

File No. 120022

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: January 25, 2012

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Victor Young

Date: January 20, 2012

Completed by: Victor Young

Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Agreement - Motorola - Bay Area Regional Interoperable Communications Systems]

2
3 **Resolution approving site access and use agreement with Motorola for the San**
4 **Francisco sites to be used for the Bay Area 700 MHz public safety broadband spectrum**
5 **to be managed and operated by the Bay Area Regional Interoperable Communications**
6 **Systems for a term of 12 years; and making findings, including environmental findings.**

7 I. History and Background

8 WHEREAS, Effective and coordinated communications is a top priority for public safety
9 agencies in the City and County of San Francisco ("City"). The counties of Alameda, Contra
10 Costa, Marin, Santa Clara, San Mateo, Sonoma, the cities of Oakland, San Jose, and the City
11 (collectively, the "Bay Area"), determined that working in concert to develop interoperable
12 communications systems is in the region's public interest; and

13 WHEREAS, The Bay Area counties entered a Joint Powers Agreement to establish
14 the Bay Area Regional Interoperable Communications Systems ("BayRICS") Authority, which
15 is on file with the Clerk of the Board of Supervisors in File No. 110565, and which is hereby
16 declared to be a part of this resolution as if set forth fully herein; and

17 WHEREAS, The BayRICS Authority, established on August 8, 2011, supports the
18 establishment and operation of an interoperable voice and broadband data network in the San
19 Francisco Bay Area known as the Bay Area Wireless Enhanced Broadband ("the BayWEB");
20 and

21 WHEREAS, The creation of the BayWEB will improve the City's public safety system
22 by positively impacting public safety communications in the Bay Area and providing the
23 opportunity to be among the first areas in the nation to deploy cutting edge broadband
24 technology and be poised to take advantage of expanded spectrum opportunities when the
25 nationwide public safety broadband is deployed; and

1 WHEREAS, The BayWEB project is the result of a Broadband Technology Opportunity
2 Program ("BTOP") grant awarded by the National Telecommunications and Information
3 Administration ("NTIA") to Motorola Solutions Inc. ("Motorola"), for the construction of a 700
4 MHz Public Safety Broadband System, (the "network"); and

5 WHEREAS, The network being deployed will consist of approximately 140 sites
6 distributed throughout the seven-county Bay Area region, including approximately 16 sites
7 within the City. The network will be funded by a \$50.6 million grant from NTIA and a \$21.9
8 million match by Motorola; and

9 WHEREAS, The NTIA grant imposes two overriding deadlines that govern the timing of
10 the BayWEB project. First, the "substantial completion" deadline requires that two-thirds of
11 the network be built and two-thirds of BTOP grant funding be spent by July 31, 2012 and
12 second, the deadline for expending or encumbering BTOP funds and completing the BayWEB
13 project is July 31, 2013. The failure to meet these deadlines risks action by NTIA to suspend
14 Motorola's ability to draw funds necessary to complete the project or, in extreme cases, to
15 terminate the award; and

16 II. City Permit Sites and Terms

17 WHEREAS, Motorola and DEM have negotiated a Site Access and Use Agreement
18 ("Agreement") on file with the Clerk of the Board of Supervisors, in File No. 120022, that
19 establishes the terms and conditions for access and use of various sites within the City for the
20 BayWEB project; and

21 WHEREAS, the Agreement identifies 16 sites for antenna installation that will ensure
22 sufficient City-wide coverage to meet the needs of public safety. Some of the sites are owned
23 by the City, and others are located on private property leased by (or to be leased by) the City
24 for other communication facilities. The Department of Emergency Management ("DEM")
25 plans to work with the Real Estate Division and other entities as applicable to seek all

1 necessary environmental and other approvals for the sites, including negotiating leases with
2 private entities and seeking approvals from the City and private entities for use of their sites.

3 (a) The City owns the following sites:

- 4 o Muni Building - 949 Presidio
- 5 o Forest Hill Radio Site – 150 Mendosa Avenue
- 6 o Central Radio Station at Twin Peaks – 1 Christmas Tree Point Road
- 7 o Department of Technology Radio Shop - 901 Rankin Street
- 8 o Community Health Network – 25th Street at Potrero Avenue

9 (b) Other entities own the following sites:

- 10 o Fort Miley/VA Hospital – 43rd Avenue at Clement Street
- 11 o Presidio Hill –Building 314, Deems Road
- 12 o Clay Jones - 1250 Jones Street
- 13 o One Market Plaza – 1 Market Street
- 14 o City College Downtown Campus – 88 – 4th Street
- 15 o Former State Compensation Fund Building - 1275 Market Street
- 16 o San Francisco State University – Thornton Hall
- 17 o Bernal Heights Radio Site -99 Moultrie
- 18 o 200 Paul Avenue
- 19 o South Hill Radio Site (57 Alta Vista Way in Daly City)
- 20 o Sutro Tower

21 (c) In addition to these sites, Motorola may rely on two additional sites which are not
22 owned or controlled by the City.

- 23 o BART facility at Glen Park
- 24 o BART facility at Balboa Park

25

1 (d) DEM has identified alternate sites owned by the City to be used if any of the
2 primary sites fail to meet the network requirements.

- 3 o City siren pole - 25th Avenue at Fulton.
- 4 o City Outdoor Public Warning System (OPWS) siren pole - 37th Avenue at
5 Pacheco
- 6 o City OPWS siren pole - 22nd Avenue at Sloat Boulevard
- 7 o City OPWS siren pole - 47th Avenue at Sloat Boulevard
- 8 o Candlestick Park – Candlestick Point
- 9 o Southeast Community Center – 1800 Oakdale Avenue
- 10 o City OPWS siren pole - Fitch at Egbert Avenue
- 11 o City OPWS siren pole – Jamestown Avenue at Ingalls Street
- 12 o San Francisco Fire Department Station 17 – 1295 Shafter Avenue; and

13 WHEREAS, The City's costs related to this Agreement will be limited to any site related
14 costs and expenses, including any zoning/permitting costs and fees , site operating costs
15 such as site maintenance, security, electricity and other utilities, lease payments, and property
16 taxes, to the extent any are applicable; and

17 WHEREAS, the Agreement provides the City will indemnify Motorola and hold it
18 harmless for any negligent or intentional wrongful acts or omissions by the City and the Risk
19 Manager has approved this provision; and

20 WHEREAS, the Agreement provides that Motorola's limit on liability is capped at four
21 million eight hundred thousand dollars [\$4,800,000], and the City Attorney has approved this
22 limitation of liability; and

23 WHEREAS, Section 9.118 of the San Francisco Charter requires approval by the
24 Board of Supervisors of agreements with a term of ten years or more; and

1 WHEREAS, The Department intends to negotiate leases for specific sites, and it will
2 return to the Board for any necessary approvals of these leases; and

3 III. Environmental Review

4 WHEREAS, The Planning Department has determined that the actions contemplated in
5 this Resolution comply with the California Environmental Quality Act (California Public
6 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
7 Board of Supervisors in File No. 120022 and is incorporated herein by reference; now,
8 therefore, be it

9 RESOLVED, That the Board of Supervisors authorizes the DEM Executive Director to
10 execute Site Use and Access Agreement with Motorola in substantially the form on file with
11 the Clerk of the Board of Supervisors, in File No. 120022, with such changes or modifications,
12 including without limitation modifications to the exhibits, as may be acceptable to the DEM
13 Executive Director and the City Attorney, and which do not materially increase the obligations
14 and liabilities of the City.

Item 1
File 12-0022

Department:
Department of Emergency Management (DEM)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a 12-year Site Access and Use Agreement between the City, through the Department of Emergency Management (DEM), and Motorola Solutions Inc. (Motorola), for various San Francisco sites to be used for the Bay Area 700 MHz public safety broadband spectrum, to be managed and operated by the Bay Area Regional Interoperable Communications Systems, and making environmental findings.

Key Points

- On May 24, 2011, the Board of Supervisors approved a resolution (File 11-0565; Resolution 223-11) authorizing the City to enter into a Joint Powers Agreement to authorize the (a) Bay Area Regional Interoperable Communications Systems (BayRICS) Authority, (b) City's membership in the BayRICS Authority and (c) initial and annual membership payments to the BayRICS Authority.
- On August 8, 2011, the BayRICS Authority was created with the goal of establishing and operating a regional, interoperable voice and data communications network in the San Francisco Bay Area, known as the Bay Area Wireless Enhanced Broadband (BayWEB). This BayWEB project was initiated through a \$50.6 million 2010 Federal Department of Commerce's National Telecommunications and Information Administration (NTIA) stimulus grant to Motorola Solutions, Inc., which requires that (a) two-thirds of the BayWEB network be constructed and two-thirds of the grant funds be expended by July 31, 2012, and (b) the entire BayWEB system be completed with all grant funds expended or encumbered by July 31, 2013.
- The BayWEB system will consist of 140 sites throughout the seven-county Bay Area, including 16 primary and nine alternate sites in San Francisco. Of the 16 primary sites, five are City-owned properties and 11 are not City-owned properties.
- If the Board of Supervisors approves the proposed resolution, DEM would negotiate leases for the 11 non-City-owned properties with the assistance of the Department of Technology and the Department of Real Estate. In accordance with the City's Administrative Code, all leases of \$5,000 or more per month that extend for more than one year would be subject to future Board of Supervisors approval.
- The proposed resolution states that the Planning Department determined that the actions contemplated in this resolution comply with the California Environmental Quality Act (CEQA), based on issuance of a Categorical Exemption.

Fiscal Impacts

- Under the proposed resolution, which would authorize the subject Site Access and Use Agreement, there would be no exchange of funds between Motorola and the City. Rather, Motorola would be responsible for installing the necessary equipment at its own cost, and then owning, operating and maintaining the regional BayWEB system, including equipment on the 16 primary sites in San Francisco.
- The City would be responsible for site related costs, including any permit fees, City staff costs, lease payments, and other site operating expenses including maintenance, security, electricity, other utilities and Property Taxes on the 16 primary or nine alternate sites.
- The City's initial one-time costs are estimated at \$130,800 in FY 2011-12 and \$180,000 in FY 2012-13, or a total of \$310,800.

- In addition, the City's ongoing annual costs are estimated at (a) electrical utility expenses of \$400 per month for each City-owned site or \$24,000 annually for the five City-owned sites, and (b) lease expenses of \$0 to \$7,500 per month or an estimated \$533,280 annually for the 11 non City-owned sites, or total estimated ongoing annual costs of \$557,280.
- Over the proposed 12-year term of the subject Agreement, the ongoing lease, utility and related expenses are projected to cost the City approximately \$6,687,360. Together, with the initial estimated one-time expenses of \$310,800, the total cost of the proposed resolution would be \$6,998,160.
- DEM is in discussions with the Mayor's Office regarding what source of revenues would be used to fund the subject Agreement and which City departments would budget for such costs.

Policy Considerations

- The City is currently projecting a General Fund shortfall of \$262.7 million for FY 2012-13 and \$375.3 million for FY 2013-14. Yet, the proposed Agreement is estimated to result in \$310,800 of additional one-time expenses in FY 2011-12 and FY 2012-13 and \$557,280 of ongoing additional annual costs commencing in FY 2012-13, resulting in an estimated total cost of approximately \$7 million over the 12-year term of the proposed Agreement. However, as of the writing of this report, no funding sources have been identified to pay for these \$7 million estimated costs.
- The Committee on Information Technology (COIT) recently issued the City's Information and Communication Technology (ICT) Plan for Fiscal Years 2011-12 through 2015-16 to the Mayor and the Board of Supervisors, identifying the City's and individual Department Information and Communication Technology priorities, costs, and funding for each of the next five years. However, a review of this ICT Plan does not reflect a discussion of the proposed BayWEB project.
- Although DEM is requesting approval to develop the proposed BayWEB system with 16 sites in San Francisco, the City has (a) neither developed specific plans for purchasing devices, such as radios or in-vehicle modems, to access the subject new BayWEB system, (b) nor developed estimates of the number of needed devices, under which City departments would subscribe to the proposed new BayWEB system.
- Given that there is not an overall plan to address the proposed new regional BayWEB project within the City's ICT Plan, the Budget and Legislative Analyst recommends that the Department of Emergency Management and the Police Department, which are the two departments representing the City, on the regional BayRICS Authority which is responsible for managing the BayWEB project with Motorola, work directly with COIT, to immediately address the proposed BayWEB project within the City's Five Year ICT Plan. As part of this effort, the Department of Emergency Management and the Police Department should work with COIT to develop a plan, with detailed cost estimates, and to identify funding sources for how the proposed new BayWEB system would be implemented and paid for in San Francisco.

Recommendations

- Request that all City departments that are currently working on various radio communication systems, including DEM, Police, the San Francisco Municipal Transportation Agency (SFMTA) and the Department of Technology immediately convene to discuss and agree on the specific radio improvements needed in the City.
- Request that the Department of Emergency Management and the Police Department work with COIT to immediately address the proposed BayWEB project within the City's Five Year ICT Plan, by developing a plan, with detailed cost estimates, and identify funding sources for how the proposed new BayWEB system would be implemented and paid for in San Francisco.
- Approval of the proposed resolution is a policy decision for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

In accordance with Section 9.118 of the City's Charter, agreements that extend for terms of ten years or more are subject to approval by the Board of Supervisors.

Background

On May 24, 2011, the Board of Supervisors approved a resolution (File 11-0565; Resolution 223-11) authorizing the City and County of San Francisco, through the Department of Emergency Management (DEM), to enter into a Joint Powers Agreement¹ to (a) establish the Bay Area Regional Interoperable Communications Systems (BayRICS) Authority, (b) authorize the City's membership in the BayRICS Authority and (c) authorize payments to the BayRICS Authority of initial membership fees of \$49,000 and annual membership fees² for the next two years, as set by the BayRICS Authority Joint Powers Board of Directors.

On August 8, 2011, the BayRICS Authority was created with the goal of establishing and operating a regional, interoperable voice and data communications network in the San Francisco Bay Area, known as the Bay Area Wireless Enhanced Broadband (BayWEB), in order to improve regional public safety communications on both a daily basis and during disasters, by deploying a new 700 Megahertz (MHz) broadband technology to share expanded multi-media applications, such as text, graphics and videos. This BayWEB project was initiated through a Broadband Technology Opportunity Program (BTOP), a 2010 Federal stimulus grant program, that provided \$50.6 million of Federal grants from the Department of Commerce's National Telecommunications and Information Administration (NTIA) to Motorola Solutions, Inc. for a 700 MHz Public Safety Broadband System, or BayWEB³. BayWEB will consist of 140 sites throughout the seven-county Bay Area, including a minimum of 16 sites in San Francisco. Under the existing Federal BTOP grant between the NTIA and Motorola, (a) two-thirds of the BayWEB network must be constructed and two-thirds of the BTOP funds must be expended by July 31, 2012, and (b) the entire BayWEB system must be completed with all BTOP funds expended or encumbered by July 31, 2013.

According to Ms. Amiee Alden, Policy and Planning Manager at the Department of Emergency Management (DEM), the BayRICS Joint Powers Authority entered into a separate ten-year Build, Own, Operate and Maintain (BOOM) Agreement with Motorola on January 19, 2012 regarding this BayWEB system. Under this separate BOOM Agreement, individual participants,

¹ The City and County of San Francisco entered into this Joint Powers Agreement (JPA) together with the State of California, and the Bay Area counties of Alameda, Marin, Contra Costa, Marin, Santa Clara, San Mateo and Sonoma and the cities of Oakland, San Jose, South Bay Hub Cities, which includes representative cities in Contra Costa and Alameda Counties, and East Bay Hub Cities, which includes representative cities in Santa Clara and Santa Cruz Counties. San Francisco has two seats on this 13-member BayRICS Authority, including the Director of the Department of Emergency Management (DEM) appointed by the Mayor, and the Police Chief, appointed by the Board of Supervisors.

² BayRICS Authority membership fees are capped at \$24,500 annually, with adjustments allowable based on the Consumer Price Index. Membership fees are used to cover the BayRICS Authority administrative expenses.

³ Motorola also provided a \$21 million match to this \$50.6 million NTIA 2010 Federal stimulus grant. In addition, the City, through the Bay Area's Urban Area Security Initiative (UASI) program in 2009 and 2010 provided a total of \$294,400 in Federal Homeland Security grants for two BayWEB project manager positions.

such as the Police Department and/or Fire Department, could subscribe with the BayRICS Joint Powers Authority for access to this new BayWEB system at a rate of \$43 per month per device (radio, in-vehicle modem, and computer). According to Mr. Barry Fraser, Project Manager at DEM, although the City would not be required to subscribe to the BayWEB system, the BayRICS Joint Powers Authority estimates that approximately 6,000 devices in the Bay Area region would subscribe to the BayWEB system by FY 2013-2014. In accordance with this ten-year BOOM Agreement, when the ten-year term of the BOOM Agreement expires, Motorola would transfer ownership of the BayWEB system at no cost, as well as the responsibility to operate and maintain the system to the BayRICS Authority.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a 12-year Site Access and Use Agreement (Agreement) between the City, through the Department of Emergency Management (DEM), and Motorola Solutions Inc., for a minimum of 16 San Francisco sites to be used to install antennas and other equipment needed for BayWEB, the Bay Area's 700 MHz public safety broadband system, to be managed and operated by the Bay Area Regional Interoperable Communications Systems (BayRICS), and make environmental findings.

According to Ms. Alden, this Agreement would be awarded to Motorola on a sole source basis because Motorola was the recipient of a \$50.6 million Federal Broadband Technology Opportunity Program (BTOP) stimulus grant that will pay for the BayWEB project.

Under the proposed 12-year Site Access and Use Agreement,

- The City would grant Motorola the non-exclusive right to enter, have access to and use on a continuous uninterrupted basis the various public and private sites identified in the subject Agreement in order to deploy, own, operate and maintain the BayWEB system. The City would have the right to enter all public and private sites with at least 24-hour notice, except in cases of emergency, when City representatives would have the right to enter sites immediately.
- The sites listed in Attachment I to this report are identified for installation by Motorola of antenna and other equipment to provide City-wide broadband coverage, totaling 16 sites, including five City-owned sites and 11 non City-owned sites. Additionally, Attachment I identifies nine alternate City-owned sites to be used if any of the primary sites fail to meet the network requirements.
- If Motorola improves a site, such as installing a pole for equipment, Motorola will have exclusive use of that site improvement, such that the City could not install other equipment on that pole, without Motorola's written consent⁴.
- The City would provide the sites in "as is, with all faults" condition and Motorola is solely responsible for putting the sites into installation ready condition. Before installing the necessary equipment at a site, Motorola will inspect, conduct analysis testing as needed, conduct other due diligence, and provide a written report to the City regarding any

⁴ Ms. Alden advises that DEM does not anticipate that Motorola will need to improve any sites or install any poles in San Francisco because Motorola's equipment can be installed on existing poles or other existing structures.

deficiencies regarding Motorola's requirements, such that the City assumes the risk for such uncorrected deficiencies.

- All permitted improvements and equipment installed by Motorola shall remain the property of Motorola, provided that any structural improvements made by Motorola will remain at the sites and become the City's property upon termination of this Agreement.
- The City will pay for all site related costs and expenses, including zoning and permitting fees (if not waived by the City), site maintenance, security, electricity and other utilities, lease payments, and applicable Property Taxes.
- The City will provide signed acknowledgement or approvals of leases for non-City owned sites by January 31, 2012 or as soon as possible thereafter. If the City has not provided signed approvals of leases by February 29, 2012, Motorola may disqualify any of the leased sites by giving notice to City and the City and Motorola will amend the subject Agreement to delete the disqualified leased sites. If a leased site becomes disqualified, Motorola, the City and the BayRICS Joint Powers Authority may agree before May 31, 2012 on an alternative site as substitute for the disqualified lease sites.
- Motorola will maintain at its own expense commercial general liability insurance as specified in the Agreement, and approved by the City's Risk Manager.
- Limitations of liability on Motorola such that any direct damages cannot exceed a cap amount of \$300,000 times the total number of sites provided by the City, or an estimated \$4,800,000 (\$300,000 x 16 sites). In addition, Section 12.2 of the Agreement specifies that although the City and Motorola acknowledge the possibility of such losses or damages, they agree that Motorola will not be liable to City for any special, incidental indirect or consequential damages in any way related to or arising from this Agreement.

According to Ms. Alden, the 16 primary sites are the minimum necessary to provide sufficient City-wide coverage. Ms. Alden advises that the 16 primary sites, plus nine alternate sites, which are shown in Attachment I⁵, were selected based on a comprehensive evaluation conducted by the City and Motorola using several criteria, including coverage requirements, use of existing City public safety radio sites, minimal impact on residential neighborhoods and cost. Mr. Fraser advises that if the 16 primary and/or alternate sites do not provide adequate City-wide coverage, additional sites could be added in the future to address such coverage issues.

If the Board of Supervisors approves the proposed resolution, authorizing the Executive Director of the DEM to enter into the subject Site Use and Access Agreement with Motorola, Ms. Alden advises that the DEM would negotiate leases for the specific sites with the assistance of the Department of Technology and the Department of Real Estate. In accordance with Sections 23.26 and 23.27 of the City's Administrative Code, all leases of \$5,000 or more per month that extend for more than one year are subject to Board of Supervisors approval. Given that 11 of the subject 16 primary sites are not City-owned property, and would require leases extending for more than a year, Mr. John Updike, the Director of the Real Estate Division anticipates bringing these 11 leases to the Board of Supervisors for approval.

⁵M s. Alden advises that in addition to these 16 primary and nine alternate sites, Motorola will be entering into a separate agreement with the Bay Area Rapid Transit (BART) Agency, to locate equipment at the Glen Park and Balboa Park BART Stations.

The proposed resolution states that the Planning Department determined that the actions contemplated in this resolution comply with the California Environmental Quality Act (CEQA). According to Ms. Alden, the Planning Department has approved a Categorical Exemption from CEQA for the entire BayWEB project, which will be submitted prior to the January 25, 2012 Budget and Finance Committee meeting.

FISCAL IMPACTS

Under the proposed resolution, which would authorize the subject 12-year Site Access and Use Agreement, there would be no exchange of funds between Motorola and the City. Rather, Motorola would be responsible for installing the necessary equipment at its own cost, and then owning, operating and maintaining the regional BayWEB system, including the equipment on the 16 primary sites in San Francisco. As discussed above, in accordance with a separate ten-year Build, Own, Operate and Maintain (BOOM) Agreement between Motorola and the Bay Area Regional Interoperable Communications Systems (BayRICS) Authority, Motorola would transfer ownership of the regional BayWEB system at no cost to the BayRICS Authority, after the ten-year term expires, or 2022.

Under the proposed resolution and Site Access and Use Agreement, the City would be responsible for site related costs, including permit fees, City staffing, lease payments, and other site operating expenses including maintenance, security, electricity, other utilities and Property Taxes for the 16 primary or potentially nine alternate sites identified in Attachment I.

According to Mr. Fraser, initial one-time expenditures to be incurred by the City are currently estimated at \$130,800 in FY 2011-12 and \$180,000 in FY 2012-13, or a total of \$310,800. As shown in Table 1 below, the total estimated \$310,800 of one-time costs include (a) \$5,800 to the City Planning Department for the required CEQA Categorical Exemption, which has already been paid by DEM, (b) \$110,000 to be incurred by the Department of Real Estate to develop and negotiate the 11 anticipated leases, (c) \$45,000 to be incurred by the Department of Building Inspection (DBI) for permit fees related to installation of the Motorola equipment, assuming one-third of such fees would be paid in FY 2011-12 and the remaining two-thirds would be paid in FY 2012-13, and (d) \$150,000 to be incurred by the Department of Technology (DT) to provide one radio technician to escort Motorola representatives to remediate and install the required equipment at each site. Assuming DT can absorb these staff-related costs in FY 2011-12, DT would require \$150,000 funding in FY 2012-13.

Mr. Fraser advises that all of the selected sites are in secure locations, such that there are not anticipated to be any additional security expenditures to be incurred by the City.

Table 1: Anticipated FY 2011-12 and FY 2012-13 One-Time Costs of Proposed Site Access and Use Agreement

Initial One-Time Costs	FY 2011-2012	FY 2012-2013	Total
Categorical Exemption -Planning Department	\$5,800	\$0	\$5,800
Leases - Department of Real Estate	110,000	0	110,000
Permits - Department of Building Inspection	15,000	30,000	45,000
Staff -D epartment of Technology	0	150,000	150,000
Total One-Time Costs	\$130,800	\$180,000	\$310,800

As shown in Attachment II, provided by Mr. Fraser, and summarized in Table 2 below, DEM conservatively estimates additional electrical utility expenses of \$400 per month or a total of \$2,000 per month for the five anticipated City sites, or total annual costs of \$24,000 annually for the five City sites. As also detailed by site in Attachment II, DEM conservatively estimates additional lease and related expenses for the remaining 11 primary sites from \$0 to \$7,500 per month⁶ or an estimated total of \$44,440 monthly, or up to \$533,280 annually. Together, as shown in Table 2 below, these estimated ongoing annual costs total \$557,280. According to Mr. Fraser, these ongoing costs are anticipated to commence in FY 2012-13, subject to approval by the Board of Supervisors of the 11 leases and installation and operation of the Motorola equipment.

As shown in Table 2 below, over the proposed 12-year term of the subject Agreement, the ongoing lease, utility and related expenses are projected to cost the City approximately \$6,687,360. Together, with the initial estimated one-time expenses of \$310,800 shown in Table 1 above, the total estimated cost to the City of the proposed 12 year Site Access and Use Agreement would be \$6,998,160, as summarized in Table 2 below.

⁶ As shown in Attachment II, DEM is projecting maximum lease costs of \$7,500 per month per site based on estimates provided by the Department of Real Estate. In addition, as shown in Attachment II, based on discussions with representatives at each of the sites, Mr. Fraser reports that alternative arrangements, such as sharing of the City's available fiber optic cable with City College or San Francisco State University, in lieu of the City paying monthly lease payments, are reflected.

Table 2: Anticipated Ongoing Cost of Proposed Site Access and Use Agreement

Ongoing Costs	Monthly	Annual
Electricity/Utilities at Five City Sites	\$2,000	\$24,000
Leases at 11 Non-City Sites	44,440	533,280
Total Ongoing Costs	\$46,440	\$557,280
Total 12-Year Ongoing Costs		\$6,687,360
Total One-Time Costs (see Table 1 above)		\$310,800
Total One-Time and Ongoing Costs		\$6,998,160

As of the writing of this report, funding sources have not been identified to pay the total estimated costs of \$6,998,160. Ms. Alden advises that the Department of Emergency Management is in discussions with the Mayor's Office regarding what source of revenues would be used to fund the subject Agreement and which City departments would budget for such costs.

In addition to the above-noted costs, under the proposed Agreement, Motorola's liability for direct damages would be limited to \$300,000 times the total number of sites provided by the City, or an estimated \$4,800,000 (\$300,000 x 16 sites). In addition, Section 12.2 of the Agreement states that although the City and Motorola acknowledge the possibility of such losses or damages, the City and Motorola agree that Motorola will not be liable to City for any special, incidental indirect or consequential damages in any way related to or arising from this Agreement. The City would also indemnify Motorola and hold it harmless for any negligent or intentional wrongful acts or omissions by the City. According to Mr. William Sanders, Deputy City Attorney, the proposed limitations on liability and the waiver of incidental damages were included in the proposed Agreement based on a business and policy decision by the Department. According to Mr. Matt Hansen, Director of the City's Risk Management Division, the proposed indemnity provision is acceptable because the City is on the receiving end of the grant funds through Motorola, which would otherwise not be available to implement the subject BayWEB system.

POLICY CONSIDERATIONS

In the presentation to the Budget and Finance Committee on December 7, 2011 and the Mayor's FY 2012-13 budget instructions to City departments, the Mayor's Office projected a City General Fund shortfall of \$262.7 million for FY 2012-13 and \$375.3 million for FY 2013-14. Yet, as discussed above, the proposed Agreement is estimated to result in \$310,800 of additional one-time expenses in FY 2011-12 and FY 2012-13 and up to \$557,280 of ongoing additional

annual costs commencing in FY 2012-13. As shown in Table 2 above, over the 12-year term of the proposed Agreement with Motorola, the City is estimated to incur \$6,998,160 of additional costs. However, as of the writing of this report, the DEM and the Mayor's Office have not yet identified a funding source to pay for these costs, such that these costs are likely to become a City General Fund expense.

In addition, as discussed in the Background Section above, the BayRICS Joint Powers Authority entered into a separate ten-year Build, Own, Operate and Maintain (BOOM) Agreement with Motorola on January 19, 2012, such that individual participants, such as the Police Department and the Fire Department, could subscribe for access to this new BayWEB system at a rate of \$43 per month per device (radio, in-vehicle modem, computer). According to Mr. Fraser, although the City would not be required to subscribe to this BayWEB system, the City will incur the above-noted estimated costs of \$6,998,160 to help establish the regional BayWEB system. Additionally, to actually access the proposed BayWEB system, the City would then have to purchase additional radio, in-vehicle modems or computer devices that are compatible with the new BayWEB system, and then pay for individual monthly subscriptions per device through the BayRICS Joint Powers Authority. However, as of the writing of this report, the City has neither developed specific plans for purchasing such additional devices to access the subject new BayWEB system, nor developed estimates of the number of devices, under which City departments would subscribe to the proposed new BayWEB system, nor identified funding sources to pay for these additional devices or subscriptions.

In 2011, the Committee on Information Technology (COIT)⁷ issued a report on the City's Information and Communication Technology (ICT) Plan: Moving from Vision to Results, Fiscal Years 2011-12 through 2015-16 to the Mayor and the Board of Supervisors. As required by the City's Administrative Code, COIT's ICT Plan is intended to align the City's Information and Communication Technology resources with the City's goals and objectives, by identifying City and department Information and Communication Technology priorities, costs, and funding for each of the next five years. However, the ICT Plan does not include the proposed BayWEB project.

Yet, the ICT Plan identifies a major 800 MHz Citywide emergency radio replacement project to replace 7,500 radio voice two-way devices at a cost of approximately \$65 million of primarily General Fund revenues for all public safety departments, Parking and Traffic and the Recreation and Park Department. In addition, Mr. Jon Walton, Director of the Department of Technology advises that the San Francisco Municipal Transportation Agency (SFMTA) is also embarking on a new separate 800 MHz radio system, at an estimated cost of \$50-\$100 million. According to Mr. Fraser, the proposed subject regional BayWEB 700 MHz system would not be compatible with either of these Citywide 800 MHz radio systems.

Given that there is not an overall plan to address the proposed new regional BayWEB project within the City's ICT Plan, the Budget and Legislative Analyst recommends that the Department of Emergency Management and the Police Department, which are the two

⁷ The Committee on Information Technology (COIT), the City's Information and Communication Technology governing body, is comprised of five permanent members, including the Mayor, President of the Board of Supervisors, Controller, City Administrator and Chief Information Officer, and eight department heads distributed among functional areas of City government.

departments representing the City on the regional BayRICS Authority which is responsible for managing the BayWEB project with Motorola, work directly with COIT, to immediately address the proposed BayWEB project within the City's Five Year ICT Plan. As part of this effort, the Department of Emergency Management and the Police Department should work with COIT to develop a plan, with detailed cost estimates, and to identify funding sources for how the proposed new BayWEB system would be implemented and paid for in San Francisco.

In addition, the Budget and Legislative Analyst recommends that the Board of Supervisors request that all City departments that are currently working on various radio communication systems, including DEM, Police, SFMTA and the Department of Technology, immediately convene to discuss and agree on the specified radio and related communication improvements that are needed in the City.

Given that the subject BayWEB project has not been incorporated within the City's Five-Year Information and Communication Technology (ICT) Plan, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy decision for the Board of Supervisors.

RECOMMENDATIONS

1. Request that all City departments that are currently working on various radio communication systems, including DEM, Police, SFMTA and the Department of Technology immediately convene to discuss and agree on what radio improvements are needed in the City.
2. Request that the Department of Emergency Management and the Police Department work with the Committee on Information and Technology to immediately address the proposed BayWEB project within the City's Five Year Information and Technology Plan, by developing a plan, with detailed cost estimates, and identify funding sources for how the proposed new BayWEB system would be implemented and paid for in San Francisco.
3. Approval of the proposed resolution is a policy decision for the Board of Supervisors.

EXHIBIT A

SITE LIST

City owned sites:

1. MUNI Building Presidio
2. Forest Hill
3. CRS Twin Peaks
4. Department of Technology Radio Shop (901 Rankin St.)
5. Community Health Network

Other entity owned sites:

6. Fort Miley/VA Hospital
7. Presidio Hill
8. Clay Jones
9. One Market Plaza
10. City College Downtown Campus
11. State Compensation Fund Building (1275 Market St.)
12. San Francisco State University
13. Bernal Heights -99 Moultrie
14. 200 Paul Avenue
15. South Hill
16. Sutro Tower

DEM has identified alternate sites owned by the City to be used if any of the primary sites fail to meet the network requirements.

- A. City OPWS siren pole at 25th and Fulton
- B. City OPWS siren pole at 37th & Pacheco (45' Wood Pole)
- C. City OPWS siren pole at 22nd & Sloat (45' Wood Pole)
- D. City OPWS siren pole at 47th and Sloat

**Right of Entry Agreement with Motorola for
City and County of San Francisco Sites**

- E. Candlestick Park – Candlestick Point
 - F. 1800 Oakdale – Southeast Community Center
 - G. City OPWS siren pole at Fitch and Egbert
 - H. City OPWS siren pole at Jamestown and Ingalls
 - I. San Francisco Fire Department Station 17 – 1295 Shafter
-
-
-

SITE USE AGREEMENT PROJECTED RECURRING COSTS

Sites	Estimated Monthly Lease Costs	Estimated Monthly Utilities Costs	NOTES
City Owned Primary Sites			
Muni Building - 949 Presidio	\$0	\$400	Use of City owned sites require no lease or net cost, other than utility costs, which are estimated at \$400/month (high end range from BayRICS Systems Funding Plan)
Forest Hill Radio Site - 150 Mendosa Avenue	\$0	\$400	Use of City owned sites require no lease or net cost, other than utility costs, which are estimated at \$400/month (high end range from BayRICS Systems Funding Plan)
Central Radio Station at Twin Peaks - 1 Christmas Tree Point Road	\$0	\$400	Use of City owned sites require no lease or net cost, other than utility costs, which are estimated at \$400/month (high end range from BayRICS Systems Funding Plan)
Department of Technology Radio Shop - 901 Rankin Street	\$0	\$400	Use of City owned sites require no lease or net cost, other than utility costs, which are estimated at \$400/month (high end range from BayRICS Systems Funding Plan)
Community Health Network - 25 th Street at Potrero Avenue	\$0	\$400	Use of City owned sites require no lease or net cost, other than utility costs, which are estimated at \$400/month (high end range from BayRICS Systems Funding Plan)
Other Entity Owned Primary Sites			
Fort Miley/VA Hospital - 43 rd Avenue at Clement Street	\$7,500	\$0	High end Lease projection based on RED estimate
Presidio Hill - Building 314, Deems Road	\$0	\$0	Presidio desires to enter into a City fiber sharing agreement in lieu of monthly lease
Clay Jones - 1250 Jones Street	\$7,500	\$0	High end Lease projection based on RED estimate
One Market Plaza - 1 Market Street	\$1,500	\$0	Lower estimate based on recent negotiations with landlord (25% markup)
City College Downtown Campus - 88 - 4 th Street	\$1,500	\$0	City College desires \$1,500/m in concessions for shared facilities at 200 Paul Ave.
Former State Compensation Fund Building - 1275 Market Street	\$7,500	\$0	High end Lease projection based on RED estimate
San Francisco State University - Thornton Hall	\$1,500	\$0	SFSU desires concessions for fiber and maintenance agreements in lieu of lease payments
Bernal Heights Radio Site - 99 Moultrie	\$2,440	\$0	Lower estimate based on recent negotiations with landlord (25% markup)
200 Paul Avenue	\$7,500	\$0	High end Lease projection based on RED estimate
South Hill Radio Site (57 Alta Vista Way in Daly City)	\$7,500	\$0	High end Lease projection based on RED estimate
Sutro Tower	\$0	\$0	Sutro desires to enter into a City fiber sharing agreement in lieu of monthly lease
TOTAL MONTHLY LEASE COSTS	\$44,440	\$2,000	
TOTAL ANNUAL LEASE COST	\$533,280	\$24,000	



SAN FRANCISCO PLANNING DEPARTMENT

Certificate of Determination EXEMPTION FROM ENVIRONMENTAL REVIEW

Case No.: 2011.1412E
Project Title: Bay Area Wireless Enhanced Broadband (BayWEB)
Zoning: Various
Block/Lot: Various
Project Sponsor: Barry Fraser, Department of Emergency Management (DEM)
(415) 581-3976
Staff Contact: Brett Bollinger – (415) 575-9024
Brett.Bollinger@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION:

The Bay Area Wireless Enhanced Broadband (BayWEB) project is a wireless data communications system exclusively for public safety use. The project is funded through a federal stimulus grant under the Broadband Technology Opportunities Program (BTOP), as well as matching funds from a private project partner, Motorola. The City and County of San Francisco (City) will enhance and upgrade its existing voice radio systems with BayWEB, a broadband wireless data transmission system. BayWEB is a public-private partnership between Bay Area governments, public safety agencies and Motorola Solutions, Inc. to build and operate a next-generation, wireless broadband network exclusively for public safety use. Using existing sites, infrastructure and 700MHz public safety radio spectrum, BayWEB will provide a state-of-the-art, LTE (Long-Term Evolution) 3GPP broadband network for law enforcement, firefighters and emergency responders.

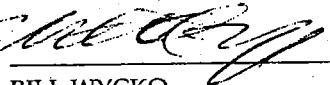
BayWEB will enhance existing public safety voice radio services by adding high-speed data transmission functionality, allowing access in the field to large data files such as maps, floor plans, photos, streaming video and a wide range of public safety databases and applications. Initially built, owned and maintained by Motorola through a federal ARRA Broadband Technology Opportunity Program (BTOP) grant and Motorola matching funds, BayWEB ownership will eventually be transferred to the local Bay Area Regional Interoperable Communications Systems (BayRICS) Joint Powers Authority.
(Continued on second page.)

EXEMPT STATUS:

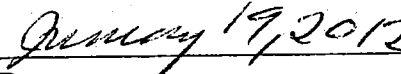
Categorical Exemption, Class 1 [State CEQA Guidelines Sections 15301(a)]

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.



BILL WYCKO
Environmental Review Officer



Date

cc: Barry Fraser, Department of Emergency Management

PROJECT DESCRIPTION (CONTINUED):

DEM has identified several alternate sites that will be used only if attempts are unsuccessful in acquiring the primary radio sites described below. By incorporating existing public safety facilities to the greatest extent possible, the network can be built with minor alterations, replacement or reconstruction of existing communications facilities, and by making minor alterations and adding small equipment to existing utility infrastructure.

REMARKS

The Bay Area Wireless Enhanced Broadband (BayWEB) Project involves modification of existing communication facilities and construction of new communication facilities throughout the City and County of San Francisco.

Primary existing radio communications sites include:

- Presidio Fort Miley/VA Hospital Water Tower (near 43rd Ave & Clement St)
- Presidio Hill Communication Tower (Presidio Building 314 Deems Rd)
- One Market Building (1 Market St)
- Clay/Jones Residential Building (1250 Jones St)
- Forest Hill Reservoir Monopole (150 Mendosa St)
- San Francisco State University (SFSU) Thornton Hall (1 Tapia Dr.)
- Tank Hill Park Communication Tower (100 Twin Peaks Blvd.)
- Bernal Heights Park Communication Tower (99 Moultrie St)
- Community Health Network Building (2789 25th St.)
- Department of Technology Radio Shop Building Communication Tower (901 Rankin St)
- South Hill Radio Site (57 Alta Vista Way, Daly City)
- Sutro Tower (250 Palo Alto Ave)
- Glen Park BART Station (Bosworth St/Monterey Blvd)
- Balboa Park BART Station (Geneva Ave/San Jose Ave)

Primary new radio communications sites include:

- SF MTA Muni Building (949 Presidio Ave)
- City College Downtown Campus (88 4th St)
- State Compensation Fund Building (1275 Market St)
- Commercial Data Center Building (200 Paul Ave)

DEM has identified alternative sites to be used if any of the primary sites fail to meet the network requirements. Proposed alternative radio communications sites include:

- Outdoor Public Warning System (OPWS) Siren Pole (25th Ave/Fulton St)
- OPWS Siren Pole (37th Ave/Pacheco St)
- OPWS Siren Pole (22nd Ave/Sloat Blvd)
- OPWS Siren Pole (47th Ave/Sloat Blvd)
- Candlestick Park (Candlestick Point)
- Southeast Community Center (1800 Oakdale Ave)
- OPWS Siren Pole (Fitch Ave/Egbert Ave)
- OPWS Siren Pole (Jamestown Avenue/Ingalls St)
- San Francisco Fire Department Station 17 (1295 Shafter Ave)

CEQA HISTORICAL RESOURCE(S) EVALUATION

The Department's analysis applies to individually designated historic resources and potential historic structures.

Category A Properties:

The following properties have been previously evaluated and found to be eligible for listing in the California Register of Historic Places. These buildings are considered "Category A" properties (Known Historical Resources) for the purposes of the Planning Department's California Environmental Quality Act (CEQA) review procedures.

- One Market Plaza (1 Market St) – constructed 1917, listed in National Register (Status Code 2S2)

Category B Properties:

The following properties are not included in any historic resource surveys or listed in any local, state or national registries. These buildings are considered a "Category B" property (Properties Requiring Further Consultation and Review) for the purposes of the Planning Department's California Environmental Quality Act (CEQA) review procedures due to their age (constructed prior to 1961) or their listing in informational surveys.

- SFMTA Muni Building (949 Presidio Ave)
- Clay/Jones Residential Building (1250 Jones St)
- Community Health Network Building (2789 25th St.)
- Alternative Site-Southeast Community Center (1800 Oakdale Ave)
- Alternative Site-Candlestick Park (Candlestick Point)
- Alternative Site-San Francisco Fire Department Station 17 (1295 Shafter Ave)

Category C Properties:

The following properties have either been affirmatively determined not to be historical resources, are properties less than 50 years of age, or are properties for which the City has no information indicating that the property qualifies as an historical resource.

- San Francisco State University (SFSU) Thornton Hall (1 Tapia Dr.)
- Department of Technology Radio Shop Building Communication Tower (901 Rankin St)
- City College Downtown Campus (88 4th St)
- State Compensation Fund Building (1275 Market St)
- Commercial Data Center Building (200 Paul Ave)

The Department has evaluated the proposed project and has considered that the sites located on either individual historic resources (Category A) or on potential historic resources (Category B) within the City and County of San Francisco, and their potential impact to historical resources. Based on the submitted information, it appears that any equipment proposed to be added to existing communication facilities and the installation of new communication facility sites on existing building roof tops would be consistent with the Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties, as the proposed new facilities and addition to existing facilities would be minimally visible from public rights-of-way when placed on existing structures, would be completely reversible with no harm to historic fabric, and would not, in their installation, cause damage or harm to historic fabric.¹

¹ CEQA Categorical Exemption Determination, January 11, 2012. A copy of this report is on file with the Planning Department at 1650 Mission Street Suite 400 and is available for public review as part of the project file 2011.1412E.

The Department's determination is based on an analysis of the impact of the proposed equipment; as it does not appear that the proposed equipment would impact the setting of historic resources in a manner that is considered a significant impact. It is unlikely that the existence of the proposed equipment on public property or on privately owned property would prevent future as yet undocumented historic districts or structures from conveying significance.

Conclusions

CEQA State Guidelines Section 15301(a), or Class 1, provides an exemption from environmental review for interior and exterior alterations to an existing structure. The proposed project work scope identified above would meet these criteria.

CEQA State Guidelines Section 15300.2 states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity would have a significant effect on the environment due to unusual circumstances. As described above, the proposed project would not have a significant effect on a historic resource. There are no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant environmental effect. The project would be exempt under each of the above-cited classification.

For all of the above reasons, the proposed project is appropriately exempt from environmental review.

**SITE ACCESS AND USE AGREEMENT
For Public Safety and Public Access Systems**

This Site Access and Use Agreement ("Agreement") is made as of 12/22, 2011 ("Effective Date"), by and between Motorola Solutions, Inc. ("Motorola") and the City and County of San Francisco ("City"). Motorola and City 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");
- B. WHEREAS, City is a member of the JPA;
- C. WHEREAS, City intends to allow certain properties it owns, are under its control, or has access to, to be accessed and used by Motorola for a Public Safety System, 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 City, as well as other similar site agreements with other public entities in the region, for the Bay Area Wireless Enhanced Broadband System ("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 City 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 the Public Safety System. As used in this Agreement, the term "Site" means a facility, such as a tower or building, at, on or in which Equipment will be installed as part of the Public Safety System ("PSS Equipment"), all of which are identified on the List of Sites (Exhibit A);
- 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 NT10BLX5570089 (the "BTOP Grant"), plus a significant financial "match" from Motorola; and
- H. WHEREAS, City acknowledges that the Public Safety System is of vital importance to the safety and well being of the region and the City and, therefore, it is the intent of the City to provide an expeditious review process for any required permits.

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 City 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.

2. Right of Entry, Access, and Use.

2.1. Subject to the terms and conditions set forth in this Agreement, City hereby grants to Motorola, its contractors and consultants, a nonexclusive, nontransferable right of entry onto the Sites which are owned by City, are under City's control, or the City has access to, 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 of title 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 PSS Equipment), test, own, operate and maintain the Public Safety System at the Sites. Without limiting the generality of the preceding sentence, Motorola's rights include the following: (a) 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 the Public Safety System; (b) if the Site is not qualified in its current condition, to remediate the Sites as is reasonable or necessary for use as a the Public Safety System Site in accordance with Site remediation/construction drawings approved by the City, which approval shall not unreasonably be withheld or delayed; and to use the Sites for the installation, testing, operation, and maintenance of PSS Equipment (such as antennas and other communications network infrastructure equipment). In exercising its rights as described in this section, Motorola will reasonably consult on material matters with City's "point of contact" whose name and contact information will be provided to Motorola and kept current by City. No other work shall be conducted on the Sites or that affect the Sites without the prior written consent of City.

2.2. As used herein, the term "non-exclusive" means City 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 ("Site Improvement"), Motorola will have exclusive use of the Site Improvement unless otherwise agreed in writing by the Parties. For example, if a Motorola Site Improvement involves installing a monopole so that PSS Equipment may be installed, then City may not install or allow the installation of any other equipment on the Site Improvement without Motorola's prior written consent.

2.3. If the City requests to make use of the Site Improvement, then Motorola will consult with the City 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 to the Site Improvement 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 City 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 City will, within five (5) business days

after receipt of Motorola's quoted price, either: (a) 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 City's agreement to pay the quoted price; or (b) will reject the quoted price, in which case the use request from the City 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 City'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.

2.4. 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 City if such transfer is mandated.

2.5. As used herein, the Site qualification process is described as follows: throughout the term of this Agreement, City will provide to Motorola all available records, structural, environmental or other analytical reports (including R56 compliance reports), photographs, drawings, certifications, third-party lease agreements and other information in City's possession concerning each Site, and concerning the issue of whether the Site is in "installation ready" condition.

2.5.1. The term "installation ready" means (i) the Site is accessible, available, ready and suitable for Motorola to install the intended PSS Equipment at the Site consistent with Motorola's design requirements as described in Section 2.5.2. Motorola acknowledges that, as of the Effective Date, the City 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).

2.5.2. 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 PSS 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 BayWEB Equipment; (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.

2.5.3. 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. City agrees to provide promptly to Motorola any such notices that it receives.

2.6. Before installing the PSS 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 City of any apparent deficiencies or non-conformities with Motorola's requirements. The report and advice given by Motorola to City 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. City assumes the risk and may rely upon Motorola's advice to the extent that it in its sole discretion considers such reliance to be appropriate. City 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 the Public Safety System.

2.7. After a Site is qualified, City will not modify and will not allow another party to modify the Site (including adding to or changing PSS Equipment installed at or connected to the Site) that would negatively affect the Public Safety System without first receiving Motorola's prior written consent which will not be unreasonably withheld or delayed.

2.8. This Agreement, does not apply to the portion of any Site at or in which the Long Term Evolution Core ("LTE Core") is installed, or to any City-owned fiber optic cabling that connects the LTE Core to other BayWEB PSS Equipment or Sites.

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 City 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 City for Motorola to perform the Site Remediation Work. During the Site qualification process, Motorola might determine that Site Remediation Work is needed for one or more Sites 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 City will pay for any Site Remediation Costs, except that if City wishes for the Site Remediation Work to be performed in a manner that enhances a Site beyond Motorola's needs and if the Parties agree that Motorola will perform the enhanced Site Remediation Work, then City will pay for the capital costs of such enhancements. City, and not Motorola, will pay for all other Site related costs and expenses, including any zoning/permitting costs and fees to the extent not waived and Site operating costs such as Site maintenance, security, electricity and other utilities, lease payments, property taxes, and the like.

4. Leased Sites.

4.1. The parties acknowledge that certain of the Sites identified in Exhibit A are not owned by City, but are either "controlled" by City or accessible to City by means of a lease or other form of legal right ("Leased Sites"). The parties agree that Site qualification for those Leased Sites is conditioned upon

City's ability to obtain from the owner of that Leased Site, and any person or entity with an intermediary right to the Leased Site, a written and signed acknowledgement or approval of this Agreement, Motorola's rights under this Agreement, and Motorola's right to use the Leased Sites to install PSS Equipment. The parties further agree that any Sites that are owned by the City, but are under the control of the San Francisco Public Utilities Commission ("SFPUC") or the San Francisco Municipal Transportation Agency ("SFMTA"), will be treated as Leased Sites for the purpose of this Section 4 Leased Sites, because they require separate approvals from the SFPUC and SFMTA. City must provide that signed acknowledgment or approval from the entity in control of any Leased Site (including the SFPUC and SFMTA) by January 31, 2012, or as soon as possible thereafter. If City has not provided the signed acknowledgement or approvals by January 31, 2012, then Motorola and City will promptly meet and confer to discuss whether one or more of the Leased Sites should be disqualified. If City has not provided the signed acknowledgement or approvals by February 29, 2012, then Motorola may disqualify any of the Leased Sites by giving notice to City and the Parties will amend this Agreement to delete the disqualified Leased Site. City will prepare the acknowledgement or approval form, subject to Motorola's reasonable approval of the form and content. Alternatively, such person or entity may insert and sign its acknowledgment or approval beneath the signature block of this Agreement.

4.2. If a Leased Site becomes disqualified under this Section, Motorola, City, 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 Public Safety System project's Site Remediation Costs budget. Notwithstanding the preceding sentence, absent Motorola's negligence, Motorola may request that City reimburse Motorola for any Site Remediation Costs that Motorola expended at the original but disqualified Leased Site. If Motorola makes this request, City may either reimburse Motorola for such expended costs or, alternatively decline the request and Motorola will be excused from any obligations to City to add the substitute Site and from any obligations under this Agreement (or the BOOM Agreement) related to the deleted disqualified Leased Site.

4.3. Motorola, its contractors and consultants shall, to the extent applicable, comply the terms and conditions of the Lease agreements for Leased Sites. City will provide to Motorola by January 31, 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). City acknowledges that the BOOM Agreement provides for a future transfer of the Public Safety System by Motorola to the JPA or its designee. At the time of such transfer, City will allow the JPA to have a reasonable time (not to exceed six months) to negotiate its own site access and use agreement with City, or remove the PSS Equipment from the Sites and restore the Sites to good condition reasonable wear and tear excepted.

6. Use of Sites to Minimize Adverse Impacts on Sites.

6.1. 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 City shall use all reasonable efforts to minimize any adverse impacts to Motorola from its or another's use of the Sites.

6.2. If significant and measureable interference occurs at a Site between: (i) the PSS 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 City or another party, then Motorola and City 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 City's or another party's malfunctioning equipment, then City 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.

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. City may not impose unreasonable special conditions or limitations on access to and use of the Sites or Motorola's performance of the work.

8. Confidential Information. 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 City is a public agency that is subject to document requests pursuant to the California Public Records Act, Freedom of Information Act and the San Francisco Sunshine Ordinance, if applicable ("Acts"). City 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, City 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, City 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 City 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 City's actions, taken at Motorola's request, in compliance with this provision in protecting Motorola's Confidential Information from public disclosure.

8.3. City acknowledges that the BTOP Grant requires Motorola to report on various matters concerning the Public Safety System 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. City 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 City or any other party.

9. Compliance with Laws/Permit Requirements.

9.1. 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.

9.2. At City owned Sites, City will be responsible for any required zoning and permitting activities, will endeavor to obtain the required permits as expeditiously as possible, and will pay for any related fees and costs that are not otherwise waived by City. At City Leased Sites, City will work with the applicable property owner to secure any required zoning and permitting activities, will endeavor to obtain the required permits as expeditiously as possible, and will pay for any related fees and costs that are not otherwise waived by City. In support of any required zoning and permitting activity, Motorola will, as expeditiously as possible, provide City with any required construction drawings and, if requested by City, assist City with the preparation of any other necessary supporting documents and provide other reasonable assistance to City in securing necessary permits (including submitting permits in Motorola's name, if so required by City), including attending any required permitting hearings.

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 City a Certificate of Insurance (standard Accord 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 Public Safety System 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 City's Risk 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 City, and its employees, agents, and officers (and the applicable lessor or sublessor if a Site is leased or subleased to City and that lease or sublease contractually obligates City 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 City 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 11, the Parties will meet and confer to determine whether Motorola, City, or another party shall repair the damage.

11.2. City 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 City) 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 City 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 City on the Sites.

11.3. This Section 11 shall survive the termination or expiration of this Agreement.

12. Limitation of Liability.

12.1. Either Party's total liability to the other Party under this Agreement for direct damages shall 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 the City. The Cap Amount shall not apply to either Party's obligation to indemnify the other Party as set forth in Section 11 Indemnification to the extent that indemnitor's obligation to indemnify the indemnitee for any claims, loss, damage, and liability for damages, costs, and expenses (including, without limitation, reasonable attorneys' fees actually) arises from a claim for injury to or death of any person or persons (including any users of the Sites), injury to any tangible property, including equipment and vehicles, or a claim caused by indemnitor's intentional tortious conduct or gross negligence.

12.2. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE TO CITY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT.

12.3. This Section 12 provision shall survive 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 City'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 12 Limitation of Liability. Notwithstanding the preceding sentence, City 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, City agrees that it may not terminate this Agreement for Motorola's uncured default if monetary damages are an adequate remedy. City 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: (i) without cause and for any reason until December 31, 2012; (ii) at any time if either the BTOP Grant or the BOOM Agreement is terminated; (iii) if the BOOM Agreement is not fully executed by January 20, 2012; or (iv) at any time for good cause (which does not require breach or default by City). 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 clause (iv), the Parties will promptly meet and confer about the "good cause" before the termination is effective. 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 reserves the right to remove the PSS

Equipment from the Sites if Motorola so chooses restore the Sites to good condition reasonable wear and tear excepted.

14. Assignment. Except as otherwise provided in Section 2.4, 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 City 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 (i) the date of delivery to the address of the person to receive such notice or (ii) three (3) business days after the date of posting the United States Postal Service at the following addresses:

(a) If to City:

Department of Emergency Management
1011 Turk Street
San Francisco CA 94102
Attn: JoAnn Hicks

(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 San Francisco, 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. City 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.

23.1. 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.

23.2. Notwithstanding anything herein to the contrary, Motorola understands and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Board of Supervisor shall have approved this Agreement in accordance with City's Charter. Therefore, any obligations of the City hereunder are contingent upon such approval, and this Agreement shall not be effective unless and until such approval is obtained. In the event that the Board of Supervisors does not approve this Agreement by February 8, 2012, then this Agreement shall terminate and shall be of no force and effect whatsoever.

24. Additional Provisions.

24.1. NON-DISCRIMINATION.

24.1.1 Covenant Not to Discriminate

In the performance of this Agreement, Motorola agrees not to discriminate against any employee of, any City employee working with Motorola, or applicant for employment with Motorola, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

24.1.2 Subcontracts

Motorola shall include in all subcontracts relating to the Sites a non-discrimination clause applicable to such subcontractor in substantially the form of Subsection 2.1 above. In addition, Motorola shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and

12C.3 of the San Francisco Administrative Code and shall require all subcontractor to comply with such provisions. Motorola's failure to comply with the obligations in this Subsection shall constitute a material breach of this Agreement.

24.1.3 Non-Discrimination in Benefits

Motorola does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

24.1.4 Condition to Agreement

As a condition to this Agreement, Motorola shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Motorola hereby represents that prior to execution of this Agreement, (i) Motorola executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

24.2. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

Through its execution of this Agreement, Motorola acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to: (i) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves; (ii) a candidate for the office held by such individual; or (iii) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Motorola acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Motorola further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Motorola's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Motorola; any subcontractor of Motorola listed in the contract; and any committee that is sponsored or controlled by Motorola. Additionally, Motorola acknowledges that Motorola must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Motorola further agrees to provide to City the names of each person, entity or committee described above.

24.3. POSSESSORY INTEREST TAXES

Motorola recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Motorola may be subject to the payment of property taxes levied on such interest under applicable law. Motorola agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Motorola's interest under this Agreement or use of the Sites pursuant hereto and to pay any other taxes, excises, licenses, Agreement charges or assessments based on Motorola's usage of the Agreement Area that may be imposed upon Motorola by applicable law. Motorola shall pay all of such charges when they become due and payable and before delinquency. Notwithstanding the foregoing, the City agrees that if Motorola is required to pay a possessory interest tax for its use of one or more of the Sites, City will promptly reimburse Motorola for such tax upon receipt of evidence that Motorola has paid such tax.

24.4. PESTICIDE PROHIBITION

Motorola shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which: (i) prohibit the use of certain pesticides on City property; (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage; and (ii) require Motorola to submit to DEM an integrated pest management ("IPM") plan that: (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Motorola may need to apply to any Site during the term of this Agreement; (b) describes the steps Motorola will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance; and (c) identifies, by name, title, address and telephone number, an individual to act as the Motorola's primary IPM contact person with the City. In addition, Motorola shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

24.5. PROHIBITION OF TOBACCO SALES AND ADVERTISING

Motorola acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Sites. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to: (i) communicate the health hazards of cigarettes and tobacco products; or (ii) encourage people not to smoke or to stop smoking.

24.6. CONFLICTS OF INTEREST

Through its execution of this Agreement, Motorola acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Motorola becomes aware of any such fact during the term of this Agreement, Motorola shall immediately notify the City.

24.7. DRUG-FREE WORKPLACE POLICY

Motorola acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Motorola agrees that any violation of this prohibition by Motorola, its employees, agents or assigns will be deemed a material breach of this Agreement.

24.8. MACBRIDE PRINCIPLES - NORTHERN IRELAND

The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Motorola acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

24.9. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly provided by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

24.10. PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

Motorola may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Motorola may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Motorola from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

24.11. WAGES AND WORKING CONDITIONS

With respect to the installation of any facilities or improvements, any employee performing services for Motorola shall be paid not less than the highest prevailing rate of wages and that Motorola shall include, in any contract for construction of such improvement work or any alterations at the Sites, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Motorola further agrees that, as to the construction of such improvement work or any alterations of the Sites under this Agreement, Motorola shall comply with all the applicable provisions of Section 6.22(E) of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Motorola shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of the improvement work or any alterations on the Sites.

24.12. CITY'S ALTERATIONS OF THE SITES

City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to all or any part of the Sites, for any purpose including compliance with mandatory or voluntary controls or guidelines, subject to the following terms and conditions, and provided that such

alterations, additions, repairs, deletions or improvements will not interfere with Motorola's use of the Sites. In performing any such work, City shall make good faith efforts to give Motorola prior notice of such work and shall make reasonable efforts not to disrupt Motorola's normal use of the Site. The making of any such alterations, additions, repairs, deletions or improvements shall in no event entitle Motorola to any damages or to absolve Motorola of its obligation to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Motorola, provided that Motorola can still operate the Site to perform its duties under this Agreement and the Boom Agreement.

24.15. HAZARDOUS MATERIALS AT SITES

Motorola covenants and agrees that neither Motorola nor any of its agents or invitees shall cause or permit any hazardous material to be brought upon, kept, used, stored, generated, disposed of or released in, on or about the Sites, or transported to or from the Sites in violation of federal, state or local environmental laws, except that Motorola may use small quantities of hazardous materials as needed for routine cleaning and maintenance of Motorola's equipment which are customarily used for routine cleaning and maintenance of such equipment and so long as all such materials are handled and used in compliance with federal, state or local environmental laws. Motorola shall immediately notify City if and when Motorola learns or has reason to believe there has been any release of hazardous material on or about the Sites.

24.16. TITLE TO AND REMOVAL OF MOTOROLA'S PROPERTY

Unless as otherwise provided for in the BOOM Agreement, all permitted improvements or equipment installed at and affixed to Sites by Motorola and all of Motorola's personal property (collectively, "Motorola's Property") shall remain the property of Motorola; provided, however, that any structural improvements to the Sites made by Motorola shall become City's property upon termination of this Agreement and remain at the Sites. City hereby acknowledges that Motorola may at any time, including any time it vacates the Sites (excluding the structural improvements referenced above), remove all of Motorola's Property from the Site.

24.17. CITY'S ACCESS TO THE SITES


City and its designated agents shall have the right to enter the Sites at all reasonable times upon not less than twenty-four (24) hours advance notice, except in the event of an emergency in which case City and its designated agents may enter the Sites immediately. In case of an emergency, City shall not be responsible for any damage or injury to any Motorola's Property, nor for the replacement of Motorola's Property, provided that City or its employees or agents causing any damage to Motorola's Property were taking reasonable actions in responding to the emergency.

24.18. SURRENDER OF SITES

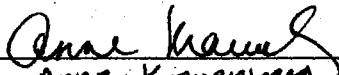
Upon expiration or termination of this Agreement, Motorola shall surrender to City the Sites in good order and condition, normal wear and tear excepted, free of debris and hazards, after having made the last necessary repair required by Motorola.

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

MOTOROLA SOLUTIONS, INC.

By: 
Name: Carla Schwab
Title: Program Director
Date: December 22, 2011

CITY AND COUNTY OF SAN FRANCISCO

By: 
Name: Anne Kronenberg
Title: Executive Director, DEM
Date: Jan 4, 2012

Approved as to Form:

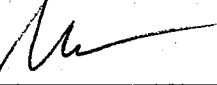
By: 
Name: William K Sanders
Title: Deputy City Attorney
Date: 01/04/12

EXHIBIT A

SITE LIST

City owned sites:

1. MUNI Building Presidio
2. Forest Hill
3. CRS Twin Peaks
4. Department of Technology Radio Shop (901 Rankin St.)
5. Community Health Network

Other entity owned sites:

6. Fort Miley/VA Hospital
7. Presidio Hill
8. Clay Jones
9. One Market Plaza
10. City College Downtown Campus
11. State Compensation Fund Building (1275 Market St.)
12. San Francisco State University
13. Bernal Heights -99 Moultrie
14. 200 Paul Avenue
15. South Hill
16. Sutro Tower

DEM has identified alternate sites owned by the City to be used if any of the primary sites fail to meet the network requirements.

- A. City OPWS siren pole at 25th and Fulton
- B. City OPWS siren pole at 37th & Pacheco (45' Wood Pole)
- C. City OPWS siren pole at 22nd & Sloat (45' Wood Pole)
- D. City OPWS siren pole at 47th and Sloat

- E. Candlestick Park – Candlestick Point**
- F. 1800 Oakdale – Southeast Community Center**
- G. City OPWS siren pole at Fitch and Egbert**
- H. City OPWS siren pole at Jamestown and Ingalls**
- I. San Francisco Fire Department Station 17 – 1295 Shafter**

EXHIBIT B

[Intentionally Omitted]

EXHIBIT C

SITE ACCESS AND USE PROCEDURES

1. Site Access and Use Procedures

- a. All site access to be scheduled at least one week in advance with the point of contact designated by the Department of Emergency Management (“DEM”) and the Department of Technology (“DT”) as specified below.
- b. Motorola will prepare a schedule for accessing the Sites and accessing the Sites will be coordinated through DEM representatives with reference to this master schedule.
- c. Motorola agrees to follow all site-specific rules and regulations to be provided prior to each site visit, and to comply with any instructions or restrictions on access or limitation on activities as directed by DEM or DT staff prior to, during or after the site access.

2. Contacts for Site Access and Scope of Work.

For City:
JoAnn Hicks
Department of Emergency Management
1011 Turk Street
San Francisco CA 92109
415-558-3831 (office)
Joann.Hicks@sfgov.org

For Motorola:
Coyle Schwab
1001 Bayhill Drive, #200
San Bruno CA 94066
650-616-4321 (office)
630-797-0666 (cell)
Coyle.Schwab@motorolasolutions.com

EXHIBIT D

INSURANCE REQUIREMENTS



MEMORANDUM OF INSURANCE

PRODUCER AON RISK SERVICES CENTRAL, INC. AON CENTER 200 EAST RANDOLPH STREET CHICAGO, ILLINOIS 60601 <small>D/B/A Aon Risk Insurance Services of Illinois. CA License #0095623</small>	THIS MEMORANDUM IS A MATTER OF INFORMATION ONLY. THIS MEMORANDUM DOES NOT AMEND, EXTEND OR ALTER THE COVERAGES AFFORDED BY THE POLICIES BELOW.
	COMPANIES AFFORDING COVERAGE
	COMPANY A LIBERTY MUTUAL FIRE INSURANCE COMPANY
	COMPANY B LIBERTY INSURANCE CORPORATION

INSURED
 MOTOROLA SOLUTIONS, INC. AND ITS SUBSIDIARIES
 1303 EAST ALGONGUIN ROAD
 SCHAUMBURG, IL 60196

COVERAGES
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY -Commercial General Liability -Occurrence	TB2-641-005169-071	7/01/2011	7/01/2012	GENERAL AGGREGATE	\$5,000,000
					PRODUCTS - COMP/OP AGG	Included
					PERSONAL & ADV INJURY	\$5,000,000
					EACH OCCURENCE	\$5,000,000
					FIRE DAMAGE (any one fire)	\$250,000
					MED EXP (any one person)	\$10,000
A	AUTOMOBILE LIABILITY -Any Auto	AS2-641-005169-011 (Domestic Auto- All Sates)	7/01/2011	7/01/2012	COMBINED SINGLE LIMIT	\$5,000,000
					BODILY INJURY (per accident)	
					BODILY INJURY (per accident)	
					PROPERTY DAMAGE	
	GARAGE LIABILITY				AUTO ONLY (each accident)	
					OTHER THAN AUTO ONLY	
					EACH ACCIDENT	
					AGGREGATE	
	EXCESS LIABILITY				EACH OCCURENCE	
					AGGREGATE	
B	WORKERS COMP & EMPLOYER'S LIABILITY	WA7-64D-005169-081 (Deductible)	7/01/2011	7/01/2012	<input checked="" type="checkbox"/> WC Statutory limits	
B		WC7-641-005169-091 (Retro)			EL EACH ACCIDENT	\$1,000,000
		EL DISEASE-POLICY LIMIT			\$1,000,000	
		EL DISEASE - EA EMPLOYEE			\$1,000,000	
	OTHER					

FOR INFORMATIONAL PURPOSES ONLY



Edwin M. Lee
Mayor

Department of Emergency Management
1011 Turk Street, San Francisco, CA 94102

Division of Emergency Communications
Phone: (415) 558-3800 Fax: (415) 558-3843

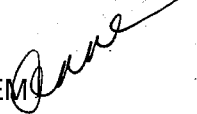
Division of Emergency Services
Phone: (415) 487-5000 Fax: (415) 487-5043



Anne Kronenberg
Executive Director

MEMORANDUM

To: Mayor Edwin Lee

From: Anne Kronenberg, Executive Director, DEM 

Date: January 9, 2012

Re: Introduction of BayWEB Site Access and Use Agreement

The Department of Emergency Management (DEM) respectfully requests that the Mayor introduce the attached resolution at the January 10, 2012 Board of Supervisors meeting to approve a Site Access and Use Agreement (Agreement) between the City and County of San Francisco and Motorola Solutions, Inc. Approval of this legislation is a critical step in advancing the Bay Area Wireless Enhanced Broadband (BayWEB) system within the tight grant deadlines imposed by the federal Broadband Technology Opportunity Program (BTOP) stimulus grant that finances this project. Board of Supervisors approval is required because, although no City funds change hands with Motorola, the 12-year term of the Agreement exceeds the 10-year threshold that triggers Board approval.

Background

In December 2011, DEM and the City Attorney completed negotiations with Motorola, Inc. on this Agreement, which sets the conditions for how Motorola will access up to 16 sites either owned or leased by the City in order to install antennas and other equipment needed to operate the BayWEB network. Many of the sites, such as Sutro Tower, already contain antennas and other communications equipment. Five of the sites are owned by the City. DEM, the Dept. of Technology, and the Dept. of Real Estate plan to negotiate lease amendments or new leases for the other 11 sites. Leases longer than one year will also be subject to Board of Supervisors approval.

Planning Department Review

The Planning Department is conducting an CEQA review for all of the sites in order to provide a Categorical Exemption Determination (CATEX) for the entire project prior to approval by the Board of Supervisors. All project sites will be subject to the regular the Planning Department permit approval process, subsequent to Board of Supervisors approval of the Agreement .

Key Deadlines

DEM requests that this resolution be calendared at the Budget Committee on January 18, with final Board approval targeted for January 24. The Site Access and Use Agreement contains a provision that the Board of Supervisors must approve it by February 8, 2012, or else the Agreement terminates. Motorola plans to begin ordering equipment once the Agreement is approved. Federal grant guidelines require that grant funds be 2/3 spent by August 2012, and fully spent by August 2013.

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *Edwin M. Lee* Mayor Edwin M. Lee *je*
RE: Approving the Bay Area Regional Interoperable Communications Systems Agreement
DATE: January 10, 2012

Attached for introduction to the Board of Supervisors is the resolution approving site access and use agreement with Motorola for the San Francisco sites to be used for the Bay Area 700 MHz public safety broadband spectrum to be managed and operated by the Bay Area Regional Interoperable Communications Systems for a term of twelve years and making findings, including environmental findings.

I request that this item be calendared in Budget and Finance Committee on January 25th, 2012.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

