

**Item 4**  
**File 12-0022**  
*(continued from January 25, 2012)*

**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.
- On January 19, 2012, the Planning Department determined that the actions contemplated in this resolution comply with the California Environmental Quality Act (CEQA), with issuance of a Categorical Exemption.

### Fiscal Impacts

- Under the proposed 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. Motorola will provide an estimated total of \$94.6 million infrastructure funding for the proposed regional BayWEB system.
- 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 in San Francisco.
- City one-time costs are estimated at \$97,800 in FY 2011-12 and \$180,000 in FY 2012-13, or a total of \$277,800.
- 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 \$17,000 to \$28,000 annually for the 11 non City-owned sites, or total estimated ongoing annual costs ranging from \$228,000 to \$360,000.

- Over the proposed 12-year term of the subject Agreement, the ongoing lease, utility and related expenses are projected to cost the City \$2,736,000 to \$4,320,000. Together, with the initial estimated one-time expenses of \$277,800, the total cost of the proposed resolution would range from \$3,013,800 to \$4,597,800.
- 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**

- On January 10, 2012, the Inspector General for the Department of Commerce issued a follow-up report identifying several areas of concern regarding the award of the \$50.6 million Broadband Technology Opportunities Program (BTOP) grant to Motorola for the BayWEB project.
- 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 \$277,800 of additional one-time expenses in FY 2011-12 and FY 2012-13 and \$228,000 to \$360,000 of ongoing additional annual costs commencing in FY 2012-13, resulting in an estimated total cost of \$3,013,800 to \$4,597,800 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 estimated costs.
- In July, 2011, the Board of Supervisors approved the Committee on Information Technology (COIT) City Information and Communication Technology (ICT) Plan for Fiscal Years 2011-12 through 2015-16, identifying the City's and individual Department's Information and Communication Technology priorities, costs, and funding for each of the next five years. However, this ICT Five Year Plan does not include 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**

- Given that the subject BayWEB project has not been incorporated within the City's Five-Year Information and Communication Technology (ICT) Plan, and a funding source for the proposed Agreement and future potential costs have not been identified, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy decision for the Board of Supervisors.
- Request that all City departments currently working on various communication systems, including DEM, Police, the San Francisco Municipal Transportation Agency (SFMTA) and the Department of Technology immediately convene to discuss and coordinate specific communication systems and 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.

**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 Agreement<sup>1</sup> 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 fees<sup>2</sup> 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, photos, 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 BayWEB<sup>3</sup>. 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

---

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Motorola provided a \$21 million match to this \$50.6 million NTIA 2010 Federal stimulus grant and is anticipated to contribute an additional \$23 million to remediate potential sites. 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.

regarding this BayWEB system<sup>4</sup>. Under this separate BOOM Agreement, individual participants, 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) during the first year.<sup>5</sup> 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 2015-2016. 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.

---

<sup>4</sup> This BOOM Agreement was approved by ten of the 13 representatives on the BayRICS Joint Powers Authority, with the City of San Jose and Santa Clara County voting against and the City of Oakland abstaining from approving the BOOM Agreement.

<sup>5</sup> Under the BOOM Agreement, Motorola would charge subscribers \$38 per month per device during the first year, or until July 1, 2014. After July 1, 2014, Motorola can change these monthly fees on an annual basis, based on changes in the "commercial competitive market". Motorola may also offer additional system features for additional fees, if approved by the BayRICS Authority. In addition, the BayRICS Joint Powers Authority would add a monthly surcharge of \$5 per month as an administrative fee, for a total cost of \$43 per month per device the first year. In subsequent years, the BayRICS Authority would also be able to adjust their fees based on their administrative and related expenses.

- 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 consent<sup>6</sup>.
- 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 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 I<sup>7</sup>, 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.

---

<sup>6</sup> 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.

<sup>7</sup> Ms. 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.

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.

The proposed resolution states that the Planning Department determined that the actions contemplated in this resolution comply with the California Environmental Quality Act (CEQA). On January 19, 2012, the Planning Department approved a Categorical Exemption from CEQA for the entire BayWEB project.

## **FISCAL IMPACTS**

### **Motorola Participation in the BayWEB System**

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 or nine potential alternate sites in San Francisco. As discussed above, Motorola received a \$50.6 million NTIA 2010 Federal stimulus grant, and is providing \$21 million in matching funds and \$23 million to upgrade potential sites, for a total of \$94.6 million infrastructure funding for the proposed regional BayWEB system.

### **Upgrades to the BayWEB System**

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. Mr. Fraser advises that the proposed 700 MHz BayWEB system would operate on a "4G" specification platform to provide text, photos, graphics and videos. However, the BOOM Agreement does not provide for any new technology or equipment enhancements over the ten-year BOOM Agreement period, such that Mr. Fraser advises that the BayRICS Joint Powers Authority has discussed the possibility of adding an additional fee for each subscriber, after an initial three years, to create a fund, to pay for additional upgrades and enhancements to the BayWEB system over time. The amount of such additional subscriber fees, the specific upgrades and enhancements that would be needed and the costs of such upgrades and enhancements are not known at this time.

### **City Site Related Costs**

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. As noted above, 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. The Budget and Legislative Analyst notes that additional sites would likely result in additional annual utility and/or lease costs to the City, although the amount of such costs cannot be determined at this time.

### **City One-Time Expenditures**

According to Mr. Fraser, initial one-time expenditures to be incurred by the City are currently estimated at \$97,800 in FY 2011-12 and \$180,000 in FY 2012-13, or a total of \$277,800. As shown in Table 1 below, the total estimated \$277,800 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) \$77,000 to be incurred by the Department of Real Estate to develop and negotiate the 11 anticipated leases<sup>8</sup>, (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 full-time equivalent (FTE) 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**

<b>Initial One-Time Costs</b>	<b>FY 2011-2012</b>	<b>FY 2012-2013</b>	<b>Total</b>
Categorical Exemption -Planning Department	\$5,800*	\$0	\$5,800*
Leases - Department of Real Estate	77,000	0	77,000
Permits - Department of Building Inspection	15,000	30,000	45,000
Staff – Department of Technology	0	150,000	150,000
<b>Total One-Time Costs</b>	<b>\$97,800</b>	<b>\$180,000</b>	<b>\$277,800</b>
*Cost already paid by DEM			

According to Ms. Alden, other than the \$5,800 Categorical Exemption fee, which DEM has already paid to the Planning Department, as of the writing of this report, decisions have not been completed between the DEM and the Mayor's Office regarding who will fund the current FY 2011-12 or FY 2012-13 expenses, shown in Table 1 above.

<sup>8</sup> This cost was revised from an initial \$110,000 to \$77,000, an estimated savings of \$33,000, assuming that the 11 leases will be similar and thus duplicative efforts would be eliminated.

### **City's Ongoing Annual Expenditures**

As shown in Attachment II, provided by Mr. Fraser, and summarized in Table 2 below, DEM 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 estimates additional lease and related expenses for the remaining 11 primary sites from \$0 to \$7,500 per month<sup>9</sup> or an estimated total ranging from \$17,000 to \$28,000 monthly, or \$204,000 to \$336,000 annually. Together, as shown in Table 2 below, these estimated ongoing annual costs would range from a total of \$228,000 to \$360,000. 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 \$2,736,000 to \$4,320,000. It should be noted that these projected utility and lease costs do not include anticipated annual adjustments, which for leases typically range from three to six percent annually, according to Mr. Updike. Together, with the initial estimated one-time expenses of \$277,800 shown in Table 2 below as well as Table 1 above, the total estimated cost to the City over the proposed 12 year Site Access and Use Agreement ranges from \$3,013,800 to \$4,597,800, as summarized in Table 2 below.

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

<b>Ongoing Costs</b>	<b>Monthly</b>	<b>Annual</b>
Electricity/Utilities at Five City Sites	\$2,000	\$24,000
Leases at 11 Non-City Sites	17,000 – 28,000	204,000 – 336,000
<b>Total Ongoing Costs</b>	<b>\$19,000 – \$30,000</b>	<b>\$228,000 - \$360,000</b>
<b>Total 12-Year Ongoing Costs</b>		<b>\$2,736,000 - \$4,320,000</b>
<b>Total One-Time Costs</b> (see Table 1 above)		<b>\$277,800 - \$277,800</b>
<b>Total One-Time and Ongoing Costs</b>		<b>\$3,013,800 - \$4,597,800</b>

As of the writing of this report, funding sources have not been identified to pay the total estimated costs ranging from \$3,013,800 to \$4,597,800. However, Ms. Alden advises that the Department of Emergency Management is in discussions with the Mayor's Office regarding

<sup>9</sup> As shown in Attachment II, DEM is projecting lease costs of \$0 to \$7,500 per month per site based on estimates provided by the Department of Real Estate. In addition, 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 the Presidio or Sutro Tower, in lieu of the City paying monthly lease payments, are reflected.

what source of revenues would be used to fund the subject Agreement and which City departments would budget for such costs.

### **Liabilities for Motorola and the City**

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**

### **Inspector General Report for the Department of Commerce**

On January 10, 2012, the Inspector General for the U.S. Department of Commerce issued a follow-up report identifying several areas of concern regarding the grant application process and the award of the \$50.6 million Broadband Technology Opportunities Program (BTOP) grant to Motorola for the BayWEB project. In this report, the Department of Commerce's Inspector General found: (a) the grant application was not directly attributable to the grantee, (b) the regional governing body, BayRICS Joint Powers Authority, as presented in the application did not exist, (c) misrepresentations regarding the "shovel readiness" of the sites for broadband infrastructure, and (d) the grant application misrepresented the BayRICS authority to use the broadband spectrum. The Inspector General advises that these findings of concern, while they "may not mandate termination of the grant, they have contributed to delays in the project that put at risk the successful completion of the project and the fulfillment of the grant's purpose." In response, on January 11, 2012, the Assistant Secretary for Communications and Information for the U. S. Department of Commerce responded to the Inspector General that "this project has faced challenges from the start"....and urged all parties to work with the U. S. Department of Commerce's NTIA to "bring the benefits of a public safety broadband network to the Bay Area consistent with prudent management of taxpayer dollars".

### **Unidentified Funding Sources**

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, and as shown in Table 2 above, the proposed Agreement is estimated to result in \$277,800 of additional one-time expenses in FY 2011-12 and FY 2012-13 and \$228,000

to \$360,000 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 \$3,013,800 to \$4,597,800 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.

### **BayWEB Access Monthly Subscription Fees**

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) for the first year. The \$43 per month per device fee includes \$38 payable to Motorola and \$5 payable to the BayRICS Authority, or a total of \$516 (12 months x \$43 per month) per device the first year. After July 1, 2014, both Motorola and the BayRICS Joint Powers Authority could annually increase these monthly fees based on market rates.

DEM will provide estimates of the number of devices and the estimated monthly fees directly to the Budget and Finance Committee on February 1, 2012.

### **New Devices Needed to Access BayWEB System**

According to Mr. Fraser, although the City would not be required to subscribe to this BayWEB system, the City will incur the estimated costs shown in Table 2 above of \$3,013,800 to \$4,597,800 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.

DEM advises that they are currently working with the City's public safety departments to project the number of devices anticipated to access the proposed BayWEB system. According to Ms. Alden, each device is estimated to cost \$400-\$1,500 per unit, depending on the type of device selected (e.g., radio, modem or computer). In contrast, Ms. Alden reports that the current Police and Fire 800 MHz radios cost approximately \$3,500 per unit. DEM will provide estimates directly to the Budget and Finance Committee on February 1, 2012 regarding the number and total costs of equipment to be purchased. According to Ms. Alden, DEM will seek various Federal grants, including Urban Area Security Initiative (UASI), State Homeland Security, Department of Justice Community Oriented Policing (COPs) and Justice Assistance Grant (JAG) and Port Security grants to potentially purchase the required devices needed for the proposed BayWEB system. However, there are no assurances that such grant funds would be provided.

### **COIT's Recently Approved Five Year Plan, FY 2011-12 Through 2015-16**

In July of 2011, the Board of Supervisors approved the Committee on Information Technology's (COIT)<sup>10</sup> Information and Communication Technology (ICT) Plan: Moving from Vision to Results, Fiscal Years 2011-12 through 2015-16. 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 individual department's Information and Communication Technology priorities, costs, and funding for each of the next five years. DEM advises that the BayWEB project was presented to COIT in January of 2011. However, the City's current ICT Five-Year 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, including an estimated \$29 million for the devices and \$36 million for the infrastructure and staff, 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 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<sup>11</sup>. 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 communication systems, including DEM, Police, SFMTA and the Department of Technology, immediately convene to discuss and coordinate the specific communication systems and improvements that are needed in the City.

## RECOMMENDATIONS

---

<sup>10</sup> 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.

<sup>11</sup> In response, Ms. Michelle Geddes of DEM advises that DEM representatives met with COIT's Architecture Committee on January 26, 2012, plan to present an overview of the BayWEB system to the full COIT Board at their next meeting and hope to participate in COIT's funding process in future years.

1. Given that the subject BayWEB project has not been incorporated within the City's Five-Year Information and Communication Technology (ICT) Plan, and a funding source for the proposed Agreement and future potential costs have not been identified, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy decision for the Board of Supervisors.
2. Request that all City departments currently working on various communication systems, including DEM, Police, SFMTA and the Department of Technology immediately convene to discuss and coordinate specific communication systems and improvements needed in the City.
3. 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.

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

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

## SITE USE AGREEMENT PROJECTED RECURRING COSTS

Site	Estimated Lease Costs	Estimated Utilities Costs	NOTES
<b>City Owned Primary Sites</b>			
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 <sup>th</sup> 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)
<b>Other Entity-Owned Primary Sites</b>			
Fort Miley/VA Hospital - 43 <sup>rd</sup> Avenue at Clement Street	\$2,000	\$0	
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	\$2000-\$7,500	\$0	
One Market Plaza - 1 Market Street	\$2,000	\$0	Estimate based on recent negotiations with landlord (25% markup)
City College Downtown Campus - 88 - 4 <sup>th</sup> 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	\$2,000	\$0	
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	\$2,500	\$0	Estimate based on recent negotiations with landlord (25% markup)
200 Paul Avenue	\$2000-\$7,500	\$0	
South Hill Radio Site (57 Alta Vista Way in Daly City)	\$1,500	\$0	
Sutro Tower	\$0	\$0	Sutro desires to enter into a City fiber sharing agreement in lieu of monthly lease
<b>BART Sites (primary sites not owned or controlled by the City)</b>			
BART facility at Glen Park	\$0	\$0	
BART facility at Balboa Park	\$0	\$0	
<b>City-Owned Alternate Sites (To be used only if any primary sites become too expensive to fail to meet requirements)</b>			
City siren pole - 25 <sup>th</sup> Avenue at Fulton	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
City Outdoor Public Warning System (OPWS) siren pole - 37 <sup>th</sup> Avenue at Pacheco	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
City OPWS siren pole - 22 <sup>nd</sup> Avenue at Sloat Boulevard	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
City OPWS siren pole - 47 <sup>th</sup> Avenue at Sloat	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
Candlestick Park - Candlestick Point	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
Southeast Community Center - 1800 Oakdale Avenue	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
City OPWS siren pole - Fitch at Egbert Avenue	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
City OPWS siren pole - Jamestown Avenue at Ingalls Street	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
San Francisco Fire Department Station 17 - 1295 Shafter Avenue	\$0	\$0	Use of City owned sites require no lease or net cost. Utility Cost only incurred if site replaced a leased site on the primary list.
<b>TOTAL MONTHLY LEASE COSTS</b>	<b>17,000-28,000</b>	<b>\$2,000</b>	
<b>TOTAL ANNUAL LEASE COST</b>	<b>\$204,000- \$336,000</b>	<b>\$24,000</b>	

## Assumptions:

1. Lease cost estimates based on recent commercial lease negotiations for One Market, Bernal sites, current discussions with landlords and Mr. Updike.
2. Utility Costs obtained from BayRICS System Funding Plan Report, high end estimate (October 18, 2011).
3. Alternate Site costs are not included, as the alternate would only be used to replace a primary site (assuming the substituted costs would be comparable).