COUNCIL AGENDA: June 14, 2011
ITEM: 2.13

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Deanna J. Santana
Michelle McGurk

SUBJECT: **JPA FOR BAYRICS**

DATE: May 19, 2011

Approved Chuck Reed Date 5/27/11

Approved Date 5/30/11

RECOMMENDATION

(a) Adopt a resolution authorizing the City Manager to execute the Joint Powers Agreement to Establish the Bay Area Regional Interoperable Communications System (BayRICS) Authority on behalf of the City of San Jose, upon appropriation of funding.

(b) Authorize the Mayor to appoint a representative from the City of San Jose to the BayRICS JPA Board of Directors and an alternate.

OUTCOME

The JPA creates a local governmental entity to exercise the powers shared in common by its members to engage in regional, cooperative planning and coordination of governmental services, and to develop the systems and other communications and data system projects that promote interoperability in the Bay Area.

BACKGROUND

Over the past several years, local governments in the Bay Area have acquired a significant number of shared regional public safety communications assets, funded primarily by the Bay Area Urban Area Security Initiative (UASI). Faced with the immediate need to develop a plan for the management, use and sustainability of BayLoop, a digital microwave network funded by UASI, technical staff from the UASI Interoperable Communications Working Group proposed a regional oversight structure representing all regional participants, including the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Santa Cruz, Sonoma and the core cities of Oakland, San Francisco and San Jose.

Subsequently, a governance mechanism to implement an interoperable broadband system was identified with Motorola Solutions, Inc. in an application for a Broadband Technology Opportunities (BTOP) grant. The award of the BTOP grant to Motorola provided additional impetus to the efforts to develop a regional structure to oversee shared interoperability system assets. Once created, the JPA Board will negotiate and vote on whether to enter a Build-Own-Operate-Maintain Agreement with Motorola Solutions. It is important to note that the creation of this JPA is recommended regardless of the outcome of the Motorola project.

Since late 2010, representatives from the 10 Bay Area counties and a number of cities have worked together collaboratively to develop a Joint Powers Authority (JPA) to govern the "Bay Area Regional Interoperable Communications System (BayRICS)." The City of San Jose has been active with these developments and this JPA agreement is now before the Council for approval.

The Mayor's appointment of a member to the BayRICS JPA is required concurrent with the Council's consideration of joining the JPA because it is likely that 10 Board of Director jurisdictions will join in late May or early June, and the City desires to be represented at these meetings to ensure that our interests are represented as soon as these JPA activities commence.

ANALYSIS

Attached to this memorandum is the fully negotiated JPA. Highlights of the JPA document are discussed below:

Purpose - The purpose of this agreement is to create a local governmental entity to engage in regional, cooperative planning and coordination of governmental services, and to develop the Systems and other communications and data system projects that promote interoperability in the Bay Area. The Members seek to create a structure and process to resolve technical and operational issues in the development, operation and management of such Systems; identify funding mechanisms for the Systems; and anticipate and address future advanced information and communications needs.

Membership Fee - The Initial Membership Fee for agencies who appoint members to the Board of Directors is $24,500, which was based upon the estimated administrative budget for supporting the new Authority (staff, legal services, etc.). The ongoing Annual Member Fee is also $24,500 and can only be raised by the Board when changes in the CPI increases.

Board Representation - Each of the governing bodies for the 10 counties in the Bay Area are entitled to join and appoint a member to the Board of Directors, as are the mayors of the three core cities, Oakland, San Francisco and San Jose. The City and County of San Francisco are unique in that the Board of Supervisors is entitled to appoint one director while the Mayor is entitled to appoint a second. In addition to the counties and core cities, "hubs" have been created for the regions of the Bay Area, to enable cities within the designated hubs to collectively join and appoint a director to represent them. The regional "hub" of cities in Santa Clara and Santa Cruz Counties (the "South Bay Hub") would be entitled to have a seat on the Board of Directors

once 4 of the 18 cities had become members. The maximum size of the proposed Board of Directors would be 19. The minimum size, required for activation of the JPA, is 10. The City will be asked to appoint a Director and an Alternate. Appointed Directors and Alternates may be elected officials or staff of the public agency.

Weighted Voting - All voting power of the Authority shall reside in the Board, and each Director will have one vote and the Alternate Director may vote in the absence of the Director. The Board is also authorized to adopt weighted voting methods for approval of items brought before the Board under certain conditions noted in the JPA under Section 2.08.

Use of Spectrum – It is the Authority's intent to operate a regional interoperable public safety broadband communications system on any radio spectrum that the FCC authorizes for public safety use.

Withdrawal from the JPA - A Systems Funding Plan is considered pivotal to the establishment of the JPA. Based upon a needs analysis of the members, system priorities will be established and a long-range plan developed, which will include the costs of construction, on-going operation and maintenance, and technical and administrative support. The Systems Funding Plan will allow members to determine the system's "capability, data speeds, functionality, features, cost, financing and the expected impacts on the individual members." Members are given 90 days after the draft plan is distributed to provide input to the Board, after which time the Board takes action to adopt, revise or reject the plan. After a Systems Funding Plan is adopted, members have 90 days in which to withdraw from the JPA, incurring no costs except the non-refundable Initial Membership Fee of $24,500. The 90-day windows were determined to be the minimum amount of time for the appointed representatives to seek approval of their appointing authority regarding the plan and its financial and other obligations on their jurisdictions.

If a member decides to withdraw *after* the Systems Funding Plan window expires, the cost of withdrawal depends upon what the member has contributed to the overall system. If the member has not provided any system components, there is no additional cost to withdrawal other than forfeit of the Annual Member Fee, if already paid. If a member provided system components, as the withdrawal payment is determined through a good faith negotiation between the withdrawing member and the JPA. The withdrawal payment is intended to cover the JPA's actual, direct expenses related to the withdrawal, since the Authority will be required to find alternative sites and relocate equipment, as well as to incur administrative costs to support the relocation.

System Components - System components include radio sites and facilities, microwave and fiber backhaul, base station equipment, antennas, and other types of equipment. Members retain ownership of any system components that they contribute to the creation of the system unless they choose to sell them to the Authority. Components will be subject to individual lease agreements with the Authority; the agreements will include not only security and other site or component-specific details, but will also provide details on the requirements for replacement or financial reimbursement to the Authority in the event that a member withdraws from the Authority or withdraws the component from the Authority's use.

Fiscal Obligation – The JPA cannot obligate a member without permission of the member's Council or Board. This means any increased costs to San Jose would return to the City Council for approval. This is important protection in these fiscal times.

PUBLIC OUTREACH/INTEREST

☐ **Criterion 1:** Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memo will be posted on the City's website for the June 7, 2011 Council agenda.

COORDINATION

Staff has coordinated throughout this process with the City Attorney's Office, Police Department and Fire Department.

COST SUMMARY/IMPLICATIONS

The initial membership fee for joining the JPA is $24,500. The Mayor's Budget Message has referenced the need to support this effort and an appropriation ordinance action will come forward with the budget actions on June 14. If there are additional cost impacts, those will be presented to the City Council for considerations as the JPA requires.

CEQA

Not a Project.

Michelle McGurk

MICHELLE MCGURK
Senior Policy Advisor

Deanna Santana

DEANNA SANTANA
Deputy City Manager

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I - GENERAL PROVISIONS

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

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

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

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

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

1.04 Initial Members Entitled to Appoint Directors.

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

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

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

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

ARTICLE II - BOARD OF DIRECTORS.

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

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

2.02 Appointment of Directors.

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

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

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

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

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

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

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

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

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

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

2.03 General Purpose of Board.
The general purpose of the Board is to:

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

2.04 Specific Responsibilities of the Board.
The specific responsibilities of the Board shall be as follows:

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

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

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

2.06 Meetings of the Board.

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

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

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

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

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

2.07 Minutes.

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

2.08 Voting; Weighted Voting.

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

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

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

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

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

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

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

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

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

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

2.09 Quorum; Votes

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

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

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

ARTICLE III – OFFICERS, EMPLOYEES AND ADVISORY COMMITTEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV – POWERS

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

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

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

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

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

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

ARTICLE V – CONTRIBUTIONS; ACCOUNTS AND REPORTS; FUNDS

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

(a) **Initial Membership Fee.** To become a Member of the Authority within the Initial Membership Period, each eligible public agency shall pay an Initial Membership Fee as specified below (each such fee, as applicable, the "Initial Membership Fee").
   i. Each public agency identified in subsections 1 through 14 in Section 2.01 shall pay an Initial Membership Fee to the Authority of Twenty Four Thousand Five Hundred Dollars ($24,500) as a condition of appointing its Director and Alternate Director
   ii. Each Regional Cities Group identified in subsections 15 through 18 in Section 2.01 shall pay a single Initial Membership Fee to the Authority of Twenty Four Thousand Five Hundred Dollars ($24,500) for the group as a whole, which will enable each of the cities within the Regional City Group to obtain membership status upon satisfying the other requirements of this Agreement. If an eligible city has paid an Initial Membership Fee of Five Thousand Dollars ($5,000.00) because the required number of cities within its Regional City Group did not become Members within the Initial Membership Period, its payment shall be credited toward the applicable Regional City Group's Subsequent Membership Fee, as defined in Section 5.01(b).
   iii. Except as otherwise set forth above, public agencies eligible to become Members, but not specifically identified in subsections 1 through 14 in Section 2.01 shall pay an Initial Membership Fee to the Authority of Five Thousand Dollars ($5,000.00) as a condition of becoming Members.

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

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

5.02 Adoption of Systems Funding Plan.

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

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

(c) Adopt the Systems Funding Plan as proposed;

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

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

  iii. Reject the Systems Funding Plan.

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

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

5.03 Additional Contributions; Disproportionate Impact.

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

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

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

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

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

5.04 Accounts and Reports.

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

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

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

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

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

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

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

ARTICLE VI – WITHDRAWAL AND TERMINATION

6.01 Withdrawal by Members.

Members may withdraw from the Authority as follows:

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

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

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

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

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

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

6.02 Financial Liabilities of Withdrawing Members.

Except as otherwise provided in Section 5.02:

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

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

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

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

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

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

ARTICLE VII – MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.12 Counterparts.
This Agreement may be executed in counterparts.

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

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

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

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

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

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

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

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

City of Oakland

_____

Signature

_____

Name/Title

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

City of San Francisco

_____

Signature

_____

Name/Title

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

City of San Jose

_____

Signature

_____

Name/Title

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

County of Alameda

_____
Signature

_____
Name/Title

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

County of Contra Costa County

_____

Signature

_____
Name/Title

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

County of Marin

_____
Signature

_____
Name/Title

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

County of Napa

_____
Signature

_____
Name/Title

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

County of San Francisco

_____
Signature

_____
Name/Title

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

County of San Mateo

_____
Signature

_____
Name/Title

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

County of Santa Clara

_____
Signature

_____
Name/Title

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

County of Santa Cruz

_____
Signature

_____
Name/Title

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

County of Solano

_____
Signature

_____
Name/Title

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

County of Sonoma

_____
Signature

Veronica Ferguson, County Administrator _____
Name/Title

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

State of California

_____

Signature

_____
Name/Title

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

Exhibit A

List of East Bay Cities

Alameda County Incorporated Cities

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

Contra Costa County Incorporated Cities

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

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

Exhibit B

List of West Bay Cities

San Mateo County Incorporated Cities

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

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

Exhibit C

List of South Bay Incorporated Cities

Santa Clara County Incorporated Cities

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

Santa Cruz County Incorporated Cities

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

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

Exhibit D

List of North Bay Incorporated Cities

Marin County Incorporated Cities

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

Napa County Incorporated Cities

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

Sonoma County Incorporated Cities

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

Solano County Incorporated Cities

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

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