uncured default without completing a "meet and confer" process with senior managers of both Parties for an additional time period to be mutually agreed but not less than thirty (30) days. Either Party may request the JPA to participate in these discussions. The purpose of this meet and confer process is for the Parties to try in good faith to resolve the claimed default without terminating the Agreement so as to avoid the undue financial hardship described above. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information and the non-defaulting Party will mitigate damages.

13.3. Notwithstanding any other provision in this Agreement, Motorola has the right to terminate this Agreement upon sixty (60) days prior written notice in whole or part as follows: (1) without cause and for any reason until July 31, 2013; (2) at any time if either the BTOP Grant or the BOOM Agreement is terminated; (3) if the BOOM Agreement is not fully executed by January 20, 2012; or (4) at any time for good cause as reasonably determined by Motorola (which does not require breach or default by Public Entity). If Motorola exercises the right to terminate under clause (4), the Parties will promptly meet and confer about the "good cause" before the termination is effective. The term 'good cause' means Motorola taking an action that it is permitted to do under the BOOM Agreement, such as but not limited to deleting a Site if it is or becomes disqualified. If Motorola exercises the right to terminate under any clause as described above, the Parties will promptly meet and confer about a transition plan, but Motorola may remove the BayWEB equipment from the Sites if it so chooses and shall be solely responsible for the costs of such removal and for all costs necessary to restore the Sites to as good or better condition they were in prior to such installation. Motorola will be deemed to have abandoned its equipment on the Sites if it fails to remove the equipment and restore the Sites within a reasonable period of time, not to exceed six (6) months from termination of the Agreement. In the event of such abandonment, title and ownership of the equipment remains with Motorola, but Public Entity may remove the equipment, return it to Motorola, and restore the Sites; in such event, Motorola promises to reimburse Public Entity for the costs actually and reasonably incurred by Public Entity to remove the equipment, return it to Motorola, and restore the Sites.

14. Assignment. Except as otherwise provided in Section 2.2, neither Party will assign or transfer any interest in this Agreement without the prior written consent of the other Party which shall not be unreasonably withheld or delayed, and any attempt by Party to assign this Agreement or any rights, duties or obligations arising hereunder without such consent shall be void and of no effect.

15. Consultants; Contractors. Any consultant or contractor hired by Motorola to perform the activities described in this Agreement shall be the contractor of Motorola, and Public Entity shall have no obligation under this Agreement to compensate any consultant or contractor hired by Motorola for any work performed pursuant to this Agreement. Motorola shall be responsible for directing the work of its contractors and consultants and shall ensure that all contractors and consultants comply with the terms of this Agreement that are applicable to the contractor or consultant.

16. Amendments. This Agreement may only be amended by written instrument signed by both Parties.

17. Notices. All notices or other communications required hereunder shall be in writing and shall be personally delivered, or sent by national overnight courier service, or sent by facsimile transmission if also sent by one of the other methods provided in this Section, or sent by registered or certified mail, return receipt requested, and shall be deemed delivered upon the earlier date of (a) the date

of delivery to the address of the person to receive such notice or (b) three (3) business days after the date of posting the United States Postal Service at the following addresses:

(a) If to Public Entity:

Clancy Priest
Technology Services Director
City of Hayward
777 B Street
Hayward, CA 94541

(b) If to Motorola:

1001 Bayhill Drive, #200
San Bruno CA 94066
Attn: Coyle Schwab

18. Governing Law; Venue. This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. In the event that suit is brought by either Party, the Parties agree that trial of such action shall be exclusively vested in a state or federal court in Alameda County, California.

19. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

20. Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance of non-compliance. Any waiver granted by a Party must be in writing and shall apply to the specific instance expressly stated.

21. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

22. Documents to JPA. Public Entity will provide to the JPA a copy of this Agreement, all amendments to it, and all non-confidential and significant documentation that is prepared by a Party in the performance of its duties under this Agreement and provided to the other Party.

23. Authority to Execute. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

24. Hazardous Materials. "Hazardous Materials" are those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42, U.S.C. Section 9601, et seq. ("CERCLA") and the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et.

seq., or those which meet the toxic, reactivity, corrosively or flammability criteria of the above regulations, as well as any other substance which poses a hazard to human health or to the environment.

25. Environmental Law. "Environmental Law" means any and all federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, rulings, directives or notices of violation, that create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal or management of any Hazardous Material, or otherwise regulating or providing for the protection of the environment.

26. Motorola shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Site in violation of any Environmental Law (as defined above), and Public Entity hereby represents and warrants, with no duty or obligation to investigate that (i) it has no knowledge of the presence of any Hazardous Material located in, on under, upon or affecting the Site in violation of any Environmental Law; (ii) no notice has been received by or on behalf of Public Entity from, and it has no knowledge that notice has been given to any predecessor owner or operator of the Site by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Site; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Site in violation of any Environmental Law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

MOTOROLA SOLUTIONS, INC.

By: _____
Name: _____
Title: _____
Date: _____

CITY OF HAYWARD

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form and Legality

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Sites

Garin WT
Hayward City Hall
Hayward Fire Station 2
Hayward Fire Station 8
Walpert Ridge
Hesperian Pump Station

Exhibit B

[Intentionally Omitted.]

Exhibit C

Site Access and Use Procedures

[To be completed by Public Entity]

1. Contacts for Site Access and Scope of Work.

For Public Entity:

For Motorola:

2. Notice Requirements and Other Procedures Related to Site Access.

None unless expressly indicated [Note that Motorola will prepare a schedule for accessing the Sites and accessing the Sites will be coordinated through the JPA and Public Entity representatives with reference to this master schedule.]

3. Special Conditions for Site Access.

In order to maintain the security necessary for any Site, only those service technicians authorized by Motorola and by the County's GSA-Communications Department shall be granted access to the Sites except in the event of an emergency when service technicians previously authorized by Motorola and by the County's GSA-Communications Department may access the Sites without advance approval, provided that Motorola notifies the County immediately upon knowledge of the emergency and need to access the Site and follow up with confirmation of such access within twenty-four (24) hours thereafter of it occurring.

4. Limitations on Accessing Sites or Conducting Scope of Work.

None unless expressly indicated

Exhibit D

Insurance Requirements

SITE ACCESS AND USE AGREEMENT
For Public Safety System

This Site Access and Use Agreement ("Agreement") is made as of January 13, 2012 ("Effective Date"), by and between Motorola Solutions, Inc. ("Motorola") and County of Alameda ("Public Entity"). Motorola and Public Entity are herein referred to individually as a "Party" and collectively as "Parties."

RECITALS

A. WHEREAS, Motorola intends to enter into (or has entered into) a Build, Own, Operate and Maintain Agreement ("BOOM Agreement") with the BayRICS Joint Powers Authority ("JPA") regarding a regional, interoperable public safety broadband communications system ("Public Safety System") for the Bay Area Wireless Enhanced Broadband System or "BayWEB");

B. WHEREAS, Public Entity is a member of the JPA. Whether or not Public Entity is a member of the JPA, it may request and receive from Motorola a copy of the BOOM Agreement once it becomes effective if a copy is not otherwise available from the JPA;

C. WHEREAS, Public Entity intends to allow certain properties it owns or that are under its control to be accessed and used by Motorola in BayWEB, both in advance of the execution of the BOOM Agreement between Motorola and the JPA and thereafter during the entire term of the BOOM Agreement (as defined in Section 3.11 of the BOOM Agreement);

D. WHEREAS, the JPA requested that Motorola rather than the JPA enter into this Agreement with Public Entity, as well as other similar site agreements with other public entities in the region, for BayWEB, but that the JPA will assist Motorola in the performance of its duties under this Agreement;

E. WHEREAS, the Parties acknowledge that the JPA has a legitimate interest and need for a copy of this Agreement, all amendments to it, and all non-confidential and significant documentation that is prepared by a Party in the performance of its duties under this Agreement and provided to the other Party;

F. WHEREAS, the Parties desire and intend to enter into this Agreement whereby Public Entity will grant to Motorola the right to enter onto, have access to, and use on a continuous and uninterrupted basis certain properties, referred to herein as "Sites" or a "Site", to do all things and in any manner that are reasonable or necessary for Motorola's proper deployment, ownership, operation and maintenance of BayWEB, except as otherwise specified in this Agreement. As used in this Agreement, the term "Site" means a facility, such as a tower or building, at, on or in which Equipment or Software will be installed as part of the Public Safety System, excluding the LTE core and aggregation sites at backhaul locations unless they are specifically included on the List of Sites (Exhibit A); and

G. WHEREAS, BayWEB is funded in large part by a grant to Motorola from the Department of Commerce ("DOC") under its Broadband Technology Opportunities Program ("BTOP"), which is administered by the National Telecommunications and Information Administration ("NTIA"), Award Number NT10BIX5570089 (the "BTOP Grant'), plus a significant financial "match" from Motorola.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Compliance with BTOP Grant Requirements. Because Motorola has certain obligations under the BTOP Grant, both Motorola and Public Entity will perform their respective duties under this Agreement in a manner that promotes and ensures compliance with all applicable requirements of the BTOP Grant, including the Special Award Conditions, as such requirements may be amended by NTIA. The BTOP Grant and Motorola's contractual commitments to the NTIA provide for this Public Safety System and a "Public Access System." However, the parties agree that Motorola shall install only the equipment for the Public Safety System, and not the Public Access System, at the Sites. All of Public Entity's duties in this Agreement pertaining to Sites apply to the Public Safety System. Motorola intends delete the Public Access System from the BayWEB project scope and from the BTOP Grant commitments.

2. Right of Entry, Access, and Use. Subject to the terms and conditions set forth in this Agreement, Public Entity hereby grants to Motorola, its contractors and consultants, a nonexclusive, nontransferable right of entry onto the Sites which are owned by Public Entity or under Public Entity's control, as described with more particularity on **Exhibit A**, attached hereto and incorporated herein, subject to all existing but not subsequent leases, subleases, licenses, easements, encumbrances and claims affecting such Sites, for Motorola to (i) enter onto the Sites, (ii) have access to the Sites, and (iii) use the Sites on a continuous and uninterrupted basis during the term of this Agreement to perform its duties under this Agreement and the BOOM Agreement, and to do all things and in a manner that are reasonable or necessary for Motorola to engineer, remediate, deploy (including installing equipment) , test, own, operate and maintain BayWEB at the Sites. Without limiting the generality of the preceding sentence, Motorola's rights include the following: Motorola (and its contractors or consultants) may perform work on, at or concerning the Sites to select, design, evaluate and qualify the Sites for use in BayWEB; if the Site is not qualified in its current condition, to remediate the Sites as is reasonable or necessary for use as a BayWEB Site in accordance with Site remediation/construction drawings approved by the Public Entity, which approval shall not unreasonably be withheld or delayed; and to use the Sites for the installation, testing, operation, and maintenance of equipment (such as antennas and other communications network infrastructure equipment) that is part of BayWEB. In exercising its rights as described in this section, Motorola will reasonably consult on material matters with Public Entity's "point of contact" whose name and contact information will be provided to Motorola and kept current by Public Entity. No other work shall be conducted on the Sites or that affect the Sites without the prior written consent of Public Entity.

2.1. As used herein, the term "non-exclusive" means Public Entity or others may have concurrent use of a Site so long as that concurrent use does not interfere with Motorola's rights under this Agreement; however, if Motorola remediates and improves a Site, Motorola will have exclusive use of the Site improvement only unless otherwise agreed in writing by the Parties and the exclusive use shall be strictly limited to the area improved and not to the entire Site. For example, if Motorola remediates and improves a Site by installing a monopole so that BayWEB equipment may be installed, then Motorola will have exclusive use of the monopole and Public Entity may not install or allow the installation of any other equipment on the monopole without Motorola's prior written consent. Public Entity currently contracts/licenses with third parties for the use of some Sites, and these third parties have contractual rights to modify and sometimes expand their equipment and use of the Sites, and Motorola agrees that they may do so if they do not interfere with Motorola's use of the Sites or its exclusive use of the Site improvements.

2.1.1. If the Public Entity (on its own behalf or on behalf of a third party who currently uses the Site under contract with Public Entity) requests to make use of the Site improvement, then Motorola will consult with the Public Entity to determine whether the requested use would interfere or impede Motorola's ability to satisfy its obligations under the BOOM Agreement including its Service Level commitments or the BTOP Grant requirements, or would cause Motorola to incur additional costs. If after review, the Parties conclude the requested change does not interfere with or impede Motorola's ability to satisfy its obligations under the BOOM Agreement including its Service Level commitments or the BTOP Grant

requirements, then Motorola (i) may agree to the requested change, or (ii) may conditionally agree to the requested change if the Public Entity agrees to pay a quoted price caused by any additional costs required for the proposed use and the requested change will be treated as enhanced Site Remediation Work as more fully described below in Section 3. Concerning this last choice, the Public Entity will, within five (5) business days after receipt of Motorola's quoted price, either (1) agree to pay the quoted price, in which case the Parties will execute a written amendment to this Agreement (or a separate agreement) which will include the Public Entity's agreement to pay the quoted price, or (2) will reject the quoted price, in which case the use request from the Public Entity is deemed withdrawn. Unless that amendment or agreement provides to the contrary, payment of the quoted price will be due within thirty (30) days of the Public Entity's receipt of an accurate and complete invoice which will be sent promptly after the execution of the amendment or agreement. Depending on the nature and scope of the requested change, the Parties may agree to payment milestones rather than a single invoice. Motorola shall not unreasonably withhold consent to allow such uses if the proposed uses are otherwise acceptable under this section.

2.2. As used herein, the term "non-transferable" excludes any transfer by Motorola to the JPA or its approved designee, to a Motorola affiliated or successor company, or to any other entity if that transfer is required by the Department of Commerce or the NTIA. Motorola will provide reasonable notice to the Public Entity if such transfer is mandated.

2.3. As used herein, the Site qualification process is described as follows: throughout the term of this Agreement, Public Entity will provide to Motorola all available records, structural, environmental or other analytical reports (including R56 compliance reports), photographs, drawings, certifications, relevant lease agreements and other information in Public Entity's possession concerning each Site, and concerning the issue of whether the Site is in "installation ready" condition. Motorola understands that Public Entity may not have any R56 certifications on County owned Sites. Motorola understands that Public Entity is a large county entity and will require reasonable time to assemble any requested documents. Public Entity understands that the BayWEB project schedule is heavily influenced by the BTOP Grant deadlines, and that Sites could become disqualified and dropped from the project if information is not provided promptly.

2.3.1. The term "installation ready" means (i) the Site is accessible, available, ready and suitable for Motorola to install the intended BayWEB equipment at the Site consistent with Motorola's design requirements as described in the BOOM Agreement. Motorola acknowledges that, as of the Effective Date, Public Entity is providing the Sites to Motorola in their "AS IS, WITH ALL FAULTS" CONDITION, and that, as provided in Section 3 Site Remediation, Motorola is solely responsible for putting the Sites into installation ready condition (but not for maintaining the Sites in this condition).

2.3.2. Site design requirements include but are not limited to: (i) Site access by authorized personnel of Motorola and its subcontractors; (ii) the Site is accessible by vehicle; (iii) the Site has available tower or other space to install the BayWEB equipment , and for Motorola to perform its related installation, testing, operation, maintenance and other services; (iv) the Site has available, adequate and accessible electrical power (including electrical outlets, distribution, equipment and connections); (v) if applicable, the Site has adequate telephone or other communication lines (including modem access and adequate interfacing and networking capabilities); (vi) the Site has, if applicable, adequate wind and ice loading capabilities; (vii) the Site has adequate air conditioning if the Site is inside a building requiring air conditioning for the proper operation, use and maintenance of the Equipment or Software; (viii) the Site is in full compliance with all necessary construction and building permits, zoning requirements or variances, licenses, and any other governmental (including FCC and FAA) approvals, and with all environmental laws and regulations; (ix) the Site has structural integrity and is in full compliance with all applicable and reasonable safety and security requirements, including grounding and applicable industry and OSHA

standards; and (x) the Site has other physical characteristics as may be reasonably requested by Motorola, including compliant with R-56 standards.

2.3.3. In interpreting clause (viii) above, the Parties acknowledge Special Award Condition number 12 of the BTOP Grant Award Documents (Exhibit T to the BOOM Agreement), which in pertinent part requires demonstrated compliance with the National Historic Preservation Act of 1966 and with all other applicable federal, state, and local environmental laws and regulations, and agree that a Site must be in demonstrable compliance with Special Award Condition number 12 to be installation ready. Further, Special Award Condition number 12 requires Motorola to complete any required consultations with the State Historic Preservation Office ("SHPO") and the appropriate federally recognized Native American tribes and to comply with all conditions placed on the project as a result of the consultation processes. The Parties agree that if Motorola's compliance with conditions placed on the project as the result of the consultation processes affects the Sites, then they will take all actions that are reasonable and necessary to make the Sites conform to such conditions. Further, Special Award Condition number 12 requires Motorola to notify the NTIA within 24 hours of receipt of any notices of foreclosure; notices for continuing consultation received from the SHPO, Tribal Historic Preservation Officer, USFWS, or other consulting party; or notices of noncompliance received from consulting authorities or regulatory agencies. Public Entity agrees to provide promptly to Motorola any such notices that it receives.

2.4. Before installing the BayWEB equipment at a Site, Motorola will inspect the Site and conduct analysis, testing as needed, and other due diligence activities concerning the Site and will provide a written report that advises Public Entity of any apparent deficiencies or non-conformities with Motorola's requirements. The report and advice given by Motorola to Public Entity concerning Sites will be without any warranty from Motorola or any liability to Motorola except as otherwise provided in Section 3 concerning the payment for Site Remediation Costs. Public Entity may rely upon Motorola's advice to the extent that it in its sole discretion considers such reliance to be appropriate. Public Entity may at its expense employ other consultants, contractors or experts to advise it on any issues concerning a Site. A Site that has no uncorrected deficiencies or non-conformances is "qualified" for Motorola's use in connection with BayWEB.

2.5. After a Site is qualified, Public Entity will not modify and will not allow another party to modify the Site (including adding to or changing equipment installed at or connected to the Site) that would negatively affect BayWEB without first receiving Motorola's prior written consent which will not be unreasonably withheld or delayed. Notwithstanding the provisions of this section, Public Entity shall be permitted to allow equipment changes necessitated by any pre existing agreements with third parties, but no others, so long as they do not negatively affect BayWEB. Moreover, Public Entity retains all rights to lease or enter into partnerships on its property if, and only if, the installed equipment does not interfere with the operation of Motorola's equipment.

2.6. Motorola, by the acceptance of this Agreement and use or occupancy of the Sites, has not acquired any title or property interests in or to the Sites or real property wherein the Sites are located, except as otherwise stated herein and except further that Motorola owns the improvements to the Sites that are the result of the Site Remediation Work and are paid for with Site Remediation Costs described in Section 3 below. However, when the term of this Agreement expires, title and ownership of the Site improvements will transfer to Public Entity or Public Entity's designee. Also, as stated in Section 5.5 of the BOOM Agreement, Motorola and the JPA intend for Motorola to transfer the System (including the equipment installed at the Sites) to the JPA or its designee. Motorola may use the Sites only as provided in this Agreement, and Motorola does not have any right or claim to the continued use of the Sites beyond that specifically given in this Agreement.

3. Site Remediation Work and Costs. As used herein, the term "Site Remediation Work" means the work that is reasonable or necessary as determined by Motorola in consultation with Public Entity for the Site to be made into "installation ready" condition, and the term "Site Remediation Costs" means the capital costs that are reasonable or necessary as determined by Motorola in consultation with Public Entity for Motorola to perform the Site Remediation Work. During the Site qualification process, Motorola might determine that Site Remediation Work is needed for the Site to become qualified. Motorola (or in some cases the JPA under its duties described in the BOOM Agreement, particularly Section 3.2.4) and not Public Entity will pay for Site Remediation Costs, except that if Public Entity wishes for the Site Remediation Work to be performed in a manner that enhances the Site beyond Motorola's needs and if the Parties agree that Motorola will perform the enhanced Site Remediation Work, then Public Entity will pay for the capital costs of such enhancements. Public Entity and not Motorola will pay for all other Site related costs and expenses, including Site operating costs such as permitting, Site maintenance, security, electricity and other utilities, lease payments, property taxes, and the like.

4. Leased Sites. If any Site is not owned by Public Entity but is "controlled" by Public Entity by means of a lease or other form of legal right, then Site qualification for those "Leased Sites" will be conditioned upon Public Entity's ability to obtain from the owner of that Leased Site and any person or entity with an intermediary right a written and signed acknowledgement of this Agreement and Motorola's rights under this Agreement. Public Entity must provide that signed acknowledgment by February 14, 2012, or as soon as possible thereafter. If Public Entity has not provided the signed acknowledgement by that date, then Motorola and Public Entity will promptly meet and confer to discuss whether the Leased Site should be disqualified. If Public Entity has not provided the signed acknowledgement by February 29, 2012, then Motorola may disqualify the Leased Site by giving notice to Public Entity and the Parties will amend this Agreement to delete the disqualified Leased Site. Public Entity will prepare the acknowledgement form, subject to Motorola's reasonable approval of the form and content. Alternatively, such person or entity may insert and sign its acknowledgment beneath the signature block of this Agreement.

4.1. If a Leased Site becomes disqualified under the paragraph immediately above, Motorola, Public Entity, and the JPA may agree before May 31, 2012, upon an alternative available Site as a substitute for the disqualified Leased Site, provided the NTIA approves the substitution and agrees the BTOP Grant funds may be used for applicable work and equipment for the substitute Site. If so approved and agreed, Motorola shall retain responsibility for Site Remediation Costs concerning the substitute Site, provided that the total Site Remediation Costs for all Sites do not exceed the BayWEB project's Site Remediation Costs budget. Notwithstanding the preceding sentence, absent Motorola's negligence, Motorola may request that Public Entity reimburse Motorola for any Site Remediation Costs that Motorola expended at the original but disqualified Leased Site. If Motorola makes this request, Public Entity may either reimburse Motorola for such expended costs or, alternatively decline the request and Motorola will be excused from any obligations to Public Entity to add the substitute Site and from any obligations under this Agreement (or the BOOM Agreement) related to the deleted disqualified Leased Site.

4.2. Motorola, its contractors and consultants shall, to the extent applicable, comply with the terms and conditions of the Lease agreements for Leased Sites. Public Entity will provide to Motorola by February 14, 2012, a written copy of all applicable terms and conditions of the Lease agreements for Leased Sites. If Motorola is unable or unwilling (exercising its reasonable judgment) to comply with the terms and conditions of the Lease Agreement, then Motorola may disqualify the Site.

5. Term. The term of this Agreement shall begin on the Effective Date and continue for the entire duration of the BOOM Agreement (as defined in Section 3.11 of the BOOM Agreement). Public Entity acknowledges that the BOOM Agreement provides for a future transfer of BayWEB by Motorola to

the JPA or its designee. At the time of such transfer, Public Entity will allow the JPA to have a reasonable time (not to exceed six months) to negotiate its own site access and use agreement with Public Entity, or remove the BayWEB equipment from the Sites and restore the Sites to good condition reasonable wear and tear excepted. Public Entity is not responsible to pay for any relocation of the Equipment that Motorola installs at the Sites upon the expiration of the term of this Agreement.

6. Use of Sites to Minimize Adverse Impacts on Sites. Motorola shall use the Sites in accordance with the procedures set forth on **Exhibit C**, attached hereto and incorporated herein, if any, and shall use all reasonable efforts to minimize any adverse impacts to any other users of the Sites, and Public Entity shall use all reasonable efforts to minimize any adverse impacts to Motorola from its or another's use of the Sites.

6.1 If significant and measureable interference occurs at a Site between (i) the equipment provided by Motorola for this System and (ii) existing licensed communications equipment on the Site that is properly operated and maintained and that is operated by Public Entity or another party, then Motorola and Public Entity will promptly meet and confer to determine the cause of the interference. If the cause of the interference is malfunctioning equipment provided by Motorola for this System, then Motorola will promptly take all actions that are reasonable and necessary to correct its malfunctioning equipment and eliminate the significant and measureable interference, including temporarily ceasing operation of its malfunctioning equipment at the Site if the corrective measures take longer than twenty-four (24) hours from Motorola's receipt of notice of the significant and measureable interference. If the cause of the interference is Public Entity's or another party's malfunctioning equipment, then Public Entity will promptly take all actions that are reasonable and necessary to correct its malfunctioning equipment and eliminate the significant and measureable interference or will cause the other party to take such corrective measures. If the interference is not caused by a Party's malfunctioning equipment, the Parties shall meet and confer immediately to resolve the issue.

7. Accessing Sites. Motorola and its subcontractors or consultants shall access and conduct its activities on the Sites in accordance with the procedures set forth on **Exhibit C**, attached hereto and incorporated herein. In addition, Motorola and its subcontractors or consultants shall at all times conduct their activities on the Sites in a safe, neat and orderly fashion; minimize any dust and noise in conformance with neighborhood and governmental standards; and promptly remove any and all garbage and/or debris on the Sites resulting from Motorola's activities under this Agreement. Public Entity may not impose unreasonable special conditions or limitations on access to and use of the Sites or Motorola's performance of the work.

8. Results of Site Evaluation. For the limited purpose of furthering the performance of this Agreement, it might become necessary or desirable for a Party to provide Confidential Information to the other Party.

8.1. The terms "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is or becomes, rightfully and without breach of this Agreement, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

8.2. The Parties will use reasonable efforts to avoid sharing Confidential Information with each other. However, during the term of this Agreement, if a Party provides the other with Confidential Information, the following applies. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement. Motorola acknowledges that Public Entity is a public agency that is subject to document requests pursuant to the California Public Records Act and Freedom of Information Act, if applicable ("Acts"). Public Entity shall notify Motorola within five (5) business days of receiving a request under the Acts for any records which would constitute Motorola's Confidential Information and to the extent allowed by law, Public Entity shall apply exceptions to disclosure of the Motorola's Confidential Information that are applicable under the Acts. If a suit is filed with respect to any such request, Public Entity will cooperate in any action to intervene filed by Motorola. Notwithstanding any provision in this Agreement to the contrary, Motorola will indemnify and hold harmless Public Entity for any and all costs and attorney fees awarded to a prevailing plaintiff arising out of a suit brought by the prevailing plaintiff which result from Public Entity's actions, taken at Motorola's request, in compliance with this provision in protecting Motorola's Confidential Information from public disclosure.

8.2.1. Public Entity acknowledges that the BTOP Grant requires Motorola to report on various matters concerning BayWEB and the grant funded project, and agrees that any disclosures that Motorola reasonably makes in support of its reporting or other BTOP Grant compliance responsibilities shall not be a breach of this Agreement. Public Entity further acknowledges that the BTOP Grant application contains Motorola's confidential and trade secret information. Notwithstanding any provision suggesting the contrary, Motorola has no duty to provide the full BTOP Grant application to Public Entity or any other party.

9. Compliance with Laws; Environmental Review; Permitting and Zoning. Each Party will comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments with respect to its permitted activities on the Sites, including but not limited to laws and regulations relating to the disposal of hazardous materials. Motorola and Public Entity will be jointly responsible for zoning and permitting activities, and both Parties will support the zoning and permit applications and processes as expeditiously as possible. Motorola shall prepare and submit permit and zoning applications in Motorola's name. Motorola also will provide construction drawings and other information as is reasonable or necessary. In support of Motorola's zoning and permitting activity, as described more fully below, Public Entity will provide reasonable assistance concerning permit applications, including any necessary assistance reasonably requested by Motorola in the preparation and submission of permit and zoning applications. Public Entity shall attend permit and zoning hearings together with Motorola representatives when reasonably requested by Motorola. Public Entity shall be responsible for any permit and zoning fees and costs that are not waived.

9.1 Building Permits and Zoning Permits. Motorola will submit to Public Entity's environmental and permitting point of contact set forth on **Exhibit C**, as related only to the Sites listed on **Exhibit A,** all building permit applications and zoning applications (each in Motorola's name), final design and engineering plans, final contract plans, and final specifications for the Sites, and is responsible for obtaining building permits in its name. However, it shall be the sole responsibility of Motorola to submit the permit and zoning applications to the appropriate authority at the Public Entity or other jurisdiction, where necessary. Notwithstanding that many of the Sites are not located in Public Entity's jurisdiction, Public Entity will assist with processing all building permits, approvals, and entitlements necessary for the Public Safety System, based on the building permit applications, zoning applications, and plans and specifications submitted by Motorola.

10. Insurance. During the term of this Agreement, Motorola will obtain and maintain at its expense insurance as described in **Exhibit D**, which is attached hereto and incorporated herein. Promptly after the execution of this Agreement, Motorola will provide to Public Entity a Certificate of Insurance (standard Acord form) evidencing this insurance. The Commercial General Liability policy will include as additional insureds, "The BayRICS Authority and each State and local government within the State of California that provide Sites for the BayWEB project." Insurance afforded by the additional insured blanket endorsement shall apply as primary insurance to any other insurance available to the Additional Insureds with respect to any claims arising out of this Agreement, and such insurance shall apply separately to each insured against whom claim is made or suit is brought. The insurance provided by Motorola under this Agreement is not intended to and does not limit or qualify Motorola's other obligations under this Agreement. All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VIII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager. In addition, Motorola will cause any contractor(s) and/or consultant(s) employed by Motorola to work at the Sites to comply with similar insurance requirements as reasonably determined by Motorola's Insurance Department in coordination with its insurance brokers and advisors.

11. Indemnification.

11.1. Motorola will indemnify, defend, and hold harmless the Public Entity, and its employees, agents, and officers (and the applicable lessor or sublessor if a Site is leased or subleased to Public Entity and that lease or sublease contractually obligates Public Entity to require entities like Motorola who enter onto the Site to indemnify the lessor or sublessor) from and against any claims, loss, damage, and liability for damages, costs, and expenses (including, without limitation, reasonable attorneys' fees actually) incurred by Public Entity as a result of any negligent or intentionally wrongful acts or omissions of Motorola or any of its agents, employees, consultants, or contractors in connection with performing the work under this Agreement. These indemnification and hold harmless obligations include, without limitation, any claims resulting from injury to or death of any person or persons (including any users of the Sites), or injury to any property, including equipment and vehicles, arising out of any negligent or intentionally wrongful action or inaction by Motorola on the Sites. If Motorola is responsible for damage to a Site or Sites under this Section 9, the Parties will meet and confer to determine whether Motorola, Public Entity, or another party shall repair the damage. The indemnification obligations in this section shall survive the termination or expiration of this Agreement.

11.2 Public Entity will indemnify, defend, and hold harmless Motorola, and its contractors or consultants, and their employees, agents, and officers (and the applicable lessor or sublessor if a Site is leased or subleased to Public Entity) from and against any claims, loss, damage, and liability for damages, costs, and expenses (including, without limitation, reasonable attorneys' fees actually) incurred by an indemnified party as a result of any negligent or intentionally wrongful acts or omissions of Public Entity

or any of its agents, employees, consultants, or contractors in connection with this Agreement. These indemnification and hold harmless obligations include, without limitation, any claims resulting from injury to or death of any person or persons (including any users of the Sites), or injury to any property, including equipment and vehicles, arising out of any negligent or intentionally wrongful action or inaction by Public Entity on the Sites. The indemnification obligations in this section shall survive the termination or expiration of this Agreement.

12. Limitation of Liability. Motorola's total liability under this Agreement will be limited to the direct damages recoverable under law, but not to exceed the "Cap Amount." The term Cap Amount shall mean $300,000 multiplied by the total number of Sites being provided by this Public Entity. The first sentence of this Section 14 does not apply to Motorola's liability for (i) personal injury, death, damage to tangible property, or (ii) Motorola's intentional torts or gross negligence. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT. If (i) a third party sues Public Entity for damages caused by the negligent or intentionally wrongful acts or omissions of Motorola or any of its agents, employees, consultants, or contractors in connection with performing the work under this Agreement, (ii) that third party is awarded damages by a court or in binding arbitration, and (iii) Public Entity actually pays those damages to the third party, this Section 14 will not apply to those damages. To clarify, the purpose of the preceding sentence is to reflect the agreement of Motorola and Public Entity that as between them, damages paid by Public Entity as described in the preceding sentence will be characterized as direct damages even if they are characterized as indirect damages as between Public Entity and the third party. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

13. Default and Termination.

13.1. If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default unless a Force Majeure causes the failure. The term "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots). The non-defaulting Party may assert a default claim by giving the defaulting Party a written and detailed notice of default ("Notice of Default"). Except in the case of Public Entity's default which has a material adverse effect on the Public Safety System and immediate relief is necessary to protect public safety, the defaulting Party will have thirty (30) days after receipt of the Notice of Default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan that is acceptable to the non-defaulting Party. The non-defaulting Party must act reasonably in determining whether a cure plan is acceptable and must make good faith and collaborative efforts to agree upon a mutually acceptable cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the cure plan.

13.2. If a defaulting Party fails to cure the default as provided above in Section 13.1, unless otherwise provided in this Agreement or unless otherwise agreed in writing, the non-defaulting Party may resort to any available legal or equitable remedy, including termination of any unfulfilled portion of this Agreement and recovering from the defaulting Party damages recoverable under applicable law but subject to Section 14 below. Notwithstanding the preceding sentence, Public Entity acknowledges that termination of the Agreement would result in undue financial hardship to Motorola because Motorola has incurred substantial costs under or relating to the BOOM Agreement and this Agreement (including paying Site

Remediation Costs). Based on this acknowledgement, Public Entity agrees that it may not terminate this Agreement for Motorola's uncured default if monetary damages are an adequate remedy. Public Entity agrees further that even if monetary damages are not an adequate remedy, it may not terminate this Agreement for Motorola's uncured default without completing a "meet and confer" process with senior managers of both Parties for an additional time period to be mutually agreed but not less than thirty (30) days. Either Party may request the JPA to participate in these discussions. The purpose of this meet and confer process is for the Parties to try in good faith to resolve the claimed default without terminating the Agreement so as to avoid the undue financial hardship described above. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information and the non-defaulting Party will mitigate damages.

13.3. Notwithstanding any other provision in this Agreement, Motorola has the right to terminate this Agreement upon sixty (60) days prior written notice in whole or part as follows: (1) without cause and for any reason until July 31, 2013; (2) at any time if either the BTOP Grant or the BOOM Agreement is terminated; (3) if the BOOM Agreement is not fully executed by January 20, 2012; or (4) at any time for good cause as reasonably determined by Motorola (which does not require breach or default by Public Entity). If Motorola exercises the right to terminate under clause (4), the Parties will promptly meet and confer about the "good cause" before the termination is effective. The term 'good cause' means Motorola taking an action that it is permitted to do under the BOOM Agreement, such as but not limited to deleting a Site if it is or becomes disqualified. If Motorola exercises the right to terminate under any clause as described above, the Parties will promptly meet and confer about a transition plan, but Motorola may remove the BayWEB equipment from the Sites if it so chooses and shall be solely responsible for the costs of such removal and for all costs necessary to restore the Sites to as good or better condition they were in prior to such installation. Motorola will be deemed to have abandoned its equipment on the Sites if it fails to remove the equipment and restore the Sites within a reasonable period of time, not to exceed six (6) months from termination of the Agreement. In the event of such abandonment, title and ownership of the equipment remains with Motorola, but Public Entity may remove the equipment, return it to Motorola, and restore the Sites; in such event, Motorola promises to reimburse Public Entity for the costs actually and reasonably incurred by Public Entity to remove the equipment, return it to Motorola, and restore the Sites.

14. Assignment. Except as otherwise provided in Section 2.2, neither Party will assign or transfer any interest in this Agreement without the prior written consent of the other Party which shall not be unreasonably withheld or delayed, and any attempt by Party to assign this Agreement or any rights, duties or obligations arising hereunder without such consent shall be void and of no effect.

15. Consultants; Contractors. Any consultant or contractor hired by Motorola to perform the activities described in this Agreement shall be the contractor of Motorola, and Public Entity shall have no obligation under this Agreement to compensate any consultant or contractor hired by Motorola for any work performed pursuant to this Agreement. Motorola shall be responsible for directing the work of its contractors and consultants and shall ensure that all contractors and consultants comply with the terms of this Agreement that are applicable to the contractor or consultant.

16. Amendments. This Agreement may only be amended by written instrument signed by both Parties.

17. Notices. All notices or other communications required hereunder shall be in writing and shall be personally delivered, or sent by national overnight courier service, or sent by facsimile transmission if also sent by one of the other methods provided in this Section, or sent by registered or certified mail, return receipt requested, and shall be deemed delivered upon the earlier date of (a) the date

of delivery to the address of the person to receive such notice or (b) three (3) business days after the date of posting the United States Postal Service at the following addresses:

(a) If to Public Entity:
[Insert address]
Attn: [Insert name of person to receive notices]

(b) If to Motorola:

1001 Bayhill Drive, #200
San Bruno CA 94066
Attn: Coyle Schwab

18. Governing Law; Venue. This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. In the event that suit is brought by either Party, the Parties agree that trial of such action shall be exclusively vested in a state or federal court in Alameda County, California.

19. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

20. Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance of non-compliance. Any waiver granted by a Party must be in writing and shall apply to the specific instance expressly stated.

21. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

22. Documents to JPA. Public Entity will provide to the JPA a copy of this Agreement, all amendments to it, and all non-confidential and significant documentation that is prepared by a Party in the performance of its duties under this Agreement and provided to the other Party.

23. Authority to Execute. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

24. Hazardous Materials. "Hazardous Materials" are those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42, U.S.C. Section 9601, et seq. ("CERCLA") and the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et. seq., or those which meet the toxic, reactivity, corrosively or flammability criteria of the above regulations, as well as any other substance which poses a hazard to human health or to the environment.

25. Environmental Law. "Environmental Law" means any and all federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, rulings, directives or notices of violation, that create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal or management of any Hazardous Material, or otherwise regulating or providing for the protection of the environment.

26. Motorola shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Site in violation of any Environmental Law (as defined above), and Public Entity hereby represents and warrants, with no duty or obligation to investigate that (i) it has no knowledge of the presence of any Hazardous Material located in, on under, upon or affecting the Site in violation of any Environmental Law; (ii) no notice has been received by or on behalf of Public Entity from, and it has no knowledge that notice has been given to any predecessor owner or operator of the Site by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Site; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Site in violation of any Environmental Law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

MOTOROLA SOLUTIONS, INC.

By: Coyle P. Schwab
Name: Coyle P. Schwab
Title: Program Director
Date: January 13, 2012

ALAMEDA COUNTY

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form and Legality

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Sites

Crane Ridge	Livermore
San Leandro Hills	San Leandro
Sunol Ridge	37000 Palomares Rd -Sunol
Coyote Hills	Fremont Hills
County Fire Station 14	Pleasanton-Sunol Rd - Sunol
County Fire Station 15	4985 Broder Blvd. , Dublin
County Fire Station 11	14903 Catalina Street, San Leandro
County Fire Station 5	18770 Lake Chabot Rd, Castro Valley
County Fire Station 7	6901 Villareal Ave, Castro Valley

Exhibit B

[Intentionally Omitted.]

Exhibit C

Site Access and Use Procedures

[To be completed by Public Entity]

1. Contacts for Site Access and Scope of Work.

For Public Entity:

For Motorola:

2. Notice Requirements and Other Procedures Related to Site Access.

None unless expressly indicated [Note that Motorola will prepare a schedule for accessing the Sites and accessing the Sites will be coordinated through the JPA and Public Entity representatives with reference to this master schedule.]

3. Special Conditions for Site Access.

In order to maintain the security necessary for any Site, only those service technicians authorized by Motorola and by the County's GSA-Communications Department shall be granted access to the Sites except in the event of an emergency when service technicians previously authorized by Motorola and by the County's GSA-Communications Department may access the Sites without advance approval, provided that Motorola notifies the County immediately upon knowledge of the emergency and need to access the Site and follow up with confirmation of such access within twenty-four (24) hours thereafter of it occurring.

4. Limitations on Accessing Sites or Conducting Scope of Work.

None unless expressly indicated

Exhibit D

Insurance Requirements