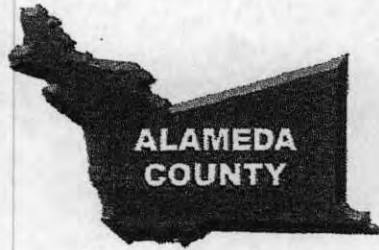


## Attachment E



# **East Bay Regional Communications System Authority**



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakland, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Livermore-Amador Valley Transit Authority, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, California Department of Transportation, Ohlone Community College District, Contra Costa Community College District, Dublin-San Ramon Services District and University of California, Berkeley

March 14, 2014

Jean Quan, Mayor  
City Of Oakland  
#1 Frank H. Ogawa Plaza  
Oakland CA. 94612

Subject: East Bay Regional Communications System Authority (EBRCSA) Governance

Dear Mayor Quan:

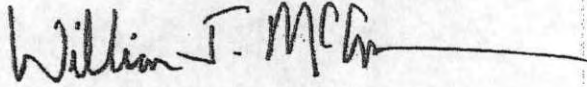
We have been working with City staff to educate them on the operations of the EBRCSA system, and provide the financial information so the City can make an informed decision about transitioning to the EBRCSA system, and are making good progress. I am aware that the City is also concerned about the lack of representation on the EBRCSA Board of Directors. In an effort to address this I attended a meeting of the Alameda County City Manager's Association in February to express the City's concern. The City Manager's all agreed that the City of Oakland should have representation on the Board of Director's, and voted unanimously to allow the City of Oakland's City Administrator to fill one of their three seats on the Board of Directors. An MOU executed between the cities in Alameda County would insure the seat is always filled by the City Administrator as long as the City is part of the EBRCSA system.

The attached letter from the City Manager's Association outlines their proposal. I would also like to point out their stated interest and support for the City of Oakland joining EBRCSA and becoming a regional partner.

If you have any questions please feel free to contact me at (925) 803-7802 or by email at [bill.mccammon@acgov.org](mailto:bill.mccammon@acgov.org).

**Alameda County Office of Homeland Security and Emergency Services**  
4985 Broder Blvd, Dublin CA 94568 • (925) 803-7802 • [www.ebrcsa.org](http://www.ebrcsa.org)


Sincerely;

A handwritten signature in black ink that reads "William J. McCammon". The signature is written in a cursive style and is followed by a long horizontal line.

William J. McCammon, EBRCSA Executive Director

CC: Oakland City Council Members:  
City Council President Pat Kernighan  
City Council Member Dan Kalb  
City Council Member Lynette Gibson McElhaney  
City Council Member Libby Schaff  
City Council Member Noel Gallo  
City Council Member Desley Brooks  
City Council Member Larry Reid  
City Council Member Rebecca Kaplan  
Fred Blackwell, Oakland City Administrator  
EBRCSA Board of Directors  
Mark Danaj, Chair Alameda County City Manager's Association

Attachment E  
East Bay Regional Comm. System Authority letter



**ALAMEDA COUNTY CITY MANAGERS' ASSOCIATION**  
c/o City of Fremont  
3300 Capitol Avenue  
Fremont, CA 94536

March 13, 2014

William J. McCammon  
EBRCSA Executive Director  
Office of Homeland Security and Emergency Services  
4985 Broder Boulevard  
Dublin, CA 94568

RE: East Bay Regional Communications System Authority (EBRCSA) Governance

Dear Mr. McCammon:

Thank you for presenting at our February meeting. The Alameda County City Manager's Association (ACCMA) is encouraged by the City of Oakland's interest in joining the EBRCSA. Elected Officials, City and County Managers, Police and Fire Chiefs from Alameda and Contra Costa counties have worked tirelessly over the past six years to build the EBRCSA system which currently serves 43 agencies in the two counties. The system design has always included infrastructure to serve the City of Oakland users, so incorporating the City into the EBRCSA system can happen seamlessly, something agencies in both counties completely support.

We are aware the City of Oakland has concern about the governance model and the inclusion of City of Oakland representation on the Board of Directors. As you know, EBRCSA is a Joint Powers Authority formed under State statute. The Board representation is split equally between the two counties with representation listed below:

**EBRCSA Board of Directors**

- (1) Alameda County Board of Supervisors
- (1) Contra Costa County Board of Supervisors
- (1) Alameda County Police Chiefs Association (to be selected by the Association)
- (1) Contra Costa County Police Chiefs Association (to be selected by the Association)
- (1) Alameda County Fire Chiefs Association (to be selected by the Association)
- (1) Contra Costa County Fire Chiefs Association (to be selected by the Association)
- (1) Special District (to be selected by the Association)
- (1) Alameda County, County Administrator
- (1) Contra Costa, County Administrator
- (1) Alameda County Sheriff
- (1) Contra Costa Sheriff

William J. McCammon  
March 13, 2014  
Page 2

- (3) Contra Costa City Managers
- (3) Alameda County City Managers
- (3) Contra Costa County Elected Officials (to be selected by the Mayor's Conference)
- (3) Alameda County Elected Officials (to be selected by the Mayor's Conference)

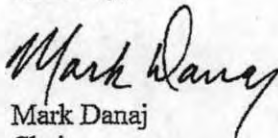
The cities within each county have eight seats (3 Elected Officials, 3 City Managers, 1 Police Chief and 1 Fire Chief) all board members are selected by their representative organizations.

The ACCMA understands the desire the City of Oakland has to have permanent representation on the Board of Directors, and supports the need for representation for the City of Oakland. The ACCMA has three seats on the Board of Directors and would like to offer the City of Oakland one of those seats to be designated as a City of Oakland Seat for the City Administrator.

We propose the development of an MOU to be executed by all the cities within Alameda County insuring a seat for the City of Oakland as long as the City is a participating and contributing member of the EBRCSA. Our only request in return is that the City Administrator participate in the ACCMA. It is understood that the representation on the EBRCSA Board will primarily be to represent the City of Oakland interests, but the City Administrator will also represent the cities within Alameda County.

We look forward to having the City of Oakland become a partner in the EBRCSA system, advancing regional cooperation for our public safety first responders. If you have any questions, please feel free to contact me at (510) 284-4005 or [mdanaj@fremont.gov](mailto:mdanaj@fremont.gov).

Sincerely,

  
Mark Danaj  
Chair

cc: EBRCSA Board of Directors  
Fred Blackwell, City Administrator, City of Oakland

**Attachment F**  
**EBRCSA Operation Agreement**

8821

10

EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

PROJECT OPERATING AGREEMENT

This PROJECT OPERATING AGREEMENT (the "Operating Agreement"), made and entered into as of July 12, 2011, (the "Effective Date"), is by and between the East Bay Regional Communications System Authority, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "Authority"), and the public agency set forth on the signature page hereof (the "User").

WITNESSETH:

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), formed by the local agencies (the "Members") through an Operating Agreement dated as of September 11, 2007 (the "Agreement") to borrow public capital improvements within the State of California pursuant to Article 4 of the Act (the "Bond Law") to borrow public capital improvements within the State of California or equivalent communications system serving Alameda and Contra Costa Counties political jurisdictions therein as further described in the Operating Agreement;

Berkeley

WHEREAS, User and the Authority propose to enter into an Operating Agreement, whereby the Authority will own and operate the Project for the benefit of the User and other users of the Project (collectively, the "Users"), which other Users will execute operating agreements similar to this one (collectively, the "Operating Agreements") and the Users will pay, pursuant to user fees, a portion of the cost of the Project, consisting of a buy-in cost based on the number of radios in use in the Project (the "Initial Payments"), the cost of the Project (the "Service Payments") and the cost of annual operation (the "Operating Payments"), (Service Payments and Operating Payments are referred to herein collectively as the "User Payments"); and

WHEREAS, the Authority will issue its revenue bonds (the "Bonds") pursuant to a trust agreement for the purpose of providing money to acquire the Project; and

WHEREAS, Users may elect to prepay the Service Payment component of the User Payments prior to issuance of the Bonds, thereby reducing the amount of Bonds required to be issued; and

WHEREAS, the Bonds are to be secured by a pledge of and first lien on the Service Payments to the extent received by the Authority from the Users pursuant to Operating Agreements executed by each of them, which Service Payments are anticipated to be sufficient in time and amount to pay the principal of and interest on the Bonds; and

WHEREAS, this Operating Agreement is intended to establish a means of providing the User Payments and ensuring the sound operation of the Project, and is not in itself an approval of the Project or the grant of any land use entitlement to develop the Project; and

VENDOR COPY

CMS#: P4PB4  
AUTH# 65421

WHEREAS, the Authority, through its Operations and Finance Committees, commits to use its best efforts to create, by December 1, 2011, an Operating and Maintenance Agreement ("OMA") that will further describe the terms and conditions for Operation of the Project and the Authority's service obligations to all Users, including without limitation: (i) the specific maintenance and operational requirements for the Project; (ii) the duration and scope of Authority's obligation to deliver radio service from the Project following termination of this Operating Agreement; (iii) the process used to determine operating costs of the Project; (iv) the baseline service levels for Users in their respective jurisdictions; (v) the payment schedule for and the amount of Operating Payments; (vi) the Authority's commitment of best efforts to complete repair or reconstruction of the Project within a reasonable time; (vii) the Authority's commitment of best efforts to provide continuous service to User and to minimize to the extent possible temporary interruptions of or reductions in service for necessary inspection, maintenance, repair or replacement of the Project; (viii) and the notification procedures to Users of temporary interruptions of or reductions in service.

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the undersigned User and the Authority agree that the recitals are true and correct, and as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.01. Definitions.

Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes hereof, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein, have the meanings defined herein; the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein. All capitalized terms used in this Operating Agreement and not defined herein shall have the meanings ascribed thereto in the Trust Agreement.

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

"Authority" means the East Bay Regional Communications System Authority, a joint exercise of powers authority organized and existing under the Act and any successor thereto.

"Authorized Representative" means: (a) with respect to the Authority, its Chair, Vice Chair, Executive Director, or Secretary, or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chair and filed with the Trustee; and (b) with respect to a User, any person authorized to perform any act or sign any document by or pursuant to a resolution of the governing board of such User and filed with the Authority.

"Bondholder or "Bond Owner" means any person who shall be the registered owner of any Outstanding Bond.

"Bond Law" means Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code, as amended from time to time.

"Bonds" means the revenue bonds of the Authority issued from time to time to finance the Project pursuant to the Trust Agreement.

"Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California, or in any state in which the Office of the Trustee is located, are closed.

"County" means the County of Alameda and/or the County of Contra Costa, as further specified herein.

"Debt Service" means the debt service due Alameda and Contra Costa Counties on the Bonds and set forth in the Trust Agreement and Financing Agreements, as they may be amended or supplemented from time to time.

"Due Date" means, with respect to the User Payments, August 31st of each year.

"Event of Default" means an event of default described in Section 5.01 hereof.

"Financing Agreement" means an agreement between the Authority and the respective County pursuant to which County will purchase the Bonds.

"Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period hereafter selected and designated as the official Fiscal Year period of the Authority designated in a Written Certificate of the Authority delivered to the Trustee.

"Initial Payments" means the charge of Two Hundred Dollars (\$200) per radio, established by the Authority as an up-front payment required to become a User pursuant to Section 3.01.

"JPA Agreement" means that certain Joint Exercise of Powers Agreement, dated as of September 11, 2007, establishing the Authority, as originally executed or as it may from time to time be supplemented, modified or amended as provided therein.

"Members" means the signatories to the JPA Agreement, as the same may be amended from time to time, that have executed an Operating Agreement.

"Net Proceeds" means, when used with respect to any insurance or condemnation award received by the Authority, the proceeds from such insurance or condemnation award remaining after payment of all reasonable expenses (including attorneys' fees) incurred in the collection of such proceeds.

"New User" means a local agency that has entered into or intends to enter into an Operating Agreement with the Authority and that has not paid an Initial Payment.



"Operating Agreement" means this operating agreement, dated as of \_\_\_\_\_, including any amendments and supplements hereto.

"Operating Agreements" means, collectively, the operating agreements executed by the Authority relating to the Project.

"Operating Costs" means the costs spent or incurred by the Authority for maintaining and operating the Project, including all expenses of management, repair and operation, including but not limited to costs of electricity, outside vendor contracts, software license and upgrades, , replenishment of the Reserve and Replacement Fund, and all other expenses necessary to maintain and preserve the Project in good repair and working order, and all administrative costs of the Authority, including administrative costs attributable to the Project and to the Operating Agreement, including without limitation salaries and wages of employees, overhead, insurance, taxes (if any), expenses, reasonable compensation and indemnification of fiscal agents, paying agents and trustees with respect to the foregoing, and fees of auditors, accountants, attorneys or engineers, and all applicable federal, state and local requirements pertaining to the operation of the Project.

"Operating Payment" means the share of Operating Costs, including but not limited to funding of the Reserve and Replacement Fund and funding of new capital, annually allocated to each User, as annually determined by the Authority.

"Operating Period" means the period in each year from July 1 to and including the following June 30, during which time the Authority is operating the Project.

"Project" means that certain public safety radio system to be financed with the proceeds of the Bonds and all other sources of financing available to the Authority, as described in Exhibit B hereto, as the same may be amended from time to time.

"Project Fund" means that certain fund created pursuant to the Authority's Financing Agreements with the Counties, to be funded from the proceeds of issuance of the Authority's Bonds and the prepayment of Service Payments made prior to Bond sizing.

"Reserve and Replacement Fund" means the reserve and replacement fund held by the Authority pursuant to Section 3.06 hereof.

"Reserve and Replacement Fund Requirement" means that requirement for the Authority's maintenance of a minimum of One Million Dollars (\$1,000,000) in the Reserve and Replacement Fund.

"Revenue Fund" means the special fund held by the Trustee pursuant to the Trust Agreement.

"Revenues" means (a) the Initial Payments, (b) all User Payments received by the Authority from the Users hereunder, including the proceeds of any business interruption insurance, (c) investment income with respect to any moneys held by the Trustee in the funds and accounts established under the Trust Agreement and the Financing Agreements, and (d) all other funds from any source legally available to the Authority.

"Service Payments" means the annual payments by each User for the service provided by the Project in the applicable Operating Period, in the amounts set forth in Exhibit A hereto, as revised periodically from time to time by the Authority, which amounts shall be used by the Authority to pay the principal of and interest on the Bonds or deposited in the Reserve and Replacement Fund.

"Trustee" means initially the Treasurer, Auditor or other designee of the County of Alameda or such other firm appointed by the Authority and acting as an independent Trustee with the duties and powers provided in the Trust Agreement, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in the Trust Agreement.

"Trust Agreement" means the Trust Agreement, dated as of October 1, 2010, between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented.

"User Payment" means, collectively, the Service Payment and the Operating Payment due in any year, except to the extent such amounts are rebated to a User due to abatement of such User's obligations hereunder as provided in Section 3.04 hereof.

"Users" means all signatories to an Operating Agreement that have paid an Initial Payment.

## ARTICLE II

### OPERATION OF THE FACILITIES

#### Section 2.01. Operation of the Project: Title.

The Authority has or will enter into purchase orders and contracts to supervise and provide for, or cause to be supervised and provided for, the complete planning, design, construction, acquisition, financing, improvement, repair, modification and installation of the Project (collectively, "Construction"). The Authority covenants to obtain such land use permits as are required for Construction. In the event any such permit cannot be reasonably obtained, the Authority will use its best efforts to pursue alternate sites for such component of the Project. The Authority agrees that it will cause the work under said contracts to be diligently performed and that the Project will be constructed in accordance with the specifications approved by the Authority.

The Authority shall have the right to make additions, modifications and improvements to the Project or any portion thereof. All additions, modifications and improvements to the Project shall thereafter comprise part of the Project and become subject to the provisions of this Operating Agreement. Such additions, modifications and improvements shall not in any way damage the Project, or cause the Project to be used for purposes other than those authorized under the provisions of state and federal law; and the Project, upon completion of any additions, modifications and improvements made thereto pursuant to this Section, shall be of a value which

is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The Authority will not permit any mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the Authority pursuant to this Section; provided that if any such lien is established and the Authority may in good faith contest any lien filed or established against the Project, and in such event may permit the liens so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The User will cooperate in any such contest, upon the request and at the expense of the Authority.

Notwithstanding any other provision hereof, the Authority shall be entitled to remove portions of the Project from service, upon a filing with the Trustee of evidence that adequate facilities remain to provide comparable levels of service to the Users notwithstanding any such removal.

#### Section 2.02. Modification of Project.

The Authority hereby agrees to operate the Project for the duration of this Operating Agreement.

The Project shall only be used for radio service for public safety and other governmental uses for the benefit and convenience of the Users. User shall have the right to use the Project at all times herein mentioned at rates and charges established by the Authority, except as otherwise provided pursuant to Article V hereof. In order to effectively operate the Project, the Authority hereby agrees to maintain and preserve the Project in good repair and working order at all times and to operate the Project in an efficient and economical manner, and to pay all maintenance and operation costs of the Project as they become due and payable from available revenues.

At all times during the term of this Operating Agreement the Authority shall hold title to the Project, including all additions which comprise fixtures, repairs, replacements or modifications thereto, except for such equipment as is owned by one or more Users or other governmental agencies and licensed to the Authority. Upon the termination of this Operating Agreement, all right, title and interest in and to the Project shall be retained by the Authority except as may be otherwise provided pursuant to licensing or other agreements.

The User recognizes and acknowledges that the operation, control, ownership and management of the Project is at the complete and sole discretion of the Authority. Nothing in this Operating Agreement shall be construed to limit the Authority's discretion in management and operation of the Project. In connection therewith, User hereby consents to all steps or actions Authority has taken or may take which are necessary or appropriate for the authorization, issuance, sale and delivery of the Bonds.

The Authority will make all reasonable effort to provide continuous service to the Users, but may temporarily discontinue or reduce service to one or more of the Users for the purpose of necessary investigation, inspection, maintenance, repair or replacement of any of the Project, or except as provided in Article V hereof. The Authority shall notify Users as far in advance as reasonably possible of any discontinuance or reduction of service, and the estimated duration of

such discontinuance or reduction. Recognizing that the Users will rely on the Authority for uninterrupted service, the Authority agrees to use its best efforts throughout the term of this Operating Agreement to minimize any such discontinuance or reduction of service.

The Authority shall prepare a budget for all Operating Costs by the beginning of each fiscal year, and shall promptly provide each User with a copy thereof. To the extent Operating Costs in any year exceed the amount set forth in the budget, the Authority shall promptly notify each User in writing of such increases. Upon receipt of such notice, the User hereby agrees to use its best efforts to pay such increased Operating Costs as soon as possible.

The Authority acknowledges and agrees that the User has full authority and discretion to grant or deny applications for land use entitlements and approvals within its jurisdiction related to the Project, and that this Operating Agreement does not grant the Authority any such entitlements or approvals to develop the Project.

#### Section 2.03. Bond Issuance.

The Bonds shall be issued, sold and delivered on such terms and conditions as the Authority, in its reasonable discretion, deems necessary or desirable. User hereby agrees to cooperate with the Authority and its designated representatives, and to provide all reasonably requested material relating to the User, in order to timely accomplish such authorization, issuance, sale and delivery of the Bonds; provided that such cooperation does not constitute an agreement to issue any land use permits. However, User covenants to promptly process all applications of the Authority for necessary land use permits.

The Authority shall issue Bonds only for that portion of the Project's Construction that is not funded by prepaid Service Payments from Users..

#### Section 2.04. Term.

Unless extended by mutual agreement, the term of this Operating Agreement shall commence on the first date of delivery of any Bonds to the initial purchaser thereof (or if executed later, the date of execution of this Operating Agreement) and terminate (subject to such other termination events as provided in this Operating Agreement), on the date on which no Bonds are Outstanding.

### ARTICLE III

#### PAYMENT OF INITIAL PAYMENTS AND USER PAYMENTS; RESERVE AND REPLACEMENT FUND

##### Section 3.01. Payment of the Initial Payment and User Payments.

New Users who enter into an Operating Agreement and existing Users who have paid an Initial Payment of \$200 per radio who wish to increase the number of radios in their existing service, shall pay an Initial Payment to the Authority, or its successors or assigns, from any source of legally available money, of Two Hundred Dollars (\$200) per radio. The Initial Payments shall be deposited in the Reserve and Replacement Fund. In addition, each New User,

or User increasing the number of radios in service, shall pay an Operating Payment equal to the fee per radio paid by all then existing Users, and a Service Payment per radio equal to that paid by each existing User then paying a Service Payment, unless such New User selects prepayment of its Service Payment.

In the event that a User chooses to prepay its Service Payment at the time of its execution of the Operating Agreement, the Authority will calculate the appropriate contribution of the User based on the total cost of the Project, and will deposit such Service Payment made prior to Bond sizing in the Project Fund. Projected User Payments are set forth in Exhibit A.

In addition to any required Initial Payment, on each Due Date, beginning in 2013, unless required earlier pursuant to a supplemental agreement, the User shall pay to the Authority, or its successors or assigns, from any source of legally available money, its Service Payment, if any is due, and its Operating Payment. The Operating Payment owed by each User shall be in the amount annually determined by the Authority for such Operating Period. The payment in any Operating Period by a User of its User Payment shall be for use of the Project by such User during such Operating Period.

Each Initial Payment and User Payment shall be payable by the User in accordance with the terms hereof and at the times required herein in lawful money of the United States of America. In the event the User should fail to make any of the payments required in this Section 3.01, the payment in default shall continue as an obligation of such User until the amount in default shall have been fully paid, and the User agrees to pay the same with interest thereon, to the extent permitted under applicable law, from the date of default to the date of payment at the highest rate of interest represented by any Outstanding Bond plus one percent (1%). Overdue Service Payments, if received, shall be deposited in the Reserve and Replacement Fund to the extent that the amount on deposit therein is less than the Reserve and Replacement Fund Requirement, and then to the Revenue Fund. Overdue Operating Payments shall be used by the Authority to pay Operating Costs.

The User Payment coming due and payable during each Operating Period shall constitute the total payment for service to such User provided by the Project for such Operating Period, and shall be paid by each User in each Operating Period for and in consideration of the right of the use and service provided by the Project during each Operating Period. The parties hereto have agreed and determined that the total User Payment represents not more than the fair value of the cost of the service provided by the Project. In making such determination, consideration has been given to the estimated fair market value of the Project, the costs of financing, servicing and operating the Project, other obligations of the User and the Authority under this Operating Agreement, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the Users and the general public.

#### Section 3.02. Source of Payments: Budget and Appropriation.

The User Payments shall be payable from any source of legally available funds of the Users. User covenants to take such action as may be necessary to include all payments owed hereunder in each of its annual budgets during the term of this Operating Agreement and to make the necessary annual appropriations for all such payments. The covenants on the part of User

contained herein shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of User to take such action and do such things as are required by law in the performance of the official duty of such officials to enable such User to carry out and perform the covenants and agreements of such User in this Operating Agreement.

In the event of abatement of User's Service Payment due to the Project being unavailable for use, the User's Authorized Representative and officers charged with the duty of preparing and submitting the annual budget of User to its legislative body shall include in the proposed budget, and request that the legislative body include in the final approved budget, and thereby appropriate, any amount necessary to replenish the Reserve and Replacement Fund in the amount of such User's abated Service Payment. Such officers shall use their best efforts to obtain such appropriation. The request for inclusion in the final approved budget and appropriation shall be made in each Fiscal Year following any such abatement so long as is necessary to restore the Reserve and Replacement Fund. Notwithstanding the foregoing provisions of this paragraph, the decision of the legislative body as to whether or not to approve and appropriate any amount under this paragraph in any given Fiscal Year for the purpose of reinstating the Reserve and Replacement Fund Requirement is in the sole and sound discretion of such legislative body, and the failure to make any such appropriation in any given Fiscal Year shall not constitute an Event of Default under this Operating Agreement.

Section 3.03. Reserved.

Section 3.04. Abatement of Payment of User Payments.

If the Project shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, this Operating Agreement shall cease with respect thereto as of the day possession shall be so taken. If less than all of the Project shall be taken permanently, or if the Project or any portion thereof shall be taken temporarily, under the power of eminent domain, and there is a resulting substantial interference with the service provided by the Project, then (a) this Operating Agreement shall continue in full force and effect with respect thereto and shall not be terminated by virtue of such taking and the parties hereto waive the benefit of any law to the contrary, and (b) there shall be a partial abatement of the User Payments, in a commercially reasonable amount to be determined by the Authority such that the resulting User Payments represent fair consideration for the service provided by the remaining usable components of the Project. The User Payments shall be abated during any period in which there is a material failure by the Authority to provide radio service from the Project to such User. The amount of such abatement shall be determined by the Authority such that the resulting User Payments represent fair consideration for the service provided by the portions of the Project not damaged or destroyed. Such abatement shall continue for the period commencing with such material damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such material damage, destruction or malfunction, this Operating Agreement shall continue in full force and effect and User waives any right to terminate this Operating Agreement by virtue of any such damage and destruction.

Section 3.05. Receipt and Deposit of User Payments.

The Authority covenants and agrees that the User Payments, when and as received, will be received and held by or on behalf of the Authority in trust and deposited in the Revenue Fund.

Section 3.06. Establishment, Maintenance and Use of Reserve and Replacement Fund.

The Authority shall maintain and hold a separate fund to be known as the "Reserve and Replacement Fund." The Authority shall deposit Revenues remaining after paying Debt Service on the Bonds, and Operating Payments remaining after payment of all Operating Costs for the Fiscal Year, in the Reserve and Replacement Fund until the amount on deposit therein is at least equal to the Reserve and Replacement Fund Requirement, and thereafter add such amounts as the Authority shall determine from time to time as necessary to replenish the Reserve and Replacement Fund so that it has on deposit an amount at least equal to the Reserve and Replacement Fund Requirement. The Authority may withdraw amounts from the Reserve and Replacement Fund for use in repairing, improving or replacing the Project or any component thereof; providing credits to Users pursuant to Exhibit A hereto; or for any other lawful purpose that is authorized by the Authority's Board of Directors; provided, however, that in the event any User Payment is abated as provided herein or is insufficient to pay Debt Service, amounts on deposit in the Reserve and Replacement Fund may be used for transfer to the Trustee in an amount equal to such abated User Payments or such insufficiency, until such time as the abatement is discontinued and User Payments are sufficient to pay Debt Service.

ARTICLE IV

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 4.01. Compliance with Operating Agreement.

The Users will punctually pay the User Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by them.

The Authority will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein and in the Trust Agreement required to be observed and performed by it, and it is expressly understood and agreed by and among the parties to this Operating Agreement that each of the agreements, conditions, covenants and terms contained in this Operating Agreement is an essential and material term of the operation of the Project by the Authority.

Section 4.02. Against Encumbrances.

The Authority hereby covenants that as of the date hereof there is no pledge of or lien on the Revenues other than the pledge and lien securing the Bonds. The Authority will not make any pledge of or place any lien on the Revenues except as provided for herein or in the Resolution.

Section 4.03. Against Sale or Other Disposition of Property.

The Authority will not sell, lease, encumber or otherwise dispose of the Project or any part thereof; provided however, any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the Project, or any material or equipment which has become worn out, may be sold or exchanged at not less than the fair market value thereof, provided that such sale or exchange does not materially adversely affect the service provided by the Project and that the proceeds (if any) of such sale or exchange shall be deposited in either the Revenue Fund or the Reserve and Replacement Fund. The determination of which fund to receive such deposit shall be at the discretion of the Authority.

Section 4.04. Against Competitive Project.

To the extent permitted by law, the User covenants not to acquire, maintain or operate within the jurisdiction of the Authority any public safety radio system competitive with the Project without the prior written consent of the Authority, which consent shall not be unreasonably withheld. This covenant is not intended to, and does not, prohibit the User from acquiring, maintaining, or operating a public radio system within its jurisdiction if the Operating Agreement is terminated or when the User no longer participates in the Project or with the Authority.

Section 4.05. Tax Covenants.

The Authority and User hereby covenant that they shall not make or permit any use of the Project that may cause the Bonds, or bonds the proceeds of which are used to purchase the Bonds, to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

The Authority shall not use the Project to benefit a non-governmental unit until the Project achieves the baseline level of service to Users, and further covenants that so long as any Bonds remain Outstanding, the amount of capacity of the Project to be used, allocated or assigned to any person, other than a governmental unit, will not exceed ten percent (10%) of the total capacity of the Project during such period. For these purposes, the total capacity of the Project shall be determined by multiplying the capacity of the Project by the number of years in the term of the Bonds. The term "governmental unit" means the State of California or any political subdivision thereof but excludes the United States Government or any agency thereof.

Section 4.06. Access to the Project.

The Users and any Authorized Representative of the Users, and the Users' successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Project or any part thereof. The Users, any Authorized Representative of the Users and the Users' successors or assigns shall further have such rights of access to the Project or any component thereof as may be reasonably necessary to cause the proper maintenance of the Project in the event of failure by the Authority to perform its obligations hereunder; provided, however, that neither the Users nor any of their assigns shall have any obligation to cause such proper maintenance.

Section 4.07. Maintenance of Existence; Amendment of JPA Agreement.



User hereby covenants that so long as any Bonds are Outstanding, User will not terminate this Operating Agreement except as provided in this Section or Section 6.01 hereof. Withdrawal from the JPA Agreement shall not constitute a withdrawal from this Operating Agreement. User shall use its best efforts to maintain its existence and the existence of the Authority, will not dissolve or otherwise dispose of all or substantially all of its own or the Authority's assets and will not consolidate with or merge into another public agency or permit one or more public agencies to consolidate with or merge into it; provided, however, that User may dissolve, consolidate or merge, sell or otherwise transfer to another entity all or substantially all of its assets, provided that the surviving, resulting or transferee entity, as the case may be (i) is a public agency of the State of California or a subdivision thereof, (ii) assumes in writing all of the obligations of User under this Operating Agreement, and (iii) provides an opinion of Bond Counsel (addressed to the Trustee, Counties and the Authority) to the effect that such dissolution, consolidation, merger, sale or transfer will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes, and complies with the requirements of this Section 4.07. The Authority will use its best efforts to enforce the provisions of this Section 4.07.

So long as any Bonds are Outstanding, the User, if a Member, hereby covenants not to amend or modify the JPA Agreement in a manner which materially affects this Operating Agreement without first obtaining an opinion of Bond Counsel that such modification or amendment does not materially adversely affect the interests of the Bond Owners.

Section 4.08. Payment of Claims.

The Authority will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Revenues or any part thereof or on any funds in the control of the Authority prior or superior to the lien of the Bonds or which might impair the security of the Bonds.

Section 4.09. Compliance with Contracts.

The Authority will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Project and all other contracts affecting or involving the Project to the extent that the Authority is a party thereto, including the contract with the initial Project vendor.

Section 4.10. Insurance.

(a) The Authority shall procure and maintain, or cause to be procured and maintained, throughout the term of this Operating Agreement, casualty insurance against loss or damage to the Project, in an amount at least equal to the lesser of replacement cost of the Project or the then outstanding principal amount of the Bonds. Such insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, fire, lightning, vandalism, malicious mischief and such other hazards as are normally covered by such insurance with extended coverage. Such insurance shall not cover loss or damage by seismic activity. Such insurance shall be subject to such deductibles as are customarily maintained by public agencies with respect to works and properties of a like character, but in any

case shall not exceed One Hundred Thousand Dollars (\$100,000). Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Authority, and may be maintained in whole or in part in the form of the participation by the Authority in a joint powers authority or other program providing pooled insurance; provided that such insurance may not be maintained by the Authority in the form of self-insurance. The Net Proceeds of such insurance shall be applied as provided in the Trust Agreement.

(b) The Authority shall maintain or cause to be maintained throughout the term of this Operating Agreement, a standard comprehensive general insurance policy or policies in protection of the Authority, the Users, and their respective members, officers, agents, employees, designated volunteers and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Project as required by the JPA Agreement. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the Authority shall deem adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Authority, and may be maintained in whole or in part in the form of self-insurance by the Authority, subject to the provisions of (e) below, or in the form of the participation by the Authority in a joint powers authority or other program providing pooled insurance. The proceeds of such liability insurance shall be applied by the Authority toward extinguishment or satisfaction of the liability with respect to which paid.

(c) The Authority will procure and maintain, or cause to be procured and maintained, workers' compensation insurance against liability for compensation under the Workers' Compensation Insurance and Safety Act of California, or any act hereafter enacted as an amendment or supplement or in lieu thereof, such insurance to cover all persons employed by the Authority in connection with the operation of the Project; provided that such insurance may be effected under a legal self-insurance program.

(d) The Authority shall procure and maintain, or cause to be procured and maintained, throughout the term of the Operating Agreement, business interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Project and the service provided thereby as a result of any of the hazards covered in the insurance required by this Section 4.10, in an amount at least equal to the Debt Service coming due and payable in the next two (2) consecutive years, net of any capitalized interest held pursuant to the Financing Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Authority, and may be maintained in whole or in part in the form of participation in a joint powers authority or other program providing pooled insurance; provided that such insurance may not be maintained by the Authority in the form of self-insurance. The Net Proceeds of such insurance, if any, shall be paid to the Trustee and deposited in the Revenue Fund, and shall be credited towards the User Payments allocable to the insured improvements as the same become due and payable.

(e) Insurance required to be maintained by subparagraphs (b) or (c) above may be effected under a legal self-insurance program so long as (i) the Authority shall certify to the Trustee that the Authority has segregated amounts in a special insurance reserve meeting the requirements of the applicable subparagraph (which segregated reserve may be held by any legal

depository of Authority funds) and (ii) the Trustee receives a certificate of a nationally recognized Insurance Consultant that such reserve is actuarially sound, upon which certificate the Trustee may conclusively rely. All policies of insurance required to be maintained herein shall provide that the Trustee shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby, provided, however, the Trustee shall not be responsible for the sufficiency of any insurance herein required.

Section 4.11. Books and Accounts; Statements.

(a) The Authority will keep proper books of record and accounts of the Project, separate from all other records and accounts of the Authority, in which complete and correct entries shall be made of all transactions relating to the Project. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Users.

(b) The Authority will prepare and file with the Trustee and the Counties annually within sixty (60) days after the close of each Fiscal Year during the term of this Operating Agreement a certified statement that all insurance required by this Operating Agreement to be carried by the Authority with respect to the Project is in full force and effect and complies with the terms hereof.

(c) The Authority will cause to be prepared not more than two hundred ten (210) days after the close of each Fiscal Year financial statements of the Authority for such Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon prepared by an Independent Certified Public Accountant who examined such financial statements, and a general statement of the physical condition of the Project. The Authority will furnish a copy of such summary statement to the Users.

Section 4.12. Payment of Taxes and Compliance with Governmental Regulations.

The Authority will pay and discharge all taxes, assessments and other governmental charges, if any, which may hereafter be lawfully imposed upon the Project or any part thereof when the same shall become due. The Authority will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Project or any part thereof, but the Authority shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

Section 4.13. Amount of Service and Operating Payments.

The Authority will, at all times during the term of this Operating Agreement, fix, prescribe and collect the Service Payments and Operating Payments in connection with use of the Project so as to yield sufficient amounts, after making reasonable allowances for contingencies and errors in the estimates, to pay the Debt Service and Operating Costs due in the applicable Fiscal Year. The Authority shall provide a written statement to the Counties and the Trustee by October 1 of each year to the effect that it has on deposit, or reasonably expects to

have on deposit when needed, sufficient funds to pay the Debt Service and Operating Costs as they come due in the current Fiscal Year.

Section 4.14. Operation of Project.

The Authority will, so long as the Bonds are outstanding, continue to operate the Project. The Authority will use its best efforts to employ, or cause to be employed, sufficient staff to maintain and operate the Project. User hereby covenants to purchase any replacement or additional components to be used in conjunction with the service provided by the Project from the Authority, or in conformity with such specifications as the Authority may, from time to time, prescribe. User will not use the service provided by the Project with any equipment which is not authorized by the Authority. User hereby covenants not to use the Project in any manner which may adversely affect the service provided by the Project.

Section 4.15. Reserved.

Section 4.16. Further Assurances.

The Authority and the User will each adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof of the respective parties to this Operating Agreement.

Section 4.17. Eminent Domain Proceeds.

If all or any part of the Project shall be taken by eminent domain proceedings, the Net Proceeds thereof shall be used to prepay or defease the Bonds.

Section 4.18. Use of Eminent Domain.

User hereby covenants and agrees, to the extent it may lawfully do so, that during the term of this Operating Agreement, and so long as any of the Bonds remain Outstanding and unpaid, User will not exercise the power of condemnation with respect to the Project or any component thereof. User further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if User should fail or refuse to abide by such covenant and shall condemn the Project or any component thereof, the appraised value of the Project or such component shall not be less than the greater of (i) if the Bonds are then subject to redemption, the principal and interest due on the Bonds outstanding through the date of their redemption, or (ii) if the Bonds are not then subject to redemption, the amount necessary to defease such Bonds to the first available redemption date in accordance with the Trust Agreement.

Section 4.19. Further Representations, Covenants and Warranties of the Authority.

The Authority represents, covenants and warrants to the Users as follows:

(a) Due Organization and Existence. The Authority is a joint exercise of powers authority duly organized and validly existing under the JPA Agreement and the laws of the State

of California, has full legal right, power and authority under the laws of the State of California to enter into this Operating Agreement and to carry out and consummate all transactions contemplated hereby, and by proper action the Authority has duly authorized the execution and delivery of this Operating Agreement.

(b) Due Execution. The representatives of the Authority executing this Operating Agreement have been fully authorized to execute the same pursuant to a resolution duly adopted by the Board of the Authority.

(c) Valid, Binding and Enforceable Obligations. This Operating Agreement has been duly authorized, executed and delivered by the Authority and constitutes the legal, valid and binding agreement of the Authority enforceable against the Authority in accordance with its terms.

(d) No Conflicts. The execution and delivery of this Operating Agreement, the consummation of the transactions on the part of the Authority herein contemplated and the fulfillment of or compliance by the Authority with the terms and conditions hereof do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Operating Agreement or the financial condition, assets, properties or operations of the Authority.

(e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of or filing or registration with any governmental authority is necessary in connection with the execution and delivery of this Operating Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Operating Agreement, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Operating Agreement or the financial conditions, assets, properties or operations of the Authority.

Section 4.20. Representations, Covenants and Warranties of User.

User represents, covenants and warrants to the Authority as follows:

(a) Due Organization and Existence. User is a public body, corporate and politic, duly organized and validly existing under the laws of the State of California, has full legal right, power and authority to enter into this Operating Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action User has duly authorized the execution and delivery of this Operating Agreement.

(b) Due Execution. The representatives of User executing this Operating Agreement are fully authorized to execute the same pursuant to official action taken by the governing body of the User.

(c) Valid, Binding and Enforceable Obligation. This Operating Agreement has been duly authorized, executed and delivered by User and constitutes the legal, valid and binding agreement of User, enforceable against User in accordance with its terms.

(d) No Conflicts. The execution and delivery of this Operating Agreement, the consummation of the transactions on the part of User herein contemplated and the fulfillment of or compliance by User with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which User is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of User, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions on the part of such User contemplated by this Operating Agreement or the financial condition, assets, properties or operations of such User.

(e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of User, and no consent, permission, authorization, order or license of; or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Operating Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of User after reasonable investigation, threatened against or affecting such User or the assets, properties or operations of such User which, if determined adversely to the User or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Operating Agreement, or upon the financial condition, assets, properties or operations of the User, and User is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and

adversely affect the consummation of the transactions contemplated by this Operating Agreement or the financial conditions, assets, properties or operations of User.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

#### Section 5.01. Events of Default.

Any one or more of the following events shall constitute an Event of Default hereunder:

- (a) Failure by the User to punctually pay its User Payments when and as the same shall become due and payable;
- (b) Failure by User to observe and perform any non-monetary condition or agreement on its part to be observed or performed, for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied has been given to User by the Authority or the Trustee; provided, however, that if in the reasonable opinion of User the failure stated in the notice can be corrected, but not within such thirty (30) day period, such failure shall not constitute an Event of Default if User shall commence to cure such failure within such thirty (30) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time;
- (c) User shall file a petition seeking arrangement or reorganization under federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with the consent of a User seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of such User or of the whole or any substantial part of its property. However, such filing shall not constitute a default so long as User continues to pay its User Payments punctually.

#### Section 5.02. Remedies of the Authority.

Whenever any Event of Default occurs and is continuing, it shall be lawful for the Authority to, and the Authority shall, at the written direction of any Bondholder, exercise against the User any and all remedies available pursuant to law or granted pursuant to this Operating Agreement; provided, however, that notwithstanding anything herein or in the Trust Agreement to the contrary, there shall be no right under any circumstances to accelerate the User Payments or otherwise declare any User Payment not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the User is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; provided, that no termination of this Operating Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority shall have and is granted each and every one of the following remedies, subject in all respects to the limitations set forth in Section 5.04.

(a) Enforcement of Payments Without Termination. In the event the Authority does not elect to terminate this Operating Agreement with respect to a User in the manner hereinafter provided for in subparagraph (b) hereof, the User agrees to and shall remain liable for the payment of its User Payment and the performance of all conditions herein contained and shall reimburse the Authority for the full amount of its User Payments to the end of this Operating Agreement; provided that its User Payments shall be payable only at the same time and in the same manner as hereinabove provided for such User Payment, notwithstanding any suit brought by the Authority for the purpose of obtaining possession of the Project or any component thereof or the exercise of any other remedy by the Authority. Notwithstanding the provisions of the JPA Agreement, User agrees that this Operating Agreement constitutes full and sufficient notice of the right of the Authority to re-allocate service provided by the Project in the event of default by the User without effecting a surrender of this Operating Agreement, and further agrees that no acts of the Authority in effecting such re-allocation shall constitute a surrender or termination of this Operating Agreement irrespective of the term for which such re-allocation is made or the terms and conditions of such re-allocation, or otherwise, but that, on the contrary, in the event of such default by the User the right to terminate this Operating Agreement with respect to such User shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. Any User which is in default hereunder agrees to surrender and quit possession of the Project or any component thereof upon demand of the Authority.

(b) Termination of the Operating Agreement. Notwithstanding any provision of the JPA Agreement to the contrary, upon the User's default the Authority may, at its option, and shall, at the written direction of either Bondholder, terminate this Operating Agreement and reallocate all or any portion of the User's service capacity of the Project; provided, that the Authority shall not terminate this Operating Agreement with respect to a User unless such termination will not materially adversely affect either Bondholder. In the event of such termination of this Operating Agreement by the Authority at its option and in the manner hereinafter provided on account of default by the User (and notwithstanding any re-allocation of the service capacity of the Project by the Authority in any manner whatsoever), the defaulting User nevertheless agrees to pay to the Authority the difference between all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of the User Payment and any amounts realized from the reallocation of such service capacity. Neither notice to pay the User Payment or notice to deliver up possession of any component of the Project given pursuant to law shall of itself operate to terminate this Operating Agreement, and no termination of this Operating Agreement on account of default by the User shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to such User of the election on the part of the Authority to terminate this Operating Agreement with regards to such User. User covenants and agrees that no surrender of the Project, or any component thereof, or any termination of this Operating Agreement shall be valid in any manner or for any purpose whatsoever unless stated and accepted by the Authority by such written notice. User hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned in accordance with the provisions herein contained.

(c) Proceedings at Law or In Equity. The Authority may, and shall at the written direction of either Bondholder:



(i) by mandamus or other action or proceeding or suit at law or in equity, enforce its rights against a User, or any board member, officer or employee thereof, and compel the User or any such board member, officer or employee to perform and carry out its or his duties under applicable law and the agreements and covenants contained herein required to be performed by it or him;

(ii) by suit in equity enjoin any acts or things which are unlawful or violate the rights of the Authority; or

(iii) by suit in equity upon the happening of an Event of Default require the User and its board members, officers and employees to account as the trustee of an express trust.

#### Section 5.03. Non-Waiver.

A waiver of any default or breach of duty or contract by the Authority (which waiver shall be subject to the prior written consent of the Bond Holders) shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by applicable law or by this Article V may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the Authority and the Users shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

#### Section 5.04. Remedies Not Exclusive.

No remedy herein conferred upon or reserved in this Agreement is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any other law.

#### Section 5.05. Agreement to Pay Attorneys' Fees and Expenses.

In the event any party to this Operating Agreement should default under any of the provisions hereof and the nondefaulting parties should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party, upon successful completion of such proceedings by the nondefaulting party, agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of and subject to any provision in the JPA Agreement regarding indemnification or payment of attorney fees, such attorney fees and such other expenses so incurred by the nondefaulting party.

Section 5.06. Trustee and Bond Owners to Exercise Rights.

Such rights and remedies as are given to the Authority under this Article V have been pledged by the Authority to the Trustee for the benefit of the Bond Owners, to which pledge User hereby consents. Such rights and remedies shall be exercised by the Authority, the Trustee and the Bond Owners as provided in the Trust Agreement.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Prepayment.

The User may prepay its Service Payments by a deposit with the Trustee, as escrow holder under an escrow deposit and trust agreement as referenced in and in conformance with the Trust Agreement, of either (i) cash in an amount which is sufficient to pay all unpaid Service Payments in accordance with the schedule set forth in the Trust Agreement, or (ii) non-callable Federal Securities or pre-refunded non-callable municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (iii) any other investment approved in writing by the Trustee, together with cash if required, in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon, be fully sufficient to pay all unpaid Service Payments pursuant to the Trust Agreement on their payment dates so that a pro-rata share of the Bonds shall be defeased as provided for in the Trust Agreement.

Notwithstanding the JPA Agreement or any other provision of this Operating Agreement, including without limitation Sections 4.07 and 5.01 hereof, in the event of a deposit pursuant to this Section 6.01, all obligations of the User under this Operating Agreement shall cease and terminate, excepting only the obligation of the User to pay the Operating Payments, to the extent the User is still using the service provided by the Project. The prepaid Service Payments are deemed to be and shall constitute a special fund for the payment of Service Payments in accordance with the provisions of this Operating Agreement.

The Authority shall consent to such prepayment or defeasance to the extent the same complies with the tax covenants of the Authority and the Counties.

Section 6.02. Benefits of Operating Agreement Limited to Parties.

Except as provided in Section 6.03, nothing contained herein, express or implied, is intended to give to any person other than the Authority and the User any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the Authority or the User shall be for the sole and exclusive benefit of the other party.

Section 6.03. Successor Is Deemed Included In All References to Predecessor.

Whenever the Authority or the User is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Authority or the User, and all agreements and covenants required hereby to be performed

by or on behalf of the Authority or the User shall bind and inure to the benefit of the respective successors thereof whether so expressed or not; provided, however, that the Authority shall not provide service from the Project to any successor to a User until such successor accepts in writing the obligations hereunder of the predecessor User.

Section 6.04. Waiver of Personal Liability.

No board member, officer or employee of User shall be individually or personally liable for the User Payment, but nothing contained herein shall relieve any board member, officer or employee of User from the performance of any official duty provided by any applicable provisions of law or hereby.

Section 6.05. Article and Section Headings, Gender and References.

The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Operating Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 6.06. Partial Invalidity.

If any one or more of the agreements or covenants or portions thereof contained herein required to be performed by or on the part of the Authority or the User shall be contrary to the law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Authority and User hereby declare that they would have executed this Operating Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 6.07. Assignment.

This Operating Agreement and any rights hereunder may not be assigned by either Party without obtaining the prior written consent of the other Party. Section 6.08. Net Contract.

This Operating Agreement shall be deemed and construed to be a "net-net-net obligation" and User hereby agrees that the User Payments shall annually be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 6.09. California Law.

This Operating Agreement shall be deemed and construed to be a "net-net-net obligation" and User hereby agrees that the User Payments shall annually be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 6.09. California Law.

This Operating Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 6.10. Notices.

Any notice, request, complaint, demand or other communication under this Operating Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address as set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) forty-eight (48) hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. User, the Authority or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

Authority: East Bay Regional Communications System Authority  
Alameda County Office of Homeland Security and Emergency Services  
4985 Broder Boulevard  
Dublin California 94568  
Facsimile: (925)  
Attention: William J. McCammon, Executive Director

User: City of Berkeley  
2180 Milvia Street, Berkeley, California 94704  
Facsimile # 510-981-7099  
Attention: Phil Kamlarz, City Manager; or  
ARobin Orden, Public Works Senior Management Analyst

Trustee: Deutsche Bank, 5022 Gate Parkway, Suite 200, Jacksonville, Florida 32256

Section 6.11. Effective Date.

This Operating Agreement shall become effective upon its execution and delivery, and shall terminate as set forth in Section 2.03 hereof.

Section 6.12. Execution in Counterparts.

This Operating Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 6.13. Amendments.

AUTHORITY:

East Bay Regional Communications System Authority

By: \_\_\_\_\_  
William D. Shinn, Chair

APPROVED AS TO FORM:

By: Robin Donoghue  
Robin Donoghue, Attorney at Law

USER:

City of Berkeley

By: Phil Kamlarz  
Phil Kamlarz, City Manager

ATTEST:

By: Deanna Despain  
for Deanna Despain, City Clerk

APPROVED AS TO FORM:

By: Michael Woo  
Michael Woo, Deputy City Attorney

Registered by:

Chi-Ming Ho 10/11/04  
City Auditor

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## EXHIBIT A

### SERVICE AND OPERATING PAYMENT AMOUNTS

#### AS OF FISCAL YEAR 2013-2014

The amount of User's Operating Payments will be calculated and made each year based on the total number of radios that Subscribers have committed to place in service in the Project, once the User has paid the upfront cost of \$200 per radio. There are two types of payment categories:

Payment Category #1 – If the User prepay its Service Payment it will only be responsible for its Operating Payments.. The amount to prepay the Service Payment is estimated to be \$1,545 per radio placed in service. The Operating Payment for a User that has prepaid its Service Payment is estimated to be \$30 per month per radio subscribed to the Project. The Authority will notify the User of the amount of the Operating Payment in January of the fiscal year preceding the fiscal year for such payment. Operating Payments will be due by August 31<sup>st</sup> of the fiscal year in which such payment is due.

Payment Category #2 – If the User does not prepay its Service Payment, it will be responsible for both the Service Payment and Operating Payment components of the User Payment. Such User will pay a combined User Payment that includes the Service Payment and Operating Payment components, with an estimated combined payment of \$45 per month for each radio it subscribes to the Project. The Authority will notify the User of the amount of the required User Payment in January of the fiscal year preceding the fiscal year for such payment. The User Payment will be due by August 31<sup>st</sup> of the fiscal year in which such payment is due.

The estimated payments reflected in this Exhibit A are based on Project costs of \$17,000,000 and a total number of 11,000 radios committed to service on the Project. In the event that prior to January 1, 2013, the total number of radios committed to service on the Project increases or decreases, or the Project cost decreases, the User will receive a credit or a rate adjustment, as applicable.

User: \_\_\_\_\_

Amount of Prepayment of Service Payments (if applicable):

\_\_\_\_\_

Date of Prepayment of Service Payments (if applicable):

\_\_\_\_\_

Amount of Initial Payment (if applicable):

N/A

\_\_\_\_\_

Date of Payment of Initial Payment (if applicable):

N/A

\_\_\_\_\_

Radio count:

550

\_\_\_\_\_



## EXHIBIT B

### PROJECT DESCRIPTION

The East Bay Regional Communications System (EBRCS) is a P-25 compliant digital communications system manufactured by Motorola providing interoperability for emergency responders and others on the system in Alameda and Contra Costa counties. The system is a Motorola Astro 25 SmartZone Project 25 700/800 MHz. system. The system consists of 36 repeater sites divided into 6 simulcast cells.

Cell	Repeater Sites	Channels	Standalones	Channels
ALCO Northwest	4	16	1	4
ALCO Southwest	7	12	1	5
ALCO East	4	10	1	4
CCCO West	4	10	1	5
CCCO Central	8	10		
CCCO East	3	7	2	3-4

The EBRCS system specifications were developed by AECOM of Lynchburg Virginia. The system Master site controller is located at the Alameda County Office of Emergency Services and Homeland Security in Dublin. All of the repeater sites are connected back to the Master Site through a looped digital microwave system. Each cell will have a prime site that will house additional equipment to coordinate signal timing between itself and the other repeater sites within the cell. Each repeater site is equipped with an emergency generator and a minimum of 2 hours of batter backup power, and meets Motorola's R56 standards for grounding. The sites are owned by multiple agencies within Alameda and Contra Costa counties, with the majority of the sites owned by the two counties. The EBRCS Authority has entered into, or is in the process of entering into licensing agreements for use of the non county-owned sites. Each public safety dispatch center has connectivity to the system through microwave. The EBRCS Authority will provide dispatch consoles and/or console upgrades for each center. Currently there are 110 planned replacements and 39 upgrades to existing facilities.

1551170.2

**Attachment G**  
**EBRCSA Bylaws**

## BYLAWS

### EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

The East Bay Regional Communications System Authority (hereafter the "Authority") is a cooperative agency voluntarily established by its members pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California, for the purpose of acquiring, planning, designing, constructing, operating and maintaining a P25 compliant or equivalent communications system serving Alameda and Contra Costa Counties and their individual political jurisdictions.

Pursuant to Section 11 of the Joint Exercise of Powers Agreement for the Authority (hereafter the "Agreement") dated September 11, 2007, by and between the following members:

Alameda County, Contra Costa County, Alameda, Albany, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Pleasanton, San Leandro, Union City, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Martinez, Moraga, Oakley, Pittsburg, Pinole, Pleasant Hill, Richmond, San Pablo, San Ramon, Walnut Creek, Kensington Police Community Services District, San Ramon Valley Fire Protection District, Rodeo-Hercules Fire Protection District, East Bay Regional Parks District

These By-Laws were adopted by the Board of Directors for the Authority by:  
Resolution No. 07-5 adopted on December 7, 2007

#### Article I: Definitions

- A. "Agreement" shall mean the Joint Powers Authority agreement
- B. "Board" shall mean the 23 member Board of Directors
- C. "Operations Committee" shall mean the Operations Committee identified in Section 8.1 of the Bylaws
- D. "Finance Committee" shall mean the Finance Committee identified in Section 8.1 of the Bylaws
- E. "Quorum" shall mean a majority of the Board Members (12)
- F. "Technical Advisory Committee" shall mean the Technical Advisory Committee identified in Article VIII, Section 8.1 of the Bylaws

#### Article II: Principal Office

Section 2.1. The principal office for the transaction of business of the Authority is hereby fixed and located at:

Alameda County Office of Homeland Security and Emergency Services  
4985 Broder Blvd.  
Dublin CA. 94568

### **Article III: Notice**

Section 3.1. Notice from one member agency to another shall be given as provided in Section 16 of the Agreement. Member agencies may change the address to which notices shall be sent by giving notice of such change to all other member agencies at least thirty (30) days prior to the effective date of such change.

### **Article IV: Board of Directors**

Section 4.1. The Authority shall be governed by a Board of Directors (hereafter the "Board") consisting of twenty-three (23) Directors. Each Director shall have an alternate that will be appointed by their representative organization. Alternates, once selected, can serve to fill any vacancy of a Director for their represented organization/county. Directors and their alternates shall, at the time of their appointment and for the duration of their service on the Board, be employees or officers of their member agencies. Alternates shall serve as Directors in the absence of their respective Directors and shall exercise all duties and responsibilities thereof. Each Director and each alternate shall serve at the pleasure of the appointing entity and may be removed by the appointing entity at any time without notice.

Section 4.2. The Directors shall represent the entities and be appointed as set forth in Section 6a of the Agreement.

Section 4.3. A resignation of a Director or alternate shall be in writing and filed with the East Bay Regional Communications System Executive Director.

Section 4.4. The alternate may not participate and/or vote at a meeting attended by the appointed Board member.

Section 4.5. Directors and alternates are the only ones eligible to represent their Board position including participation and voting at the Board of Directors meetings.

Section 4.6. Director and alternate vacancies shall be timely filled by the applicable appointing entity, and officer vacancies shall be timely filled by the applicable electing or appointing entity.

## Article V: Presiding Officers

Section 5.1. The officers shall be a Chair, and Vice-Chair. The duties, and term, as applicable, are as set forth in Section 6 Administration c. Procedures (*Procedures.*(1) *The Board shall elect annually a Chair from among its membership to preside at meetings and shall select a Secretary who may, but need not, be a Director. The Board may, from time to time, elect such other officers as the Board shall deem necessary or convenient to conduct the affairs of the Authority.*) of the Agreement. In the absence of the Chair, the Board shall be presided over by the Vice-Chair, who shall be elected annually from among the Board's membership. The election of the Chair and Vice Chair will be accomplished pursuant to the process outlined in Section 5.3 of the Bylaws. The Board will appoint a Secretary as set forth 6.c of the Agreement to provide minutes of the meetings, as outlined in Section 6. Administration b. Meetings (4) ( *4 Minutes. The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director, the Members, and other parties upon request.*) of the Agreement. The Secretary will not be a Board member.

Section 5.2. The positions of Chair and Vice Chair will be filled by a representative from each county. If the Chair is from Alameda County, the Vice Chair will be from Contra Costa. If the Chair is from Contra Costa, the Vice Chair will be from Alameda.

Section 5.3 The Board of Directors will receive nominations from sitting members of the Board to fill the positions of Chair and Vice Chair at a meeting of the Board. The Board will vote on the nominations for Chair and Vice Chair following Robert's Rules of Order. The newly elected Chair and Vice Chair will assume their positions at the conclusion of the meeting, and will continue in the positions for one year.

## Article VI: Meetings

Section 6.1. The procedures for Board meetings shall be as set forth in Section 6 Administration b. Meetings

*b. Meetings.*

(1) *Regular Meetings.* The Board shall by resolution establish the number of regular meetings to be held each year and the date, hour and location at which such regular meetings shall be held; provided, that the Board shall meet at least once every year.

(2) *Special Meetings.* Special meetings of the Board may be called in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.).

(3) *Conduct of Meetings.* All meetings of the Board shall be held in accordance with the Ralph M. Brown Act (Government Code Section 54950 et seq.).

(4) *Minutes.* The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director, the Members, and other parties upon

request.

(5) *Quorum.* Twelve (12) Directors of the Board shall constitute a quorum for the transaction of business. Except as provided in Section 7 below, actions of the Board shall require the affirmative vote of a majority of the entire Board (i.e., twelve (12) affirmative votes). of the Agreement.

Section 6.2. Committee meetings will be posted on the web site and meeting notices will be sent to Board members and alternates by email.

Section 6.3. Agendas and Minutes of all meetings will be posted on the web site.

### **Article VII: Legal Notices**

Section 7.1. All legal notices required by the Government Code shall be published in one or more newspapers of general circulation or posted according to state law.

### **Article VIII: Authority Organization**

Section 8.1. In Section 5. Duties (f) (*f. To establish within six (6) months of the execution of this Agreement ad hoc operational and technical committees as necessary to consider and recommend to the Board of Directors system implementation issues.*) the Board is directed to form committees as necessary to provide recommendations and direction on issues relating to the EBRCs. In order to provide recommendations to the full Board of Directors on operational and financing issues, and provide day to day oversight, standing Operational and Finance committees will be formed as standing committees of the Board, and the committees will be required to follow the Brown Act. Agendas and minutes of the committee meetings will be made available on the web site. The committees will be made up of Board members and/or alternates, with representation and authority as listed below.

In the event that neither a Board member nor his or her designated alternate can attend a committee meeting, alternates to the Finance and Operations Committees will be selected first by discipline from Board members or alternate Board members from the appropriate county. If the Executive Director receives notice of the absence of a committee member, the Executive Director will contact Board members or alternates from the appropriate discipline or county. If no one from the discipline is able to attend, the Executive Director will contact Board members and/or alternates from the appropriate county until a replacement can be found.

**Operations Committee:** The Operations Committee will have 7 members and be responsible for review of system operational and technical issues including but not

limited to the review of existing technology, system upgrades, implementation of new technology, and provide support for the existing system implementation. The operations committee can appoint ad hoc committees when it needs to bring in additional expertise to address issues. The operations committee will also be able to approve expenditures up to \$25,000 without approval of the full Board of Directors. They will make recommendations to the Board through the Executive Director.

**Operations Committee Representation:**

- Board Chair or Vice Chair
- 2 Police Chiefs (one from each county)
- 2 Fire Chiefs (one from each county)
- 2 Sheriff's (one from each county)

**Finance Committee:** The Finance Committee will have 8 members and be responsible for the development of a budget, and review of financing options in order to develop a financing plan. The committee will also develop recommendations for subscriber unit pricing to account for the ongoing operations, upgrades and replacement. The Finance Committee will also be able to approve expenditures up to \$25,000 without approval of the full Board of Directors. They will make recommendations to the Board on finance issues through the Executive Director.

**Finance Committee Representation:**

- Board Chair or Vice Chair
- 2 City Managers (one from each county)
- 2 Elected Officials (one from each county)
- 2 County (one from each county)
- 1 Special District

**Technical Advisory Committee:** The Technical Advisory Committee will have 10 to 20 members, consisting of Fire Protection, Law Enforcement and Radio Technicians constituting balanced representation of Alameda County and Contra Costa County, and the EBRCSA Executive Director, for the purpose of providing technical expertise and advice to the Operations Committee and/or the EBRCSA Board on operational decisions to be made in connection with implementation of the EBRCSA P-25 compliant or equivalent communications system.

**Article IX: Staff**

Section 9.1. There will be an Executive Director of the EBRCs who will be responsible for the general management, administration, direction and development of the Authority's operations and procedures on a daily basis, including grant applications, acquisitions of equipment, financial administration, meeting administration, recordkeeping, all facilities, employees, consultants, and their respective uses.

Section 9.2. The Executive Director will be appointed by a majority of the Board of Directors and may be removed by a majority of the Board of Directors.

Section 9.3. The Executive Director working through designated member agencies shall be responsible for employment practices, and the administration of all approved policies regarding employee compensation, leave, and other personnel matters. The Executive Director will bring to the Board a resolution adopting the personnel practices of one of the member agencies.

Section 9.4. The Executive Director, upon the approval of the Board Chair or Vice Chair, will be able to approve certain expenditures up to \$25,000 without approval of the full Board of Directors, the Operations Committee, or the Finance Committee. Any such expenditure will be reviewed at the next regularly scheduled meeting of the Finance Committee.

#### **Article X: Board Reimbursement and Compensation**

Section 10.1. Directors and alternates representing the authority shall receive reimbursement for any actual expenses incurred for travel directly related to the business of the authority. There will be no per diem or travel reimbursement for attending Board of Directors or committee meetings. The Board will adopt the reimbursement policies of Alameda County.

#### **Article XI: Finances**

Section 11.1. The financial system of the Authority shall be kept under the provisions as specified in California Government Code Sections 6505 and 6505.5.

Section 11.2. The budget shall be adopted as set forth in Section 6. Administration d.Fiscal Matters (4) Budget ((4) Budget. *The Board shall adopt a budget no later than one hundred twenty (120) days after the first meeting of the Board and no later than June 30th of each year thereafter.*) of the Agreement.



Section 11.3. Expenditures by the Authority may not exceed the final budget without a budgetary revision approved by a 2/3 vote of the Board.

Section 11.4. Purchasing for the Authority shall be administered by the Executive Director, pursuant to the purchasing procedures of a charter county (Alameda County) as listed in State statute and shall be authorized by the Authority's Auditor, within budgetary amounts.

### **Article XII: Amendments**

Section 12.1. These Bylaws may be amended from time to time by resolution of the Board. Amendments shall be ratified by a 2/3 majority of the Board of Directors.

### **Article XIII: Indemnification**

The Joint Powers Agreement addresses indemnification in Section 9. *Indemnification 9. Indemnification. The Authority shall acquire such insurance protection as is necessary to protect the interest of the Authority and its Members. The Authority shall assume the defense of and indemnify and save harmless the Members and their governing bodies, officers, agents, and employees from all claims, losses, damages, costs, injury, and liability of every kind, nature, and description directly or indirectly arising from the performance of any of the activities of the Authority or the activities undertaken pursuant to this Agreement.*

**Attachment H**  
**Grand Jury Report**

## **REGIONAL EMERGENCY COMMUNICATIONS**

The 2010-2011 Grand Jury investigated the interoperability of the emergency communication systems in Alameda County in response to previous Grand Jury reports and on-going communication problems in emergencies. Most jurisdictions in Alameda and Contra Costa counties have joined an organization called East Bay Regional Communications Systems Authority (EBRCSA), but four have not: Berkeley, Oakland, Piedmont and Orinda.

The 2005-2006 Alameda County Grand Jury had written that there is a need for a multi-county radio communication system that would allow first responders in all jurisdictions in Alameda and Contra Costa counties to communicate with one another when responding to major disasters or terrorist attacks. They supported a proposal for a joint powers authority (JPA) composed of representatives from the two counties, all the cities within the two counties, and other emergency responders including those within university police and fire departments, and park and transit districts. In order to succeed, the proposal would require the political and financial commitment of all the jurisdictions. The 2006-2007 Alameda County Grand Jury went on to re-affirm that cooperation among the various jurisdictions in Alameda and Contra Costa counties is paramount in order for EBRCSA to achieve interoperability, and urged EBRCSA to promote wide membership.

Focusing on the question of why the city of Oakland has not joined EBRCSA, the current Grand Jury interviewed public safety officials from Oakland and EBRCSA. In addition, we reviewed the following documents: Alameda County Grand Jury final reports for 2005-2006 and 2006-2007; City of Oakland's California Interoperability Study Public Report (11/6/09) and an internal staff report (11/10/09), both by CTA Communications (CTA study); Final EBRCSA Design Evaluation Report for Contra Costa County (4/19/07); Interoperability

Assessment & Gap Analysis for the Bay Area Super Urban Area Security Initiative (SUASI) Interoperable Communication Project (1/4/08); and correspondence between various officials.

Unfortunately, based on our research, the current Grand Jury concludes that the goals of cooperation and interoperability are far from being achieved, and progress towards regional interoperability between the city of Oakland and EBRCSA is at a standstill. The delay in finding a joint solution for this issue leaves the lives of officers and the public in continued jeopardy.

### **Background**

The East Bay Regional Communications System Authority is a joint powers authority that was formed in 2007. Thirty-six member agencies belong to EBRCSA including:

- Alameda and Contra Costa counties;
- 18 of the 19 cities in Contra Costa County (all except Orinda);
- 11 of the 14 cities in Alameda County (all except Berkeley, Oakland, and Piedmont);
- four Special Districts (excluding BART); and
- the University of California.

The goal of EBRCSA is to provide interoperability for the radio systems in Alameda and Contra Costa counties. Interoperability allows multiple parties to communicate when and where necessary, even when different systems are involved. Lack of interoperability can severely hinder coordinated responses to natural disasters, catastrophic accidents, civil unrest, and criminal actions. Examples include the 1979 BART tube fire, the 1982 Caldecott Tunnel fire, the 1989 Loma Prieta earthquake, the 1991 Oakland Hills fire, and public protests connected to the Mehserle/BART shooting case. In addition, police officers from one jurisdiction frequently pursue suspects across city and county lines. In those

situations, first responders from different jurisdictions need to communicate seamlessly and in real time to prevent the loss of life and property.

EBRCSA is supported by grant funds and bonds issued by the two counties. Starting in 2012 user fees will be used to service the debt. User fees will be based on the number of users in the system. Member agencies are currently paying to operate and maintain existing systems; the user fee will replace those costs. Agencies that join EBRCSA will also pay an upfront, one-time \$200 per radio fee.

### **Investigation**

The Grand Jury learned that the city of Oakland uses a radio system from Harris Communications that it has operated for many years. In June 1992, Oakland voters passed Bond Measure I to enhance emergency preparedness. In 2010, the city initiated plans to upgrade its radios and communication system, fully funded by grant money. The grant funds would not cover on-going operations and maintenance.

Oakland has not joined the JPA because it has heavily invested in its own system and wants to avoid the additional costs. The city says that it moved ahead, stimulated by the 1991 Oakland Hills fire response problems, whereas the regional effort was slower to develop.

The Grand Jury learned that EBRCSA selected a P25-compliant Motorola system. P25 refers to a federally funded set of standards to be used by federal, state and local public agencies in North America to allow communication with one another and with mutual aid response teams in times of emergency.

The city of Oakland, in consultation with EBRCSA, commissioned a study by CTA, an independent consulting firm, to evaluate how it should proceed with interoperability. The CTA study for Oakland provided important information on the advantages and disadvantages of their options (CTA Communications,

“Interoperability Study,” November 8, 2009). According to this study, Oakland faced a choice of whether to build out its own Harris simulcast system at a cost in excess of \$5 million to become compliant with the new P25 interoperability standards, or to join EBRCSA’s simulcast system which would also be P25-compliant. Oakland used the complex recommendations in the CTA study to justify remaining separate. The Grand Jury does not find such a definitive conclusion in the CTA study.

Oakland claims it is being penalized for having taken the initiative in improving radio communications. The city’s position is that it would not be cost-effective and there would be no technological advantage for it to join EBRCSA. The city also claims it will be P25-compliant by late 2011, well before EBRCSA is P-25 compliant. However, regardless of when either becomes P25 compliant, interoperability fails unless both systems are able to be linked together.

A letter from Oakland’s fire chief to the chair of EBRCSA stated: “The city of Oakland has invested considerable funds and more than 13 years in upgrading our wireless system and finds it unacceptable to dismantle or surrender its operation.” He goes on to write that it is estimated that the city would incur an additional debt of more than \$1.2 million per year for the next ten years if it joined EBRCSA, based on a projected system cost of \$50 million. (February 14, 2008).

In contrast, the CTA study outlined several ways Oakland could reduce the additional costs of joining EBRCSA. One opportunity includes a memorandum of understanding with EBRCSA to contract with the Oakland Department of Information Technology radio shop to provide maintenance and subscriber support for the entire system. This would be financially beneficial to Oakland because all other jurisdictions through EBRCSA would pay for the maintenance. The CTA study noted that such an agreement would provide the city with “an opportunity to defer most of the costs of using EBRCSA.” The CTA study stated “coordination is required as soon as possible with EBRCSA to ensure that the

leveraging opportunities that exist today are not missed as the project moves forward.” Unfortunately, that cooperation has not occurred.

If Oakland does not participate in EBRCSA, easy communication between the Harris and Motorola systems would require establishing communication interface protocols. One way to accomplish this is via an infrastructure called Inter SubSystem Interface (ISSI). This, in turn, requires a memorandum of understanding that establishes communication protocols and specifies how to share the costs. Without these steps, seamless communication between safety personnel will not be built in, will not be automatic, and will be subject to unnecessary human error.

The Grand Jury heard a specific example where top officials in two different Texas jurisdictions, one using a Harris system and one using Motorola, worked with two vendors to create seamless communication using ISSI. As one witness told the Grand Jury, “It is a multi-vendor world and it always will be.” This suggests that vendors can create the necessary technology when they have the motivation to do so. The testimony indicated that the success of the Texas project resulted from the pressure applied by top elected leaders across jurisdictional boundaries.

Unfortunately, communication between the city of Oakland and EBRCSA broke down years ago and has not been repaired, to the detriment of the community’s public safety. The Grand Jury concludes that accommodations must be made both by EBRCSA and by Oakland. It does not seem reasonable to expect Oakland to change its vendor or completely abandon the new system they are building. The funding formula for Oakland may need to be different than that for other cities in order to motivate Oakland’s full participation. Lack of participation by a city the size of Oakland seems to be the major obstacle to a well-functioning multi-county radio communication system.

However, it does not seem reasonable for Oakland to expect to benefit from EBRCSA's efforts without paying its fair share. To determine reasonable compromises, the elected officials in all the jurisdictions should provide leadership to resolve the logjams, which are not only counterproductive but a significant danger to everyone living and working in the two counties. The Grand Jury was heartened to learn that in February 2011 a meeting of representatives from EBRCSA and the city of Oakland took place, but disappointed to learn that no framework for compromise appears to have resulted.

### **Radio Communications – Oakland Police Department**

While investigating interoperability, the Grand Jury became aware of persistent radio communication problems within the city of Oakland (internal operability problems). The Grand Jury requested and received copies of reports of radio problems submitted by police personnel over the past year including reports of dead spots and radio failures. The sheer volume of reported problems from these reports, the CTA study, and from witness testimony can only be described as shocking.

Examples include:

- Dead spots regularly occur, particularly between dispatchers and users in many highly sensitive locations.
- During a lengthy high-speed chase and crash, the radio system failed. Officers had intermittent radio coverage during the deadly confrontation, which hampered efforts to secure an immediate medical response.
- A lone police officer recognized a dangerous suspect with warrants relating to an armed robbery. The officer attempted to contact dispatch while confronting the suspect but a radio malfunction precluded the dispatcher and the officer from communicating with each other. Fortunately another officer was able to hear the attempted transmission over the radio and self-dispatched other



officers to the scene. The confrontation quickly escalated to a near deadly struggle because the suspect was armed with a firearm. Up until back-up arrived, the officer had no idea whether dispatch even knew about the situation.

- Officers responded to a potential hostage situation inside a public building in East Oakland. While confronting the suspect inside the building, officers were unable to use their radios. An officer had to use a phone inside the building to contact dispatch while another officer ran out to the street to use the radio.
- While responding to a burglary call, an officer was provided with the incorrect address. As the officer arrived at the scene, dispatch could not contact him to correct the mistake. The suspect saw the officer approach the wrong house and fled. Other officers joined in the pursuit of the fleeing suspect but radio “dead spots” hampered the chase.
- The red emergency button on police radios has resulted in multiple communications failures. When pushed, a channel is reserved for that specific officer. In certain areas of the city, when multiple red buttons are pressed at the same time, other officers cannot use the system.

The current radio system does not work for Oakland and sufficient resources have not been applied to fixing the system. The Grand Jury heard testimony that TV satellite trucks show up when a news story breaks about Oakland police communication problems, but when they depart, attention to the problems end. Oakland officials claim that the upgrade underway will eliminate the internal operational problems.

In early 2011, the city of Oakland’s Department of Information Technology, along with an independent engineering firm, completed a three-week inspection of their radio system as a result of the numerous radio failures reported by Oakland police. The inspection validated all of the problems reported by Oakland police

officers. The report resulted in modification and/or recommendations to replace a number of the 17-year old components to the system until the new radio system could be operational, which is expected to be running sometime in late 2011. The Grand Jury is troubled that it took repeated system failures over a lengthy period of time to address the issues and bring in independent experts to evaluate the problems. The Grand Jury is more troubled that the system has continued to malfunction even after many of these modifications have been made. The Grand Jury also questions whether the city of Oakland has the capacity to sustain and maintain a stand-alone radio system without the long-term interface with EBRCSA.

During the writing of this report, the Grand Jury learned that the Oakland police radio system failed due to a malfunction on April 7, 2011. Officers were requested not to make high-risk stops during that period. Patrol officers were relegated to using their cell phones to communicate with the police department. The department was forced to limit police response to only the highest priority calls. If an earthquake hit Oakland during a radio shutdown, a coordinated emergency response would be next to impossible.

The Grand Jury heard testimony that monthly meetings of a radio working group have recently been initiated between Oakland's Information Technology Department and the Police Department, including field commanders. We are disheartened that this working group has not been used throughout the upgrade process to ensure user input for solutions to current problems. This lack of interaction between these two organizations has led to the officers being inappropriately blamed for user error. Additionally, training on the system is insufficient. Memos are not a substitute for hands-on training.

## **Conclusion**

The Grand Jury recognizes that interoperability and internal operability are complex problems. However, the persistent problems and the breakdown in relationships necessary to resolving the issues are of the utmost seriousness. They merit pro-active intervention by elected officials and top administrators in all the jurisdictions of both counties.

Although the Grand Jury realizes all radio communication is important, internal operability among police emergency personnel is of the highest immediate concern. It is unacceptable that a police radio communication system should ever fail, risking the lives of police and citizens of Oakland. The Grand Jury is very concerned about Oakland's radio communication system and the potential for life-threatening problems when it fails.

The city of Oakland should reconsider its "go it alone" mentality. Oakland and EBRCSA must work together to agree on a mechanism for mediation to determine reasonable compromises. The process requires top-down leadership. This means getting the vendors in the same room and telling them, "You will make this work." Compliance with P-25 standards is just the first step. In practice, regional emergency communication also requires effective governance, standardized operating procedures, effective training and exercises, and inter-jurisdictional coordination.

## **RECOMMENDATIONS**

### *Recommendation 11-1:*

The city of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must comply with P25 specifications and ensure interoperability of radio communications immediately in order to achieve seamless automatic roaming.

### *Recommendation 11-2:*

The city of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must have regularly scheduled meetings to end the impasse.

### *Recommendation 11-3:*

The city of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must negotiate with both Motorola and Harris vendors to achieve interoperability.

### *Recommendation 11-4:*

The city of Oakland's Information Technology Department in conjunction with the mayor's office must report quarterly to the Oakland City Council on radio communication failures, the status of the new system, and its upgrades.

### *Recommendation 11-5:*

The city of Oakland's Information Technology Department and the Oakland Police Department must bridge the communication gap between front-line public safety personnel and information technology staff to ensure that problems are quickly and satisfactorily addressed.

**RESPONSES REQUIRED**

Mayor, City of Oakland

*Recommendations 11-1 through 11-5*

Interim City Administrator, City of Oakland

*Recommendations 11-1 through 11-5*

Executive Director, East Bay Regional Communications Systems Authority

*Recommendations 11-1 through 11-3*

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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 3RD FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Administrator

(510) 238-3301  
FAX (510) 238-2223

September 26, 2011

Dale Rogers Marshall, Foreperson  
2010-2011 Alameda County Grand Jury  
c/o Rob Warren, Deputy District Attorney  
Alameda County Grand Jury  
1401 Lakeside Drive, Suite 1104  
Oakland, CA 94612

*RE: City of Oakland's Final Response to the 2010-2011 Alameda County Grand Jury Final Report*

Dear Ms. Rogers Marshall and Mr. Warren,

The City of Oakland has received and carefully considered the 2010-2011 Alameda County Grand Jury's report and recommendations in the following areas: Parking Bureau, Building Services Division and Regional Emergency Communications.

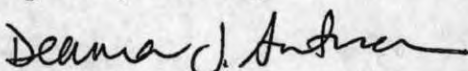
Given the importance of these core services to the public and the high level of public interest in the Grand Jury report, the City of Oakland submitted a preliminary response to the Grand Jury's findings on August 15, 2011. This report represents the City's final response to the Grand Jury's recommendations.

Overall, the City finds the Grand Jury's recommendations to be thoughtful, and we concur with most of the recommendations; in fact, many have already been implemented or are part of current work plans. This administration is deeply committed to continual improvement of our services to the public.

While I have taken time to review and comment on the Grand Jury responses from staff, the management and oversight of these efforts/projects was considerably before my time. If there are any factual errors, I am interested in hearing them and taking appropriate corrective action.

We appreciate the fact that the Grand Jury invited City staff to provide formal presentations regarding these key areas of public service, as well as meet with and speak to its members. We also appreciate their feedback and recommendations for improvement, and their dedication to public service.

Respectfully submitted,

  
Deanna J. Santana  
City Administrator

**Attachments:**

- A. Preliminary Response to Grand Jury Report: Parking Bureau
- B. Preliminary Response to Grand Jury Report: Building Services
- C. Preliminary Response to Grand Jury Report: Regional Emergency Communications



**ATTACHMENT C**  
**FINAL RESPONSE TO GRAND JURY RECOMMENDATIONS:**  
**REGIONAL EMERGENCY COMMUNICATIONS**

**Introduction**

The City of Oakland replaced its aging analog radio system on June 5, 2011, with a new, all-digital system that is fully compliant with the national Project 25 (P25) interoperability communications standards. As a result, the new digital system provides the City with the ability to connect to any public safety radio communication system in the region, whether P25 (digital) or analog.

The City of Oakland has demonstrated leadership in advancing the goals of regional public safety communications interoperability, and looks forward to demonstrating its ability to connect with the East Bay Regional Communications Systems Authority (EBRCSA) communications system once that system has been fully implemented.

The City of Oakland's most notable public safety communications interoperability accomplishments include:

- **Debt-Free Implementation** – The City's implementation of a new P25 public safety radio system was accomplished without any additional cost to Oakland's residents or businesses. Federal grant funding fully paid for the P25 public safety communications system.
- **P25 Compliant** – Our full compliance with the P25 standards will allow us to interoperate with local, regional, state and national P25-compliant networks regardless of manufacturer or organizational affiliation.
- **Capacity for Growth** – With two radio sites already implemented and a third site scheduled to come online in January 2012, the City's P25 network will have the capacity to support up to 5,000 radios. This nearly doubles the capacity the City requires to support its current public safety radio users. The three-site configuration can be expanded to support many more radios in the future.
- **Positioned for Seamless Interoperability** – The City has received approval for a Department of Homeland Security Urban Area Security Initiative (UASI) grant to implement the Inter-RF SubSystem Interface (ISSI) to achieve seamless regional interoperability with BART, EBRCSA and other regional public safety partners.

Over the last three and a half months, we have transitioned our public safety users to the new P25 radio system. As a Bay Area region early adopter of P25 technology, the City has experienced a series of challenges. The City continues to work with vendors and the manufacturer to resolve any and all issues as they arise.

The City has also reached out to local, regional, state and national organizations and public safety agencies that have implemented Harris and Motorola P25 networks, and we have received invaluable technical advice and "lessons learned" for resolving many issues that they also experienced during their P25 system implementations. The City has developed an ongoing relationship with these early-adopter organizations and agencies to benefit the City of Oakland's P25 system implementation by leveraging

their knowledge and experience as well as to share our experience with them as they transition to P25 standards.

The City's responses to the Grand Jury's specific recommendations are as follows:

## Final Responses

### Grand Jury Recommendation 11-1:

*The City of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must comply with P25 specifications and ensure interoperability of radio communications immediately in order to achieve seamless automatic roaming.*

**Response:** The City concurs with this recommendation. We appreciate the fact that the Grand Jury recognizes that interoperability of public safety radio communications must be achieved through "seamless automatic roaming." To achieve "seamless automatic roaming," as recommended by the Grand Jury, all of the building blocks of the P25 standards need to be fully deployed.

It is important to understand that P25 is a suite of standards, defined and developed by the public safety community, which includes federal, state, and local government users, as well as manufacturers. The standards are prioritized by the public safety user community based on needs. The first priority was to provide for the basic need to have any P25 radio to work on any P25 network, regardless of the brand of the radio (i.e., Harris, Motorola or other) or network. This essential priority resulted in the development and ratification of the P25 Common Air Interface (CAI) standard. Oakland has transitioned all public safety users to a new P25 network and tested a variety of vendor P25 radios. These radios have worked successfully on the City's P25 system.

The second most important need identified by the public safety community was to enable different brand P25 networks to seamlessly interoperate, which resulted in the development and ratification of the Inter RF Sub-System Interface (ISSI) standards. ISSI enables seamless, automatic roaming between different manufacturer's P25-compliant networks to provide real-time wide-area voice services.

Implementation of the ISSI standards will ensure that the Grand Jury's recommendation for achieving "seamless automatic roaming" becomes a reality for regional interoperability. However, achieving this immediately, as the Grand Jury recommends, could be a challenge in the real world of early adoption of the P25 standards in the Bay Area. Oakland's pressing need to implement a new radio system to replace its old analog radio system has placed us ahead of the EBRCSA P25 radio system implementation, which is scheduled to come online in 2012. We therefore cannot begin an ISSI implementation with EBRCSA until their P25 network is fully operational. However, the City of Oakland and EBRCSA can take advantage of the time available until the EBRCSA P25 radio system is implemented. The City of Oakland is prepared to work with EBRCSA to begin the ISSI implementation discussions with Harris and Motorola as soon as possible.

Grand Jury Recommendation 11-2:

*The City of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must have regularly scheduled meetings to end the impasse.*

**Response:** The City concurs with this recommendation. The City has met on several occasions with representatives of the EBRCSA authority to discuss plans to implement P25 technology; regular meetings are now necessary to plan for interoperability between the two P25 networks.

We highly recommend the engagement of a third-party entity, like the Department of Homeland Security (DHS), to assist with developing a multi-vendor interoperability plan. DHS, the source for much of the federal funding supporting P25 technology implementations, also offers a Technical Assistance Program (TAP). The TAP program is designed to assist early adopters of P25 technology standards with issues related to Interoperability Planning, Memoranda of Understanding (MOUs), Operational Guidelines and technical requirements. The breadth of knowledge and direction that the DHS TAP program would bring to the table has been acquired through DHS involvement in shaping the national roadmap for public safety interoperability for many federal, state, and local jurisdictions. Our efforts together with the DHS TAP team would promote our region as a model for accomplishing what the DHS agency would like to achieve on a national scale.

Grand Jury Recommendation 11-3:

*The City of Oakland and the East Bay Regional Communications Systems Authority (EBRCSA) must negotiate with both Motorola and Harris vendors to achieve interoperability.*

**Response:** The City concurs with this recommendation. EBRCSA and Oakland must demand that Harris and Motorola work together to achieve seamless interoperability between their P25 networks using the P25 standards. DHS has provided major funding to both EBRCSA and Oakland to allow the Bay Area region to achieve the DHS "system of systems" or "network of networks" roadmap for local, regional and national interoperability. DHS correctly envisioned that to achieve the roadmap, standards would be needed to bridge multi-vendor P25 systems or networks together.

The Project 25 Compliance Assessment Program (P25 CAP) is one means for early P25 network adopters to work with their vendors to accomplish demonstrated evidence of a product's compliance with a select group of requirements within the suite of P25 standards. The test procedures used to validate these requirements are also part of the P25 suite of standards. Harris and Motorola currently maintain a CAP Lab, where they test their P25 products. They therefore have the facilities to develop and test the ISSI interface to enable their P25 networks to interoperate. However, EBRCSA and Oakland together must demand that they work together for this to become a reality.

Grand Jury Recommendation 11-4:

*The City of Oakland's Information Technology Department in conjunction with the mayor's office must report quarterly to the Oakland City Council on radio communication failures, the status of the new system and its upgrades.*

**Response:** The City of Oakland concurs with this recommendation. Starting in Fall 2011, the Oakland City Council will receive regular updates regarding implementation of the new P25 system and any upgrades, a summary of any problems related to the system's operation and the status of corrective actions or necessary fixes. These regular updates will continue until it has been demonstrated that the new P25 system is running smoothly.

Grand Jury Recommendation 11-5:

*The City of Oakland's Information Technology Department and the Oakland Police Department must bridge the communications gap between front-line public safety personnel and information technology staff to ensure that problems are quickly and satisfactorily addressed.*

**Response:** The City concurs with this recommendation. The Department of Information Technology (DIT) is currently addressing this recommendation through regular weekly and monthly meetings. The following meetings are ongoing:

**Monthly Radio Working Group** – This meeting is comprised of front-line staff from the DIT Radio Shop, Oakland Police Department, Oakland Fire Department and vendors. The purpose of this meeting is to identify and discuss any issues related to implementation of the new P25 radio system, provide training and receive feedback from Police and Fire field personnel.

**Weekly P25 Problem-Solving Meeting** – This meeting includes Police and Fire command and field-level personnel. DIT Radio Shop staff, along with the P25 implementation vendor project manager and engineers also attend this meeting. The purpose of this meeting is to review a detailed punch list of issues and establish an action plan with timelines to address the issues quickly, efficiently and effectively, to the satisfaction of our first responders in the field and to ensure their utmost safety as well as the safety of the community.

**Executive-Level Meeting** – This meeting includes the Mayor's Office, the City Administrator, Chiefs and Deputy Chiefs from the Oakland Police and Fire Departments, 911 Dispatch Commander, Emergency Services Director, DIT Director, DIT Radio Shop Manager, DIT Public Safety Systems Division Manager and other City personnel, such as union representatives and vendor resources as needed. The purpose of this meeting is to review the status of the new P25 radio system implementation, identify unresolved issues affecting public safety operations and identify solutions.

The City of Oakland appreciates the opportunity to respond to the Grand Jury recommendations. The City of Oakland has made significant advancements in its recently implemented P25 public safety radio communications system. We are committed to working closely and diligently with our first responders, EBRCSA and other regional, state and federal partners to achieve effective public safety radio communications interoperability in the Bay Area region.



**East Bay Regional  
Communications  
System Authority**



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Rodeo-Hercules Fire Protection District, San Ramon Valley Fire Protection District, University of California, Berkeley and California Department of Transportation

September 1, 2011

Dale Rogers Marshall, Foreman  
Alameda County Grand Jury  
1401 Lakeside Dr. Suite 1104  
Oakland CA. 94612

Received
Alameda County Grand Jury
Date 9-6-11
Ack & cat? Y N

Subject: East Bay Regional Communications System Authority Response  
to the 2010-2011 Grand Jury Final Report

Dear Dale:

I appreciated that opportunity to speak with members of the Grand Jury on the progress of the EBRCSA system. As you know a majority of the public agencies within Alameda and Contra Costa counties are members and are in full support of the system, as evidenced by their participation in the local financing of over \$17 million to complete the infrastructure build out. We are also pleased to report that the City of Berkeley joined the system and will be participating, leaving only the cities of Oakland and Piedmont that are not members.

In the Grand Jury Report section on Regional Emergency Communications there are 5 recommendations and I have been requested to respond to 3 of them on behalf of the EBRCSA. Included below are my responses:

**Recommendation 11-1:**

***The City of Oakland and the East Bay Regional Communications System Authority (EBRCSA) must comply with P25 specifications and ensure interoperability of radio communications immediately in order to achieve seamless automatic roaming.***

**Response to 11-1:**

The EBRCSA system infrastructure complies with the P25 standard and provides system wide seamless roaming throughout our coverage area, and beyond. Once the EBRCSA is completed we can program EBRCSA talk groups on the City of Oakland radios and they will be able to roam seamlessly throughout the EBRCSA coverage area. It makes no sense to program Oakland system talk groups on EBRCSA member agency radios as the Oakland coverage foot print, and capacity are limited.

**Alameda County Office of Homeland Security and Emergency Services  
4985 Broder Blvd, Dublin CA 94568 • (925) 803-7802 • www.ebrcsa.org**

The EBRCSA agrees with the recommendation and is implementing a P-25 communications system that is planned for completion by July of 2012.

**Recommendation 11-2:**

***The City of Oakland and the East Bay Regional Communications System Authority (EBRCSA) must have regularly scheduled meeting to end the impasse.***

**Response to 11-2:**

Members of the EBRCSA have reached out to the City of Oakland staff multiple times to meet and discuss options for participation. It is clear the City of Oakland is committed to building their own system. The EBRCSA is open to future meetings to discuss how the two systems might interoperate, and how best to achieve regional interoperability. It was recommended by members of our Board of Directors that we engage a third party to facilitate the meetings and provide a technical and objective perspective of the options to achieve interoperability.

The EBRCSA agrees with the recommendation and will reach out to the City of Oakland to initiate a new series of meetings to address regional interoperability.

**Recommendation 11-3:**

***The City of Oakland and the East Bay Regional Communications System Authority must negotiate with both Motorola and Harris vendors to achieve interoperability.***

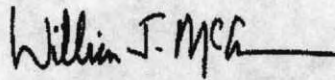
**Response to 11-3:**

We interpret this recommendation to be addressing the issue of connecting the two systems (EBRCSA and Oakland) together. The P25 standard includes a standard for connecting dissimilar systems together called the Inter Sub System Interface (ISSI). The National Institute of Standards and Technology (NIST) has been working to insure that the manufacturers are building equipment that meets the P25 standard. NIST issued an RFP for a laboratory to test the ISSI standard and received no responses. Today there is no way to test if the manufacturers are building the ISSI interface to the standard. This is very troubling to the EBRCSA technical staff and they are recommending that it is not in the EBRCSA's best interest and in fact may jeopardize lives of public safety first responders to invest significant revenue to purchase an untested interface. Once the ISSI interface has been thoroughly tested it will be reevaluated by the EBRCSAA technical staff. We strongly believe that interoperability can be better realized through the programming of EBRCSA talk groups on the radios of City of Oakland first responders.

The EBRCSA agrees with the intent of the recommendation but is in no position to negotiate compliance to a national standard that can't be tested. NIST must push to find a laboratory to test the vendor's compliance to the P-25 ISSI standard. We will reach out to NIST and express our concerns about the lack of testing.

I hope my responses adequately address the recommendations of the Grand Jury. As always we stand ready to work with the City of Oakland and the Grand Jury to improve interoperability throughout the region. We also greatly appreciate the Grand Jury's interest in this subject. If I can be of any more assistance please feel free to contact me at (925) 803-7802.

Sincerely,

A handwritten signature in black ink that reads "William J. McCammon" followed by a horizontal line.

William J. McCammon, Executive Director  
East Bay Regional Communications System Authority

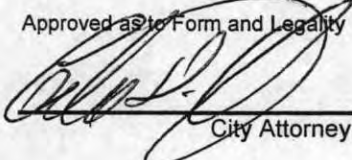
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OFFICE OF THE CITY CLERK  
OAKLAND

2014 JUN 26 PM 7:25

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

Approved as to Form and Legality



City Attorney

**A RESOLUTION #1 AUTHORIZING THE CITY ADMINISTRATOR OR HIS DESIGNEE TO:**

- 1) **NEGOTIATE AND AWARD A TWO-YEAR CONTRACT TO HARRIS PUBLIC SAFETY COMMUNICATIONS AND OTHER RELATED VENDORS, IN AN AMOUNT NOT TO EXCEED FIVE-MILLION NINE HUNDRED NINETY-THOUSAND DOLLARS (\$5,990,000) FOR THE PURCHASE OF EQUIPMENT, HARDWARE, SOFTWARE AND OTHER PROFESSIONAL SERVICES FOR THE PROPOSED OAKLAND P25 NETWORK AND OTHER TECHNOLOGICAL UPGRADES ; AND**
- 2) **NEGOTIATE AND AWARD A TWO-YEAR AGREEMENT TO AVIAT NETWORKS IN AN AMOUNT NOT TO EXCEED ONE MILLION SIX HUNDRED THIRTY-THREE THOUSAND DOLLARS (\$1,633,000) FOR THE PURCHASE OF NETWORK EQUIPMENT, HARDWARE, SOFTWARE AND OTHER PROFESSIONAL SERVICES TO ENHANCE MICROWAVE BACKBONE RESILIENCY FOR THE P25 NETWORK; AND**
- 3) **WAIVE ADVERTISING, COMPETITIVE BIDDING, AND THE REQUEST FOR PROPOSALS/QUALIFICATIONS (RFP/RFQ) REQUIREMENTS FOR THE PURCHASE OF EQUIPMENT, HARDWARE, SOFTWARE AND OTHER PROFESSIONAL SERVICES FOR THE ABOVE-REFERENCED CONTRACTS AND SERVICE AGREEMENTS; AND,**
- 4) **AWARD CONTRACTS UTILIZING THE CITY'S COMPETITIVE BIDDING REQUIREMENTS WITHIN THE BUDGET AMOUNT OF NINE HUNDRED TWENTY THOUSAND DOLLARS (\$920,000) TO PURCHASE MOBILE RADIOS FOR THE CITY'S NON-PUBLIC SAFETY DEPARTMENTS AND FOR ADDITIONAL UPGRADES TO THE CITY'S OUTDOOR PUBLIC SIREN SYSTEM PROJECT WITHOUT RETURN TO COUNCIL, PROVIDED THAT PRIOR TO EXPENDITURE OF ANY FUNDS STAFF WILL AWARD CONTRACTS AND ESTABLISH CONTRACT AMOUNTS FOR THE CONTROLLER'S BUREAU; AND**
- 5) **AUTHORIZE ADDITIONAL APPROPRIATIONS TO THE FISCAL YEAR 2014-2015 OPERATING BUDGET FOR THE INFORMATION TECHNOLOGY DEPARTMENT IN AN AMOUNT OF THREE HUNDRED SEVENTY FOUR THOUSAND FOUR HUNDRED DOLLARS (\$374,400) FOR PROFESSIONAL SERVICE CONTRACTS AND OTHER RELATED SERVICE AGREEMENTS TO IMPLEMENT THE PROPOSED P25 NETWORK.**

**WHEREAS**, On Jan 21, 2014 Council directed the staff to enter into negotiations with East Bay Regional Communication System Authority (EBRCSA) and return to Council in 90-120 days with proposed negotiations terms and funding and transition plan for the City Council to consider, and

**WHEREAS**, City of Oakland owns, operates and maintains its own P25 Radio network, manufactured by Harris, and has approximately 2000 portable and 900 mobile radios; and

**WHEREAS**, Council has an option to authorize the Staff to continue maintaining the Oakland P25 radio network instead of joining the EBRCSA network; and

**WHEREAS**, the Information Technology Department is required to improve the service and reliability of the City's P25 radio infrastructure to bring it to the public safety grade level standards; and



**WHEREAS**, the Information Technology Department has identified the network enhancements, infrastructure upgrades and radio site improvements to meet the public safety mission critical communication standards; and

**WHEREAS**, the Information Technology Department is responsible for the purchase and maintenance of P25 radio network and professional services and the City has regular day-to-day needs to fulfill purchases of equipment and services to support the network; and

**WHEREAS**, City's existing 800 MHz Radio Network system was manufactured by Harris Public Safety Communications, Harris is, therefore, the sole manufacturer of the parts and materials required for the radio system; and

**WHEREAS**, Harris Public Safety Communications has been maintaining and supporting the City's radio system since it became operational and possesses deep technical knowledge of the Oakland network; and

**WHEREAS**, City's Microwave backbone supports the P25 radio network, and manufactured by Aviat, and Aviat is, therefore, the sole manufacturer of the parts and materials required for the microwave system; and

**WHEREAS**, Aviat has been maintaining and supporting the City's Microwave backbone system since it became operational and possesses deep technical knowledge of the Oakland network; and

**WHEREAS**, Section 2.040.050 of the Oakland Municipal Code ("OMC") requires the City Administrator to conduct advertising and bidding and award to the lowest responsible, responsive bidder where the cost of services, supplies or combination required by the City exceeds fifty thousand dollars (\$50,000.00) for the purchase of products or goods; and

**WHEREAS**, OMC section 2.04.050.1.5 allows Council to waive these requirements upon a finding by the Council that it is in the best interests of the City to do so; and

**WHEREAS**, OMC section 2.040.051 A requires the City Administrator to conduct a request for proposals/qualifications (RFP/Q) process for professional services contracts in excess of \$25,000;

**WHEREAS**, OMC section 2.04.051.B authorizes the City Council to waive requests for proposal/qualification processes upon finding that it is in the best interests of the City to do so; and

**WHEREAS**, the City Administrator has determined that said agreement shall not result in a loss of employment or salary by any person having permanent status in the competitive service; now therefore be it

**WHEREAS**, staff recommends that the Council waive the requirements of OMC section 2.04.010 pertaining to the Oakland local and small local business enterprise program requirements for the purchase of equipment, hardware, software and other professional services for the above-referenced contracts and service agreements; and

**WHEREAS**, the primary funding source is the Radio and Telecommunications Fund (Fund 4200) ; and

**WHEREAS**, the City finds that this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now, therefore, be it

**RESOLVED:** That pursuant to OMC sections 2.04.050.1.5 and 2.04.051.B, the City Council hereby finds and determines that it is in the best interest of the City to waive the advertising, bidding and request for proposal/qualifications requirements and authorizes the negotiation and award of the contract to Harris Public Safety Communications and other related vendors, and of the contract to Aviat Networks because: (a) the City's existing 800 MHz Radio Network system was manufactured by Harris Public Safety Communications and the company is the sole manufacturer of the parts and materials required for the radio system; (b) Harris Public Safety Communications has been maintaining and supporting the City's radio system since it became operational and possesses deep technical knowledge of the Oakland network system; (c) the City's existing Microwave backbone supports the P25 radio network and is manufactured by Aviat Networks which is the sole manufacturer of the parts and materials required for the microwave system; (d) Aviat Networks is maintaining and has been supporting the City's Microwave backbone system since it became operational and it possesses deep technical knowledge of the Oakland network system; and (e) the City has a very urgent need to enhance and maintain the very critical public safety P25 radio communications system; and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to negotiate and award a contract to Harris for a term of two (2) years, in the amount not to exceed five million nine-hundred ninety-thousand dollars (\$5,990,000) for the network equipment and a portion of the services necessary to carry out the P25 radio network expansion; and

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to negotiate and award a contract to Aviat for a term of two (2) years in the amount not to exceed one million six-hundred thirty-three thousand dollars (\$1,633,000) for the network equipment and a portion of the services necessary to carry out the P25 radio network expansion; and

**FURTHER RESOLVED:** The City Administrator has determined that services provided pursuant to said agreement with Harris and Aviat are of a professional, scientific, or technical nature and are temporary in nature; and

**FURTHER RESOLVED:** To continue using the Oakland P25 network, the Information Technology Department require additional contracts and professional services in an amount not to exceed nine-hundred and twenty-thousand dollars (\$920,000) for the purchase of mobile radios for use within non-public safety City Departments and for additional upgrades aligned with the City's outdoor public safety siren system project and, request a waiver of the competitive request for proposal/qualifications process for the purchase of goods and services; and without return to council, provided that prior to expenditure of any funds staff will award contracts and establish contract amounts for the Controller's Bureau; and

**FURTHER RESOLVED:** To authorize adjustments and additional appropriations to the Fiscal Year 2014-2015 operating budget for the Information Technology Department in an amount not to exceed three hundred seventy four thousand four-hundred dollars (\$374,400) for one-time professional service contracts and other related service agreements associated with implementation of the proposed Oakland' P25 Network selection project from the Fund Balance in the Radio and Telecommunications Fund (Fund 4200); and

**FURTHER RESOLVED:** That the City Council finds and determines based on the above determinations of the City Administrator, that the goods and services provided pursuant to the agreements authorized hereunder are of a professional, scientific, or technical and temporary nature, and shall not result in a loss of employment or salary by any person having permanent status in the competitive service process; and

**FURTHER RESOLVED:** That the agreements shall be reviewed and approved by the City Attorney and placed on file in the Office of the City Clerk, and be it

**FURTHER RESOLVED:** That any agreements reached would be non-exclusive, compliant with city policies and subject to approval by the city council.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

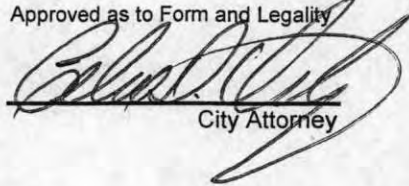
NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of Oakland, California


  
 City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

 FILED  
 OFFICE OF THE CITY CLERK  
 OAKLAND

14 JUN 27 AM 11:34

## RESOLUTION #2 AUTHORIZING THE CITY ADMINISTRATOR OR HIS DESIGNEE TO:

- 1) ENTER INTO AN AGREEMENT WITH EAST BAY REGIONAL COMMUNICATION SYSTEMS AUTHORITY (EBRCSA) TO JOIN THE EBRCSA P25 NETWORK WITHIN THREE MONTHS AND MIGRATE ALL OF THE OAKLAND ESTIMATED 2,900 USERS TO THE EBRCSA NETWORK WITHIN TWENTY FOUR MONTHS, IN AN AMOUNT NOT TO EXCEED \$200 PER RADIO AS A ONE-TIME SYSTEM ACCESS FEE, FOR A TOTAL OF \$580,000 AND \$35 PER RADIO ON A MONTHLY BASIS AS A USAGE FEES FOR A TOTAL ANNUAL ESTIMATED AMOUNT OF \$1,218,000; AND
- 2) NEGOTIATE AND AWARD A CONTRACT TO MOTOROLA SOLUTIONS INC. IN AN AMOUNT NOT TO EXCEED \$6,130,950 FOR THE PURCHASE OF MOBILE RADIOS AND PROFESSIONAL SERVICES, AND
- 3) AWARD CONTRACTS IN AN AMOUNT NOT TO EXCEED \$1,708,800 TO PURCHASE EQUIPMENT AND PROFESSIONAL SERVICES WITHOUT RETURN TO COUNCIL, PROVIDED THAT PRIOR TO EXPENDITURE OF ANY FUNDS STAFF WILL AWARD CONTRACTS AND ESTABLISH CONTRACT AMOUNTS FOR THE CONTROLLER'S BUREAU; AND
- 4) NEGOTIATE AND AWARD A TWO-YEAR AGREEMENT TO AVIAT NETWORKS IN AN AMOUNT NOT TO EXCEED \$1,633,000 FOR THE PURCHASE OF NETWORK EQUIPMENT, HARDWARE, SOFTWARE AND OTHER PROFESSIONAL SERVICES TO ENHANCE MICROWAVE BACKBONE RESILIENCY FOR THE P25 NETWORK; AND
- 5) WAIVE THE CITY'S ADVERTISING, BID AND REQUEST FOR PROPOSAL (RFP) PROCESS FOR EQUIPMENT, PRODUCTS AND PROFESSIONAL SERVICES FOR THE ABOVE DESCRIBED CONTRACTS; AND
- 6) AWARD AGREEMENTS UTILIZING THE CITY'S COMPETITIVE CONTRACTING REQUIREMENTS WITHIN A BUDGET AMOUNT OF \$4,416,300 FOR PUBLIC WORKS PORTABLE AND MOBILE RADIOS AND PUBLIC SIREN SYSTEM REPLACEMENT PROJECT PROVIDED THAT PRIOR TO EXPENDITURE OF ANY FUNDS STAFF WILL AWARD CONTRACTS AND ESTABLISH CONTRACT AMOUNTS FOR THE CONTROLLER'S BUREAU.

**WHEREAS**, On Jan 21, 2014 Council directed the staff to enter into negotiations with East Bay Regional Communication System Authority (EBRCSA) and return to Council in 90-120 days with proposed negotiations terms and funding and transition plan for the City Council to consider, and

**WHEREAS**, EBRCSA was formed in 2007 as Joints Power Authority, to serve the Alameda and Contra Costa Counties public safety communication needs;

**WHEREAS**, EBRCSA Board of Directors has 23 members made up of equal representation from both counties; and

**WHEREAS**, EBRCSA P25 network consists of 6 cell sites, including Northwest Cell covering the City of Oakland, which was launched in the end of 2012; and

**WHEREAS**, EBRCSA network equipment is manufactured and provided by Motorola;

**WHEREAS**, City of Oakland owns, operates and maintains its own P25 network, manufactured by Harris, and has approximately 2,000 handheld and 900 mobile radios; and

**WHEREAS**, EBRCSA has provided a cost proposal to the City in the amount of \$200 per radio as a onetime cost and \$35 per radio per month as ongoing network usage fee; and

**WHEREAS**, EBRCSA has offered to fund the replacement and maintenance of the 28 dispatch consoles in police and fire 911 dispatch centers and emergency operations center; and

**WEHERAS**, Staff has concluded the negotiations with EBRCSA, and all the issues identified by the Staff and corresponding responses from EBRCSA are included in the Staff report; and

**WHEREAS**, the current fleet of mobile radio equipment currently in use by the Oakland Police and Fire Department users have been in service for more than seven years, while the useful life of this equipment averages seven to nine years; and

**WHEREAS**, staff has determined it is necessary to replace and deploy new mobile radios and associated support equipment; and

**WHEREAS**, staff researched and contacted other public safety organizations in the Bay Area that have selected Motorola Radio Equipment through competitive bidding processes and currently use their handheld radio equipment; and

**WHEREAS**, the Motorola Radios are selected because of the compatibility with the current Oakland P25 network as well as EBRCSA P25 network, to minimize the additional integration costs should the Council decide to join the EBRCSA network; and

**WHEREAS**, Section 2.040.050.A of the Oakland Municipal Code ("OMC") requires the City Administrator to conduct advertising and bidding and award to the lowest responsible, responsive bidder where the cost of services, supplies or combination required by the City exceeds fifty thousand dollars (\$50,000.00) for the purchase of products or goods; and

**WHEREAS**, OMC section 2.04.050.I.5 allows Council to waive these requirements upon a finding by the Council that it is in the best interests of the City to do so; and

**WHEREAS**, OMC section 2.040.051 A requires the City Administrator to conduct a request for proposals/qualifications (RFP/Q) process for professional services contracts in excess of \$25,000 and OMC section 2.04.051.B authorizes the City Council to waive requests for proposal/qualification processes upon finding that it is in the best interests of the City to do so; and

**WHEREAS**, staff recommends that it is in the best interests of the City to waive advertising and bidding and RFP/Q requirements for the above purchases because the City needs to enhance and maintain the critical public safety P25 radio communications system; the City's existing Microwave backbone supports the P25 radio network and is manufactured by Aviat Networks which is the sole manufacturer of the parts and materials required for the microwave system; and Aviat Networks is maintaining and has been supporting the City's Microwave backbone system since it became operational and it possesses deep technical knowledge of the Oakland network system; and

**WHEREAS**, the City Administrator has determined that services provided pursuant to said agreement with Motorola Solutions Inc. are of a professional, scientific, or technical nature and are temporary in nature; and

**WHEREAS**, the City Administrator has determined that said agreement shall not result in a loss of employment or salary by any person having permanent status in the competitive service; now therefore be it

**RESOLVED:** That the City Council hereby authorizes the City Administrator or his designee to enter into an agreement with EBRCSA to join the EBRCSA P25 network within three months and migrate all of the Oakland's estimated 2,900 users to the EBRSA network within 24 months, in an amount not to exceed \$200 per radio as a one-time system access fee, for a total of \$580,000 and \$35 per radio on a monthly basis as a usage fees for a total annual estimated amount of \$1,218,000; and be it

**FURTHER RESOLVED:** That the City Council directs the City Administrator to work with EBRCSA in developing a plan to migrate all Oakland Users' Public Safety as well as Non-Public Safety, to the EBRCSA P25 network in no longer than twenty four months; and be it

**FURTHER RESOLVED:** That the City Administrator is authorized to negotiate and award a contract to Motorola Solutions Inc. in the amount not to exceed \$6,130,950 for the equipment and a portion of the services necessary to replace the City's mobile radio fleet; and

**FURTHER RESOLVED:** That the City Administrator is authorized to award additional contracts within a budgeted amount of \$1,708,800 to purchase equipment, and professional services, and request a waiver of the competitive request for proposal/qualifications process for the purchase of goods and services without return to council, provided that prior to expenditure of any funds staff will award contracts and establish contract amounts for the Controller's Bureau; and

**FURTHER RESOLVED:** That the City Administrator is authorized to negotiate and award additional professional services contracts within a budgeted amount of \$4,416,300 for the purchase of Public Works' portable and mobile radios and the Public Siren System replacement project and request a waiver of the competitive request for proposal/qualifications process for the purchase of goods and services without return to Council, provided that prior to expenditure of any funds staff will award contracts and establish contract amounts for the Controller's Bureau; and

**FURTHER RESOLVED:** That the City Administrator is authorized to negotiate and award into a two-year agreement to Aviat networks in an amount not to exceed \$1,633,000 for the purchase of network equipment, hardware, software and other professional services needed to enhance microwave backbone resiliency; and

**FURTHER RESOLVED:** That pursuant to OMC sections 2.04.050.1.5 and 2.04.051.B, the City Council hereby finds and determines that it is in the best interest of the City to waive the advertising, bidding and request for proposal/qualifications requirements and authorizes the negotiation and award of the contract to Motorola Solutions, Inc., and of the contract to Aviat Networks because: (a) the City has a very urgent need to enhance and maintain the very critical public safety P25 network; (b) the City's existing Microwave backbone supports the P25 network and is manufactured by Aviat Networks which is the sole manufacturer of the parts and materials required for the microwave system; and (c) Aviat Networks is maintaining and has been supporting the City's Microwave backbone system since it became operational and it possesses deep technical knowledge of the Oakland network system; and

**FURTHER RESOLVED:** That the City Council finds and determines based on the above determinations of the City Administrator, that the goods and services provided pursuant to the agreements authorized hereunder are of a professional, scientific, or technical and temporary nature, and shall not result in a loss of employment or salary by any person having permanent status in the competitive service process; and

**FURTHER RESOLVED:** That funds to pay the onetime costs of joining the EBRCSA network and ongoing annual EBRCSA network usage costs will be paid out of the Radio and Telecommunications Fund (Fund 4200); and be it

**FURTHER RESOLVED:** That the agreements shall be reviewed and approved by the City Attorney and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
 LaTonda Simmons  
 City Clerk and Clerk of the  
 Council of the City of Oakland, California