



MEETING DATE: 4/4/11

ITEM NO: 1

COUNCIL AGENDA REPORT

DATE: MARCH 25, 2011

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

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SUBJECT: AUTHORIZE THE TOWN MANAGER TO ENTER INTO A JOINT POWERS
AUTHORITY AGREEMENT WITH THE BAY AREA REGIONAL INFORMATION
AND COMMUNICATIONS SYSTEM (BAYRICS)

RECOMMENDATION:

Authorize the Town Manager to enter into a Joint Powers Authority agreement with the Bay Area Regional Interoperable Communications System (BayRICS)

BACKGROUND:

In August 2010, a federal grant of approximately \$50 million dollars was awarded to Motorola Corporation, through a private-public partnership with the Bay Area Urban Area Security Initiative (UASI), funded through the American Recovery and Reinvestment Act (ARRA) for the purpose of building a public safety specific, as well as a public access, wireless broadband network throughout the Bay Area. The specific project driving the formation of the JPA, in addition to other regional interoperability initiatives, is known as the BTOP BayWEB project being developed by the Motorola Corporation. Since the granting of the award, Bay Area cities and counties have been working to establish an appropriate governance structure to support this grant funded project, as well as other existing and planned regional projects. A Joint Powers Authority governance model is proposed. This staff report discusses the benefits and costs to Los Gatos and the region and recommends delegation of authority to the Town Manager to join the BayRICS JPA.

DISCUSSION:

A Joint Powers Authority currently exists within Santa Clara County for the purpose of advancing interoperable communication, primarily within the public safety arena. The Silicon Valley Regional

PREPARED BY: SCOTT R. SEAMAN, CHIEF OF POLICE

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Reviewed by: PS Assistant Town Manager JS Town Attorney
____ Clerk Administrator JS Finance ____ Community Development

Interoperability Authority (SVRIA) was constituted in June, 2010 replacing its predecessor, the Silicon Valley Regional Interoperability Project (SVRIP). SVRIA is comprised of all but one of the Santa Clara County cities and the County of Santa Clara. Its board is comprised of elected officials seated either by specific designation or through appointment by City Managers/County Executive. A working committee supports the elected board. This working committee is chaired by Chief Scott Seaman.

As SVRIA only addresses issues in Santa Clara County, it is not the appropriate body to manage Bay Area-wide interoperability issues; although, SVRIA is certainly a key partner in regional issues. To plan and implement the complex issues of regional deployment of interoperable communications throughout the Bay Area, including the immediate need of implementing the BTOP (Broadband Technology Opportunities Program) BayWEB project, a regional broadband wireless network for public safety-specific uses and general population public access through key community venues, a new governance structure is needed. The cities and counties of the Bay Area, under the leadership of the Alameda County Sheriff's Department, have been working for approximately six months to design and implement this new governance structure. A proposed Joint Powers Authority for a Bay Area Regional Interoperable Communications System (BayRICS) is under current development with the draft JPA agreement undergoing intense regional review and finalization. The timeline for the creation of the JPA is compressed to accommodate the grant timeline of the ARRA-funded BTOP BayWEB project.

The JPA agreement establishes a structure for membership with 19 board positions. Each of the three major cities in the Bay Area (San Jose, San Francisco and Oakland) has seats on the new authority as do each of the ten counties within the Bay Area. Seats are also designated for an "at large" member and the State of California. In addition, seats are designated for each of four "hubs" comprised of cities in the South, North, East and West Bay Area regions. Los Gatos is designated within the "South Bay Cities" grouping with all cities in Santa Clara County and Santa Cruz County. Threshold membership of four cities within the "South Bay Cities" is required for the Santa Clara County and Santa Cruz County cities to have a seat on the board. An aggregate payment of \$24,500 is required from each regional cities grouping to join the JPA with a like payment occurring on an annual basis to continue to participate. The \$24,500 payment is a shared payment between all participating cities within the regional grouping. If every city in the regional grouping participated, the cost would be shared among 18 cities. If only four cities participate initially, to reach the threshold for inclusion on the board, the cost would be shared between those four cities. A four city-shared amount is \$6,125 per city. Nothing precludes additional cities within a regional grouping agreeing to participate after any initial four cities join thereby spreading costs over a greater number of participants and reducing the per-city costs.

Los Gatos has been integrally involved in regional interoperability efforts through the designation of the Chief of Police as the Chair of the Silicon Valley Regional Interoperability Project (SVRIP), the predecessor of the SVRIA, and now as Chair of the Working Committee of the SVRIA. Because of the chief's intimate understanding of regional interoperability efforts, staff sees benefits to the Town of Los Gatos, and as a regional partner, to join the JPA as one of the threshold four cities to allow the South Bay cities to be constituted and to participate in the initial governance discussions for this newly formed effort. The cities of Sunnyvale, Santa Clara and Monte Sereno are moving forward to also join the JPA, thereby likely creating the four city threshold for membership in the JPA for the "South Bay Cities" grouping.

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As with any newly proposed JPA, staff considers the financial impacts, both initial and on-going, as well as other obligations. At this time, the costs associated with joining the JPA are viewed as a reasonable investment in exchange for a seat on the board on regional interoperability initiatives. In addition, staff continues to review the proposed JPA agreement for an "exit clause" in the event that the BTOP BayWEB project presents costs and burdens which are untenable, or the project does not continue for any reason. To this point, as the JPA is focused on advancing all interoperability initiatives regionally, the JPA is expected to continue to be a viable governance structure for all other regional initiatives, even if the BTOP BayWEB project changes or is discontinued. As the JPA is still in draft form, staff recommends that the Council authorize the Town Manager to continue to evaluate the proposed JPA and execute an agreement on behalf of the Town when the JPA is finalized and determined to still meet the interests of the Town and the region. The Town Manager will directly consult with the chief of police, in his role in local regional interoperability, as well as the Executive Director of SVRIA, in evaluating the final JPA and reaching a decision whether the Town should participate.

The chief has consulted with the County of Santa Clara and the City of San Jose and determined that both entities intend to join the JPA. Each of their seats are separate from the seat which would be granted to Los Gatos and other cities in the South Bay Cities grouping.

While major portions of the BTOP BayWEB broadband wireless project is grant funded, all cities know that there will be local costs associated with individual equipment purchase and monthly subscription fees and possibly other local costs associated with upgrading the existing infrastructure to support the grant funded technology. These costs are not part of the federal grant program. Concurrent work is occurring to study and define these costs. The BayRICS JPA intends to develop and propose a financing plan for the region for the major unfunded infrastructure costs as one of its first key objectives. The financing plan for the BTOP BayWEB project is expected in June or July 2011. Cities will have time to review the financing plan and make individual decisions whether to continue to participate in both the BTOP BayWEB project and the BayRICS JPA at that time.

One key area of interest for Los Gatos and the South Hub is the relationship between SVRIA and the BayRICS JPAs. This relationship is currently being discussed within the context of the development of the final JPA agreement.

A copy of the latest draft of the BayRICS JPA is attached to this report to show the structure and key principles already agreed to by the regional partners.

CONCLUSION:

Staff recommends approval of this report which will authorize the Town Manager to execute a Joint Powers Authority agreement with the Bay Area Regional Interoperable Communications System (BayRICS) and will commit the Town of Los Gatos to an expenditure of no more than \$6,125.00 this fiscal year and the same amount in future years. This action, if three other cities in Santa Clara County or Santa Cruz County also participate, will cause the "South Bay Cities" grouping in the Bay Area to have a designated seat on the board of the BayRICS JPA. The selection of who assumes that seat on

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behalf of the "South Bay Cities" grouping will be the responsibility of the city managers for the participating cities in the "South Bay Cities" grouping.

Staff will continue to review the JPA formulation process to ensure an appropriate "exit clause" and to identify current/future costs and obligations to participate, to the degree that costs can be determined. Upon receipt of a regional funding plan for the BTOP BayWEB project, staff will make a recommendation to the Town Manager for continued participation.

ENVIRONMENTAL ASSESSMENT:

Is not a project defined under CEQA, and no further action is required.

FISCAL IMPACT:

As this is a recently proposed new governmental structure, no budget exists within the Town for the initial expenditure of \$6,125. If approved by Council, staff will work within the existing Police Department budget for 2010/2011 to identify funding and will augment the Police Department's budget proposal for FY 2011/2012 to include \$6,125 for annual participation costs. If more than four cities participate, staff will work with the region to share costs to lower the per-city costs.

Attachments:

Draft BayRICS Joint Powers Authority Document

Distribution:

**JOINT POWERS AGREEMENT TO ESTABLISH
THE BAY AREA REGIONAL INTEROPERABLE COMMUNICATIONS SYSTEM
(BayRICS) AUTHORITY**(3/18/11 revisions requested by Anne Keck, Sonoma Co.)

THIS JOINT POWERS AGREEMENT (this "Agreement"), dated for convenience of reference as of _____, 2011, is between the public entities that are the signatories to this Agreement.

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

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

A. The Members wish to establish ~~or develop and maintain~~ two regional broadband communications systems, broadband and other advanced information systems, including: (1) a secure network dedicated to interoperable public safety agency communications ("Public Safety System"); and (2) for interoperable public safety communications ("Public Safety System") in the Bay Area, and a wireless broadband system for public access with a focus on providing ~~of affordable broadband service for community anchor institutes (e.g., public libraries, schools, parks and recreation districts, health care facilities, local governmental facilities, community centers, etc.) and members of the public in the Bay Area ("Public Access System") (collectively referred to as "Systems").~~

B. The Members wish to work cooperatively in developing regional communications and advanced information ~~S~~ystems, ~~for use within the 10-county Bay Area region (including the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, Santa Clara, Santa Cruz, San Mateo, Solano, and Sonoma (referred to as the "Bay Area"))~~, and have determined that working in concert is in the public interest, as doing so would provide the most effective and economical interoperable communications and broadband architecture for all participating public entities and agencies.

C. The Bay Area UASI Approval Authority allocated federal Urban Areas Security Initiative grant funds to establish and develop a regional interoperable public safety digital microwave communications system for the Bay Area ("BayLOOP"), which will support interoperable public safety broadband communications that are intended to become part of the pPublic sSafety System. ~~It is anticipated that BayLOOP will become assets that this Authority will control.~~

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

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

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

ARTICLE I - GENERAL PROVISIONS

1.01 Purpose.

This Agreement creates a local governmental entity to exercise the powers shared in common by its Members to engage in regional ~~and~~ cooperative planning and coordination of governmental

services, and to develop regional interoperable public safety advanced information (broadband) and/or communications the S-system(s), including the Bay Loop digital microwave system and other communications and data system projects and initiatives that promote interoperability in the Bay Area or are otherwise consistent with the goals of this Authority. The Members seek to create a structure and process to resolve technical and operational issues in the development, operation and management of such Ssystems; identify funding mechanisms for the Ssystems; and anticipate and address future advanced information and communications needs. Such purposes are to be accomplished, and the Members' common powers exercised, as set forth in this Agreement.

1.02 Creation of Authority.

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

1.03 Eligibility for Membership in the Authority.

To be eligible to be a Member in the Authority, an entity~~applicant~~ must meet all of the following requirements: (1) be a public agencyentity, as defined by the Act; (2) have jurisdiction in the Bay Area; and (3) duly approve and execute this Agreement, ~~and provide a copy to the Secretary.~~

(a) Initial Membership: Prior to and for a period of 60 days after the Effective Date (hereinafter the "Initial Membership Period"), an eligible public agency may become an initial Member of the Authority upon delivering to the Authority's Secretary a copy of this Agreement signed by an authorized official of the public agency and payment of the Initial Membership Fee ~~membership fee~~ as specified in Section 5.01(a).

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(b) Subsequent Membership: Eligible public agencies which seek membership after the expiration of the Initial Membership Period~~time period identified in Section 1.05(a), above,~~ may subsequently become Members of the Authority at any later time upon delivering to the Authority's Secretary a copy of this Agreement signed by an authorized official of the public agency and payment of the Subsequent Membership Fee as specified in Section 5.01(b), ~~satisfying the requirements of that subsection as well as obtaining the express approval of the Authority's Board of Directors and complying with such other and further requirements mandated by the Board.~~ Admission of new or subsequent Members shall not require amending this Agreement.

1.04 Initial Members Entitled to Appoint Directors.

Only those public agencies identified in Section 2.01 which become Members within the Initial Membership Period (i.e., prior to and for a period of 60 days after the Effective Date) shall be entitled to appoint a Director to sit on the Board of the Authority. Public agencies identified in Section 2.01 which become Members after the Initial Membership Period may be permitted to appoint a Director to sit on the Board of the Authority only if so authorized by the Authority's By Laws and if such appointment is expressly approved by the Board. Pursuant to such approval process, the Board is authorized to set further conditions for the appointment of a Director by subsequent Members.

1.054 Effective Date; Term.

This Agreement shall become effective, and the Authority shall come into existence, on the date on which at least ten (10) of the nineteen (19) appointing authorities in Section 2.01 have met the Membership requirements under Section 1.03(a), appointed a Director and Alternate Director

and notified the Secretary of the appointments (the "Effective Date"). Upon appointment of a Secretary of the Authority, ~~The Secretary shall designate in writing the Effective Date, and notify all Members and eligible Bay Area Counties and cities therein of the Effective Date, under Section 7.01.~~ The failure of the Secretary to designate the Effective Date shall not invalidate this Agreement.

The Agreement shall continue from the Effective Date until terminated as provided in Section 6.04.

1.05 Initial Members.

~~Prior to and for a period of 60 days after the Effective Date (the "Initial Membership Period"), an eligible entity pursuant to Sections 2.01 and 2.02 may become a Member upon execution and delivery to the Secretary of this Agreement and payment of an initial contribution of Twenty Four Thousand Five Hundred Dollars (\$24,500) (the "Annual Fee"), without approval by the Authority Board. If an appointing authority fails to become a Member during the Initial Membership Period, that time frame, that jurisdiction or agency such Appointing Authority will no longer have the right to appoint a Director or Alternate Director, loses its Board seat, but may become a Member at a later date join later with the approval of the Authority Board for a minimum and payment of the Annual Fee, as may be adjusted by the Board, of the same initial contribution (\$24,500) or other higher fee as set forth by the IPA. After the 60 day Initial Membership Period, additional Members may join the Authority, but that membership is subject to the requirements set forth in Section 7.03 of this Agreement, including approval of the Authority Board.~~

1.06 Ex Officio Members.

~~The Authority may invite public entities or agencies that are not eligible to be Members under Section 1.03, to serve as ex-officio members of the Authority, if and to the extent provided in the Authority's bylaws. Any ex-officio member shall have no right to appoint a Director or vote.~~

ARTICLE II - BOARD OF DIRECTORS.

2.01 Composition of the Board.

The Authority shall be governed and administered by a Board of Directors (the "Board") consisting of a minimum of ten (10) and a maximum of nineteen (19) Directors selected by the following appointing authorities (the "Appointing Authorities"):

1. The Mayor of the City of Oakland, California;
2. The Mayor of the City of San Francisco, California;
3. The Mayor of the City of San Jose, California;
4. The Board of Supervisors of the County of Alameda, California;
5. The Board of Supervisors of the County of Contra Costa, California;
6. The Board of Supervisors of the County of Marin, California;
7. The Board of Supervisors of the County of Napa, California;
8. The Board of Supervisors of the County of San Francisco, California;
9. The Board of Supervisors of the County of San Mateo, California;
10. The Board of Supervisors of the County of Santa Clara, California;
11. The Board of Supervisors of the County of Santa Cruz, California;
12. The Board of Supervisors of the County of Solano, California;
13. The Board of Supervisors of the County of Sonoma, California;
14. The Secretary of the California Technology Agency;
15. The "East Bay Cities." The term "East Bay Cities" is defined as the incorporated cities within the geographic area of Alameda and Contra Costa Counties and listed in Exhibit A attached hereto (referred to herein as the "East Bay Cities");

16. The "West Bay Cities." The term "West Bay Cities" is defined as the incorporated cities within the geographic area of San Mateo County and listed in Exhibit B attached hereto (referred to herein as the "West Bay Cities");
17. The "South Bay Cities." The term "South Bay Cities" is defined as the incorporated cities within the geographic area of Santa Clara and Santa Cruz Counties and listed in Exhibit C attached hereto (referred to herein as the "South Bay Cities");
18. The "North Bay Cities." The term "North Bay Cities" is defined as the incorporated cities within the geographic area of Marin, Napa, Sonoma, and Solano Counties and listed in Exhibit D attached hereto (referred to herein as the "North Bay Cities" and together with the East Bay Cities, the West Bay Cities, and the South Bay Cities, collectively, the "Regional Cities Groups" and each, a "Regional City Group"); and
19. Seat at large. Appointing Authority to be determined by the Board. The Association of Bay Area Governments ("ABAG").

Comment [RBC1]: We have not heard back from ABAG with positive interest. As an alternate, we could make this an "At Large" seat for any cities whose Regional City Group does not have representation on the board and special districts like BART, transit authorities, bridge authorities who wish to have representation on the board, particularly if they contribute assets (fiber, sites) to the JPA.

2.02 Appointment of Directors.

- (a) If authorized under this Agreement, and Upon becoming a Member, each of the officials or bodies listed in 1 through 14 in Section 2.01, above, representing that Member shall appoint one Director and one Alternate Director to the Board, but only after the jurisdiction or agency that official or body represents becomes a Member by paying the initial contribution set forth in Section 1.05. The Such officials or bodies shall make reasonable efforts to make the appointments within 15 days of the date when the entity that official or body represents becomes a Member, and shall promptly notify the Secretary of the appointments. Notice of appointments shall be promptly provided to the Secretary.
- (b) If authorized under this Agreement, each of the Regional Cities Groups listed in 15 through 18 in Section 2.01, above, may appoint one Director and one Alternate Director to the Board, when 25% the required number of the cities in the applicable Regional City Group within the applicable geographic area (that 25%-specific number set forth on the bottom of the applicable Exhibits A-D supra) have (i) each executed a counterpart of this Agreement, and delivered it to the Secretary, and (ii) paid one Annual Initial Membership Fee per Section 5.01 on behalf of such Regional City Group, agree that they want to become Members and a single payment of \$24,500 is paid as the cities group's initial contribution. Each of the appointed Directors and Alternate Directors appointed by a Regional City Group each shall be from one of the incorporated cities within the applicable such Regional City Group that has become executed this Agreement as a Member, and geographic area, and shall represent the interests of all the cities in its its Regional City Group. group of cities. Each Regional City Group shall make reasonable efforts to appoint its Director and Alternate Director within 15 days of the date it has satisfied the requirements of subsections (i) and (ii) of this subsection 2.02(b), when 25% of the cities within its geographic area agree to become Members, and shall promptly notify the Secretary of the appointments. The City Managers representing the Member cities within a Regional City Group within the applicable geographic area will determine which city will represent the Regional City Group, will represent the geographic area, determine how the Member cities will provide input to the chosen representative Director and Alternate Director, and how the Member cities will share and paid the initial membership fee and the initial contribution Annual Fee thereafter. If a Regional Cities Groups listed in 15-18 in Section 2.01 are not able to get 25% of the cities within its geographic area to qualify to be a Member, representation on the Board is still possible through a city's membership in ABAG (See Section 2.01(19)). Those major cities identified in Section 2.01 as numbers (1) through (3) are excluded from participating in, or affecting the membership calculations of the Regional City Groups.
- (c) If authorized under this Agreement, the Board shall determine the Appointing Authority able appoint the seat at large for a Member or group of Members not otherwise represented on the Board of Directors, per Section 2.01, number 19. Upon becoming a

~~member. ABAG shall appoint one Director and one Alternate Director to the Board to become Members of the Authority. ABAG shall make reasonable efforts to name appoint its Director and Alternate Director within 15 days of the date it becomes a Member when become Members of the Authority. Notice of such appointments shall be promptly provided to the Secretary of the Authority, and shall promptly notify the Secretary of the appointments. ABAG shall pay (The initial membership fee (and the initial contribution Annual Fee thereafter) per Section 5.01 for ABAG is \$24,500.~~

- (d) At the time of appointment and for the duration of service, Directors and Alternate Directors shall be officers or employees of Members. ~~All Directors and Alternate Directors shall be non-elected officials, except an elected Sheriff may serve as a Director.~~
- (e) The term of office of each Director and Alternate Director shall ~~continue~~ be two years, or until a successor has been appointed. ~~Directors and Alternate Directors may serve an unlimited number of terms.~~
- (f) No Member can hold more than one seat on the Board concurrently, except the City and County of San Francisco, which may hold two seats by virtue of the fact that it is both a city and a county.
- (g) An Alternate Director may act in his or her Director's absence and shall exercise all rights and privileges of a Director.
- (h) Each Director and each Alternate Director shall serve at the pleasure of the ~~a~~Appointing ~~a~~Authority, and the ~~a~~Appointing ~~a~~Authority may remove the Director or Alternate Director at any time without notice or cause.
- (i) The ~~a~~Appointing ~~a~~Authority shall provide written notice to the Chairperson of the Board of the appointment or removal of a Director or Alternate Director.
- (j) All Directors and Alternate Directors shall serve without compensation. The Board may authorize, through the bylaws, reimbursement of reasonable and necessary expenses incurred by Directors or Alternate Directors upon review of supporting documentation.
- (k) Each ~~a~~Appointing ~~a~~Authority shall authorize its Director and Alternate Director to take all actions necessary to conduct the business required by the Authority in a timely manner.

Comment [RBC2]: If ABAG is not interested, we could consider making this an "at large" seat for any city unrepresented by a Regional City Group or special districts like BART, bridge authorities or transit districts who contribute assets to JPA.

Comment [RC3]: Issues about San Francisco having two seats were raised at the Counsel Meeting and I suggest this be discussed at Governance meeting and a vote taken by entities intending to join the JPA.

Comment [RBC4]: To be discussed at governance meeting

Comment [RBC5]: To be discussed at Governance meeting given issues raised about this at counsel meeting.

2.03 General Purpose of Board.

The general purpose of the Board is to:

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

2.04 Specific Responsibilities of the Board.

The specific responsibilities of the Board shall be as follows:

- (a) Approve contracts with commercial companies, contractors, or subcontractors or other entities regarding development, operation, maintenance and expansion of interoperable communications and advanced information sSystems or other projects duly approved by the Authority;

- (b) Approve and revise, as necessary, an administrative funding plan (the "Administrative Funding Plan") for the Authority to operate and fulfill its obligations under this Agreement; including establishing any start-up contributions or initial investments from Members in addition to those specified in this Agreement;
- (c) Approve and revise, as necessary, a system funding plan (the "Systems Funding Plan") for regarding the construction and on-going operation, and maintenance and ownership of the System(s); including establishing any start-up contributions or initial investments from Members beyond those specified in this Agreement;
- (d) Before the beginning of each Fiscal Year (as defined in Section 7.043), adopt, in its sole discretion, either an annual or a multi-year budget for the Authority;
- (e) Ensure strict accountability of all funds and reports of all receipts and disbursements;
- (f) Contract for, or employ, necessary and sufficient administrative, technical, support and other staff, consultants and contractors, and provide for necessary direction, management and oversight for all staff, consultants and contractors;
- (g) Adopt personnel rules and regulations if employing staff;
- (h) Adopt rules for procuring supplies, equipment and services;
- (i) Adopt rules for the disposal of surplus property;
- (j) Identify the needs and requirements of Members, as well as subscribers of the Public Safety System and wholesalers and resellers of services of the Public Access System; and affiliates;
- (k) Establish public safety Systems priorities;
- (l) Establish long-range plans for the Systems;
- (m) Establish procedures for System(s) implementation, monitoring and maintenance;
- (n) Adopt and revise, as necessary, an appropriate and cost effective maintenance plan for the System(s);
- (o) Adopt and revise, as necessary, Systems operating policies and procedures, as well as technical and maintenance requirements;
- (p) Conduct and oversee System audits at intervals not to exceed three years;
- (q) Adopt bylaws, rules and regulations as necessary for the purposes of this Agreement; provided that nothing in the bylaws, rules and regulations shall conflict with this Agreement or the Act;
- (r) Represent the Authority in external communications, and
- (s) Discharge other duties consistent with the purposes of this Agreement as appropriate or required by statute.

2.05 Startup Responsibilities.

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

- (a) To use its best efforts to establish within two (2) months of the Effective Date advisory committee(s) in accordance with Section 3.09;
- (b) To use its best efforts to establish within two (2) months of the Effective Date a website for posting agenda and other notices and information about the Authority and Board.
- (c) To use its best efforts to develop and adopt within one month (1) month of the Effective Date an Administrative Funding Plan that provides for any additional contributions or investments from Members for the Authority to operate and fulfill its obligations under this Agreement;
- (d) To use its best efforts to develop and adopt within 80 days of the Effective Date a Systems Funding Plan specifying a means or formula for funding the construction, operation, maintenance and expansion of any systems that further the purposes of this Authority. A Systems Funding Plan shall include but is not limited to the following: (i) the construction, operation and maintenance costs of the System(s); (ii) specification as to how agreement on who shall pay site costs and/or site remediation (e.g. electrical, air conditioning, back up generators, power, etc.) of specified antenna sites by jurisdiction

~~shall be paid; and any proposed financing of these costs;~~ (iii) the estimated costs to be born by the Authority should ownership of the Ssystem(s) later be transferred to the Authority; (iv) good faith estimates of costs and types of devices that will be able to operate on the Public Safety Ssystem; (v) monthly user fees for the Ssystems; and (vi) identification of additional funding sources, if necessary;

- (e) During the 80 days following the Effective Date, to negotiate any contracts with commercial companies, contractors, subcontractors or entities that specify the timing and sequencing of construction of the Ssystem(s) consistent with the functional specifications, and other business terms related to the Ssystem(s), including but not limited to development, operation and maintenance of the Ssystem(s). In any agreement with a contractor or entity, the Authority may not bind or commit any Member to provide any resources to the Ssystems (e.g. use of a communications site, use of communications fiber over which the Member has control or ownership) or to participate in use of the Ssystem(s) without that Member's jurisdiction's or agency's authorized approval.
- (f) To contract for, hire or otherwise retain an Executive Director for the Authority, to administer the Authority. The Board shall specify in the bylaws or personnel rules the responsibilities, duties and authority of the Executive Director.
- (g) To develop bylaws and other governance documents for the Authority;
- (h) To secure administrative office space, equipment, and furnishings as necessary;
- (i) To encourage other governmental and quasi-governmental entities and agencies, including but not limited to the State and Federal government, other neighboring counties, and special districts, to participate in the Ssystems;
- (j) To develop policies and procedures for the voluntary transfer and/or sharing of assets from Members; and
- (k) To evaluate the need for, acquire and maintain insurance as deemed necessary by the Board to protect the interests of the Authority, the Members, and the public.

2.06 Meetings of the Board.

- (a) Regular Meetings. The Board shall approve a schedule for its regular meetings provided, however, that the Board shall hold at least one (1) regular meeting quarterly. The Board shall fix the date, hour and location of regular meetings by resolution and the Secretary shall transmit a copy of the resolution to each Member.
- (b) Special Meetings. Special meetings of the Board may be called by the Chair or as provided for in the bylaws.
- (c) Call, Notice and Conduct of Meetings. All meetings of the Board shall be noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code Section 54950 *et seq.* As soon as practicable, but no later than the time of posting, the Secretary shall provide a copy of the posted agenda to each Member, Director and Alternate Director.
- (d) First Meeting. The Board shall make reasonable efforts to convene its first meeting no later than 15 days after the Effective Date.

2.07 Minutes.

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

2.08 Voting.

All voting power of the Authority shall reside in the Board. Each Director shall have one vote. An Alternate Director may participate and vote in the proceedings of the Board only in the absence of that Alternate's Director. No absentee ballot or proxy is permitted.

2.09 Quorum; Votes

A majority of the total Directors appointed to comprising on the Board as of any Board meeting date shall constitute a quorum of the Board for the transaction of business. For example, if ten Directors have been duly appointed to the Board on the date of its first meeting, a quorum would be constituted if six or more Directors were present at such meeting, and, if at a subsequent Board meeting date, 14 Directors have been duly appointed, a quorum would be constituted if eight or more Directors were present at such meeting. If there is less than a quorum present at a meeting, no Board action can be taken and the Secretary may adjourn such meetings of the Board as needed. The affirmative vote of a quorum is required to take any action by the Board.

2.10 No Personal Liability of Directors.

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

Article III – OFFICERS, EMPLOYEES AND ADVISORY COMMITTEES

3.01 Chairperson, Vice-Chairperson.

At the first regular meeting of the Board, the Board shall elect a Chairperson and Vice-Chairperson from among the Directors. The initial Chairperson and Vice-Chairperson shall serve until the end of the first Fiscal Year (as defined in Section 7.04~~3~~ of this Agreement). Then, at the first regular meeting of each Fiscal Year, the Board shall elect a Chairperson and Vice-Chairperson to serve a one year term. If the Chairperson or Vice-Chairperson resigns from or is otherwise unable to perform the duties of the office, or his or her represented entity ceases to be a Member, then at the next regular meeting of the Board held after the vacancy or inability to serve occurs or as soon as practicable thereafter, the Board shall elect a new Chairperson or Vice-Chairperson, as applicable, to serve the balance of the term.

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

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

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

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

3.03 Auditor.

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

The Auditor shall perform the functions of auditor for the Authority and shall have the duties and obligations set forth in the Act. As required by the Act, the Auditor shall make or cause an independent annual audit of the accounts and records of the Authority by a certified public accountant or public accountant, in compliance with generally accepted auditing standards. A report of the financial audit will be filed as a public record as provided in Government Code Section 6505.

3.04 Legal Counsel.

At its first meeting, the Board shall retain outside legal counsel for the Authority.

3.05 Secretary to the Authority.

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

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

3.06 Bonding of Persons Having Access to Property.

If necessary, and pursuant to Government Code Section 6505.1 Under the Act, the Board shall designate the public officer or officers or person or persons who have charge of, handle, or have access to any property of the Authority, and shall require such individuals to file an official bond in an amount fixed by the Board.

3.07 Executive Director; Other Employees.

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

3.08 Privileges and Immunities from Liability.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply applicable to the activities of officers, agents or employees of a public agency entity when performing their respective functions shall apply to the officers, agents or employees of the Authority to the same degree and extent while performing any of the functions and other duties of such officers, agents or employees under this Agreement. None of the officers, agents or employees directly employed by the Authority shall be deemed, by reason of their employment by the Authority, to be employed by the Members or subject to any of the requirements of the Members.

3.09 Advisory Committees.

The Board shall establish advisory committees including a Technical Advisory Committee, the primary purpose of which will be to review and recommend to the Board policies and procedures related to Systems performance, maintenance and other technical issues, and -which shall be established at the first Board meeting. The Board may establish additional advisory committees to meet the needs of the Authority. The Board shall make reasonable efforts to establish membership of the Technical Advisory and any other committees, and any offices required by

the committees. The committees shall be subject to the Ralph M. Brown Act; (California Government Code Section 54950 et seq.), and the chairperson of the committees shall report back to the Board of Directors as specified in the bylaws.

ARTICLE IV – POWERS

4.01 General Powers.

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

4.02 Power to Issue Bonds; ~~Weighted Voting on Fiscal Matters.~~

The Authority shall have the power, with a two-thirds super-majority vote of all Directors, to issue bonds as specified under the Act, including Government Code Section 6516.5. ~~Further, the Authority may adopt a weighted system of Board voting that takes into account the amount of funds each Member or represented jurisdictions would expend on a Systems Funding Agreement, an issuance of bonds, or other fiscal matter exceeding \$100,000.~~

4.03 Specific Powers.

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

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

- (p) To promulgate, adopt, and enforce any rules and regulations, as may be necessary and proper to implement and effectuate the terms, provisions, and purposes of this Agreement.

4.04 Restriction on Exercise of Powers.

Under Section 6509 of the Act, all common powers exercised by the Board shall be exercised in a manner consistent with, and subject to, the restrictions and limitations upon the exercise of such powers as are applicable to the County of Alameda, a California Charter County.

4.05 Limited Liability of the Authority.

Consistent with Government Code section 6508.1, the debts, liabilities and obligations of the Authority shall be limited to the assets of the Authority and shall under no circumstances be the debts, liabilities and obligations of any of the Members. A Member may (but has no obligation to) separately contract for or assume responsibility in writing for specific debts, liabilities, or obligations of the Authority. In furtherance of this Section, the Authority shall indemnify the Members as provided in Section 7.17 below.

4.06 Procurement and Contracting.

Pursuant to Government Code Sections 6508.1 and 6509, the Authority may exercise its powers to separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the Authority, subject to the restrictions upon the manner of exercising such powers applicable to shall comply with the procurement and contracting procedures of the County of Alameda.

ARTICLE V – CONTRIBUTIONS; ACCOUNTS AND REPORTS; FUNDS

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

(a) Initial Membership Fee. Each public agency applying to become a Member of the Authority within the Initial Membership Period (i.e., up to and for a period of 60 days after the Effective Date) shall be required to pay an Initial Membership Fee as specified below (hereinafter the "Initial Membership Fee").

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Each public agency and its Appointing Authority identified in Section 2.01 as numbers 1 through 14 and 19 above shall pay and Initial Membership Fee make an initial annual membership fee payment contribution to the Authority of Twenty Four Thousand Five Hundred Dollars (\$24,500) ("Annual Fee") as a precondition of becoming a Member and appointing its Director and Alternate Director.

Each Regional Cities Group identified in Section 2.01 as numbers 15 through 18 shall pay make a single Initial initial Annual Membership Fee payment to the Authority of Twenty Four Thousand Five Hundred Dollars (\$24,500) for the group as a whole, which will enable each of the cities within the group to obtain membership status upon satisfying the other requirements of this Agreement.

Other public agencies eligible to become Members, but not specifically identified in Section 2.01, shall pay an Initial Membership Fee to the Authority of Five Thousand Dollars (\$5,000) as a condition of becoming a Member.

(b) Subsequent Membership Fee. Each eligible public agency applying to become a Member outside the Initial Membership Period (i.e., more than 60 days after the Effective Date), whether or not identified in Section 2.01, shall be required to pay a Subsequent Membership Fee as a

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condition to becoming a Member (hereinafter, the "Subsequent Membership Fee"). The amount of the Subsequent Membership Fee shall be determined by the Board, but in no event shall it be less than the Initial Membership Fee the public agency would have been required to pay to become a Member within the Initial Membership Period.

(c) Annual Fee. Each Member shall be required to pay an Annual Fee for each Fiscal Year during the term of the Agreement to maintain membership in the Authority (hereinafter, the "Annual Fee"). The amount of the Annual Fee shall be set by the Board in an amount not to exceed the amount of the Initial or Subsequent Membership Fee paid by the Member. A Member's payment of the Initial or Subsequent Membership Fee, as applicable, shall satisfy the Member's obligation to pay the Annual Fee during its first year of membership. In addition, each such appointing authority or Regional Cities Group in Section 2.01 shall pay the same amount (\$24,500) as an Annual Fee on an annual basis, due not later than each June 1 for the duration of Agreement; provided, that if a Member paid its initial Annual Fee less than nine months before the next succeeding June 1, such Member's next annual Fee will not be due until the second succeeding June 1 following such Member's payment of its initial Annual Fee.

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The Authority may use these funds generated by the Annual Fee payments to support the administrative, legal, and other costs of the Authority. The Board may decrease or waive the Annual Membership Fee at any time, but is not authorized to increase this fee without the express written authorization of each affected Member. The Board may adjust the Annual Payments at any time to ensure the Authority has adequate funds to cover its administrative, legal and other necessary costs.

5.02 Adoption of Systems Funding Plan.

A goal of the Authority is to develop the Systems Funding Plan as specified in Section 2.05, that identifies funding sources and mechanisms, including a development schedule and phasing plan, if necessary, which will permit the maximum feasible participation by Members. The Systems Funding Plan shall describe the contributions required from Members, specific jurisdictions, and any users of the Systems. system users or affiliates. The Board shall not approve any agreement for construction of or relating to any Systems until the Board has approved a Systems Funding Plan.

Before the Board may consider adopting the Systems Funding Plan, it shall distribute the proposed Systems Funding Plan to the Members under Section 7.01. The proposed Systems Funding Plan shall be accompanied by a description of the Ssystem(s), and information to allow Members to determine the Ssystem's' capability, data speeds, functionality, features, cost, financing and the expected impacts on individual Members. The Board shall designate a period, which shall be not less than 30 days, during which Members may provide comments to the Board regarding the proposed Systems Funding Plan. After the comment period has expired, the Board may:

- (a) Adopt the Systems Funding Plan as proposed;
- (b) Revise the Systems Funding Plan to address some or all of the Member comments;
- (c) Reconsider the Systems Funding Plan at a later date; or
- (d) Reject the Systems Funding Plan.

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

5.03 Additional Contributions.

The Members may, in the appropriate circumstance, or when required by action of the Board:
(a) Make contributions from their treasuries for the purposes set forth in this Agreement;

- (b) ~~Make payments of public funds to defray the cost of such purposes;~~
- (c) ~~Make advances of public funds for such purposes, such advances to be repaid as provided by written agreement;~~
- (d) ~~Use its personnel, equipment or property in lieu of other contributions or advances; or~~
- (e) ~~Enter agreements with the Authority in furtherance of developing, operating, maintaining or expanding the systems.~~

No Member shall be required to adopt any tax, assessment, fee or charge under any circumstances.

The Board shall not require Members to provide any additional contributions to the Authority of any kind or nature whatsoever, for any purpose. Except as otherwise expressly set forth in this Agreement, the Board is not authorized to require Members to provide funds, resources, equipment or personnel in order to maintain membership in the Authority, maintain a Director's seat on the Board, and/or participate in the Systems. In addition, the Board shall not require any Member to adopt any tax, assessment, fee or charge. Members have the ability to provide additional contributions to the Authority, but only upon approval of their governing authorities. This provision shall affect the ability of the Authority to charge user fees or other costs associated with a Member's use of the Systems.

5.04 Accounts and Reports.

The Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement entered into with respect to the proceeds of any bonds issued by the Authority, or by the State Controller or the United States Government. The books and records of the Authority in the hands of the Treasurer shall be open to inspection at all reasonable times by duly appointed representatives of the Members. The Treasurer, within 180 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members.

5.05 Funds.

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

5.06 Use of Spectrum.

It is the Authority's intent to operate the pPublic sSafety System on any radio spectrum that the Federal Communications Commission (FCC) authorizes for public safety use, specifically including spectrum leased by the Public Safety Spectrum Trust (PSST) in the 700 MHz frequency (763-768/793-798 MHz) from the FCC for use by public safety, and any other spectrum upon which the FCC allows public safety operation on in the future. It is the Authority's intent to maximize dedicated public safety spectrum in order to obtain high levels of communications reliability during major disasters, major events, or other public safety emergencies. Any member holding any rights or interests to the PSST spectrum on behalf of the Bay Area region shall promptly transfer such rights to the Authority, subject to applicable law and any required regulatory approvals. The Authority is authorized to apply for any FCC spectrum licenses or leases that are appropriate for public safety operation for the Bay Area region. This paragraph, however, does not prevent a Member from obtaining FCC or PSST permission to use public safety spectrum for its own jurisdiction's use for a public safety purpose, so long as such usage does not interfere or denigrate any system of the Authority that serves the larger Bay Area Members. For the pPublic aAccess System, unlicensed spectrum shall be used to provide this service consistent with FCC rules and regulations.

5.07 Operational and Technical Policies

~~Authority may set forth operational and technical policies for appropriate usage of the System so that the System is operated in a manner that permits usage by all Members in a fair and reasonable manner. Such operation and technical policies shall be developed by the Technical Advisory Committee and approved by the Authority after review. Payment of fines and penalties imposed for operational or equipment violations shall be the responsibility of the Authority or the Member committing the violation, which shall pay timely any fines, in such manner as may be further specified in the bylaws.~~

5.08 Systems Components.

~~The Ssystem(s) may~~ will be comprised of components that may include radio sites and facilities, microwave and fiber backhaul, base station equipment, antennas, evolved packet core network(s), network management systems, ancillary network components and end-user equipment (the "Systems Components"). Members shall retain ownership of Systems Components that they contribute to construct or operate the Ssystems unless those Members otherwise agree in writing. The Authority shall retain ownership of Systems Components purchased or otherwise obtained by the Authority, unless the Authority otherwise agrees in writing, as approved by the Board.

5.09 Non-Member Use of Systems.

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

5.10 Adverse Impacts on Systems.

~~No Member, subscriber, user, reseller, or affiliate shall take any action that adversely impacts the Authority's Ssystem(s). If a Ssystem is impacted by actions of a Member, subscriber, user, reseller or affiliate, the offending party shall take immediate action to return the Ssystem to its full operating state. The Authority, or its designee as set forth in the bylaws, shall make the sole determination of whether such entity's Member, subscriber, user, reseller or affiliate equipment or operations adversely impact the Ssystems.~~

ARTICLE VI – WITHDRAWAL AND TERMINATION

6.01 Withdrawal by Members.

~~After the periods referred to in Section 5.02, Members may withdraw from the Authority effective July 1 of any year by giving notice as follows:~~

- ~~(a) Within 1590 days of the Systems Funding Plan Notice Date, mMembers may submit written notice of withdrawal from the Authority, which withdrawal notice shall be effective at the end of the notice period immediately. Such withdrawing member shall not incur any additional costs for that member during that 1590-day period; and the initial Annualany Fees or any prior previously paid Annual Fee by such withdrawing Member shall not be returned.~~
- ~~(a)(b) After a Systems Funding Plan has been adopted, aA Member who did not provide Systems Components (except end-user equipment) shall provide to the Chairperson ninety (90) days' advance written notice of its intent to withdraw from the Authority which withdrawal notice shall be effective immediately.; aAny Annual Fees already paid will not be returned to such withdrawing Members.~~

~~(b)(c)~~ After a Systems Funding Plan has been adopted, a Member who provided System Components (except end-user equipment) shall provide to the Chairperson twelve (12) months advance written notice of its intent to withdraw from the Authority, which withdrawal shall be effective at the end of the notice period or as otherwise permitted by the Board. ~~a~~Any Annual Fees already paid will be not returned to such withdrawing Member.

~~(d)~~ If withdrawing under Section 6.01(c), a Member who provided Systems Components shall be required to pay a withdrawal payment. Such withdrawal payment shall be determined through a good faith negotiation between the withdrawing Member and the Authority, which shall be approved by the Board. The purpose of the withdrawal payment is to require the Member to cover the pay a withdrawal payment equivalent to all Authority's actual and direct any expenses reasonably related to the withdrawal or other cost incurred by the Authority including, but not limited to, equipment relocation fees, leasing, permit fees, administrative and professional costs, and upgrade costs of the Systems Components that the Member has dedicated to supporting the Systems. The Board will calculate the amount of the withdrawal payment and provide such calculations to the withdrawing Member upon request. Such withdrawal payment shall be an amount that represents a fair and equitable pro rata share of the costs, expense and obligations of the Authority. The withdrawing Member may mitigate this withdrawal payment by entering an agreement for the Authority's continued use of the Member's assets, as described in Section 6.03. If the parties are unable to reach an agreement on the amount of the withdrawal payment, the parties shall mutually choose a neutral third party who shall be authorized to make such a determination.

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6.02 Financial Liabilities of Withdrawing Members.

Except as otherwise provided in Section 5.02:

- (a) A withdrawing Member shall remain liable for all financial liabilities incurred during its membership in the Authority; however, except for the Annual Fee required per Section 5.01, however, the Member shall not be liable for any new financial liabilities incurred after submitting written notice to withdraw.
- ~~(b)~~ After submitting its written notice of the intent to withdraw, the withdrawing Member must continue to pay its share of operating costs until the effective date of the withdrawal.
- ~~(c)~~ The Authority and the withdrawing Member may negotiate a buy-out agreement for early termination of membership to retire any ongoing financial obligations the Member shares with the Authority.
- ~~(d)~~ If a withdrawing Member holds a seat on the Board, that Member's participation on the Board shall immediately cease when the written notice to withdraw is submitted.

6.03 Retention of Assets by Withdrawing Members.

Any ~~s~~System ~~e~~Component(s) that a withdrawing Member provided to the Authority shall remain the sole asset of that Member unless the Member and the Authority otherwise agree. If requested by the Authority, a withdrawing Member shall consider options for the Authority's continued use of Member's assets. Acceptance of any option is at the sole discretion of the withdrawing Member. Also, the use by the Authority of the withdrawing Member's systems components shall be terminated upon the effective date of withdrawal, ~~(twelve months from initial notice);~~ and such systems components shall remain the sole asset of the withdrawing Member, unless the withdrawing Member and the Authority otherwise agree. Such withdrawing Member shall have no interest or claim in any remaining assets of the Authority or of any of the remaining Members.

6.04 Termination of Authority; Disposition of Authority Assets.

The Board may terminate this Agreement if the Board receives notice of withdrawal from a majority of the Members. In addition, this Agreement may be terminated and the Authority dissolved by the written consent of all of the Members, or all but one of the Members. Upon termination of this Agreement and dissolution of the Authority, and after payment of all obligations of the Authority, the Board:

- (a) May sell or liquidate Authority property; and
- (b) Shall distribute assets, including real or personal property, in proportion to the contributions made by Members.

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

ARTICLE VII – MISCELLANEOUS PROVISIONS

7.01 Notices.

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

- (a) Personal delivery;
- (b) E-mail;
- (c) U.S. Mail, first class postage prepaid;
- (d) "Certified" U.S. mail, postage prepaid, return receipt requested;
- ~~(e) Facsimile; or~~
- ~~(f)(e) Any other method deemed appropriate by the Board.~~

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

- (a) The date of personal delivery;
- (b) The third business day following deposit in the U.S. mail, when sent by "first class" mail;
- (c) The date on which the party or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by "certified" mail; or
- (d) The date of transmission, when sent by e-mail or facsimile. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day of the recipient.

7.02 Amendment.

This Agreement may only be amended only upon the written approval of each Director's governing authority, as well as the written approval of any Member which provides Systems Components, by two-thirds of the Members, evidenced by the execution of a written amendment to this Agreement. However, this Agreement shall not be amended, modified or otherwise revised, changed or rescinded, if such action would:

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

7.03 Addition of Newly Incorporated Members.

~~Cities located within the 10-county Bay Area region which become incorporated after the creation of the Authority are permitted to become Members under the same terms and conditions as other cities within their geographic region, as identified in Exhibits A — D, as applicable. In addition to the initial Members under Section 1.05, other public entities or agencies may join the Authority as a Member, subject to rules and requirements adopted by the Board. The Board rules and requirements shall include a new Member payment set by the Board based on the Administrative and System Funding Plans and other relevant factors. Admission of a new Member shall not require amendment to this Agreement.~~

The addition of any Member shall become effective upon:

- (a) The execution on behalf of such entity or agency of a counterpart of this Agreement and the delivery of such executed counterpart to the Board; and
- (b) The adoption of a resolution of the Board admitting that entity or agency to the Authority.

~~Other classes of Members may be established by the Authority as it sees fit, without amendment to this Agreement so long as the rights and privileges of the new member class is set forth in a duly adopted resolution of the Board.~~

7.043 Fiscal Year.

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

7.054 Consents and Approvals.

Any consents or approvals required under this Agreement shall not be unreasonably withheld.

7.056 Incorporation of Act.

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

7.067 Enforcement of Authority.

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

7.078 Severability.

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

7.089 Successors.

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

7.0910 Assignment.

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

7.101 Governing Law.

This Agreement is made and ~~to~~will be performed in the State of California, and as such California substantive and procedural law shall apply. Venue for any litigation under this Agreement shall be within the State of California.

7.112 Headings.

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

7.123 Counterparts.

This Agreement may be executed in counterparts.

7.134 No Third Party Beneficiaries.

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

7.145 Filing of Notice of Agreement or Amendment.

Within 30 days after the Effective Date of the Agreement or any amendment to the Agreement, the Secretary shall prepare and file notices as required by Government Code Section 6503.5. The Secretary shall also file a copy of the Agreement or any amendment to the Agreement with the Controller as required by Government Code Section 6503.6.

7.156 Conflict of Interest Code.

The Board shall adopt a conflict of interest code as required by law.

7.167 Indemnification.

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

~~Each Member shall defend, indemnify and hold harmless each other Member and such Member's officers, agents, and employees, successors and assigns from any and all liability, including, but not limited to, claims, losses, suits, injuries, damages, costs and expenses (including, without limitation, attorney's fees and any consequential damages), of every kind, nature and description, (collectively, "Losses") directly or indirectly arising from or as a result of any act or failure to act under this Agreement. Notwithstanding the foregoing, no Member shall be required to indemnify any other Member against Losses that are caused by the negligence or willful misconduct of the Member seeking indemnification.~~

7.178 Dispute Resolution/Legal Proceedings.

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

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

City of Oakland

Signature

Name/Title

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

City of San Francisco

Signature

Name/Title

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

City of San Jose

Signature

Name/Title

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

County of Alameda

Signature

Name/Title

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

County of Contra Costa County

Signature

Name/Title

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

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County of Marin

Signature

Name/Title

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

County of Napa

Signature

Name/Title

1195 Third Street, Suite 310
Attn: County Executive Officer
Napa, CA 94558

County of San Francisco

Signature

Name/Title

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

County of San Mateo

Signature

Name/Title

400 County Center
Attention: County Administrator

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Redwood City, CA 94063

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County of Santa Clara

Signature

Name/Title

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

County of Santa Cruz

Signature

Name/Title

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

County of Solano

Signature

Name/Title

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

County of Sonoma

Signature

Name/Title

575 Administration Drive, Suite 104A
Attn: County Administrator
Santa Rosa, CA 95403

California Technology Agency

Signature

Name/Title

Attention: Secretary

Attention: Director, Public Safety Communications Division

California Technology Agency

1325 J Street, Suite 1600

Sacramento, CA 95814

Exhibit A
List of East Bay Cities

Alameda County Incorporated Cities

Alameda
Albany
Berkeley
Dublin
Emeryville
Fremont
Hayward
Livermore
Newark
Oakland
Piedmont
Pleasanton
San Leandro
Union City

Contra Costa County Incorporated Cities

Antioch
Brentwood
Clayton
Concord
Danville
El Cerrito
Hercules
Lafayette
Martinez
Moraga
Oakley
Orinda
Pinole
Pleasant Hill
Richmond
San Pablo
San Ramon
Walnut Creek

| ~~Seven~~Eight of the ~~312~~ East Bay Incorporated Cities becoming Members of the Authority allows this group to hold one Board Seat under Article II, 2.01(15).

Exhibit B

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List of West Bay Cities

San Mateo County Incorporated Cities

Atherton
Belmont
Brisbane
Burlingame
Colma
Daly City
East Palo Alto
Foster City
Half Moon Bay
Hillsborough
Menlo Park
Millbrae
Pacifica
Portola Valley
Redwood City
San Bruno
San Carlos
San Mateo
South San Francisco
Woodside

Five of the 20 West Bay Incorporated Cities becoming Members of the Authority allows this group to hold one Board Seat under Article II, 2.01(16).

Exhibit C

List of South Bay Incorporated Cities

Santa Clara County Incorporated Cities

Campbell
Cupertino
Gilroy
Los Altos
Los Altos Hills
Los Gatos
Milpitas
Monte Sereno
Morgan Hill
Mountain View
Palo Alto
Santa Clara
Saratoga
Sunnyvale

Santa Cruz Incorporated Cities

Capitola
Santa Cruz
Scotts Valley
Watsonville

Four of the 18 South Bay Incorporated Cities becoming Members of the Authority allows this group to hold one Board Seat under Article II, 2.01(17).

Exhibit D

List of North Bay Incorporated Cities

Marin County Incorporated Cities

Belvedere
Corte Madera
Fairfax
Larkspur
Mill Valley
Novato
Ross
San Anselmo
San Rafael
Sausalito
Tiburon

Napa County Incorporated Cities

American Canyon
Calistoga
Napa
St. Helena
Yountville

Sonoma County Incorporated Cities

Cloverdale
Cotati
Healdsburg
Petaluma
Rohnert Park
Santa Rosa
Sebastopol
Sonoma
Windsor

Solano County Incorporated Cities

Benicia
Dixon
Rio Vista
Suisun City
Vacaville
Vallejo

| Seven of the 310 North Bay Incorporated Cities becoming Members of the Authority allows this group to hold one Board Seat under Article II, 2.01(18).