



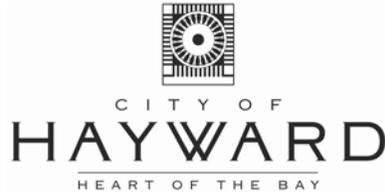
CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
NOVEMBER 1, 2011

MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE BARBARA HALLIDAY
COUNCIL MEMBER OLDEN HENSON
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER BILL QUIRK
COUNCIL MEMBER MARK SALINAS
COUNCIL MEMBER FRANCISCO ZERMEÑO

Table of Contents

Agenda	2
Resignation of Flo Samuels from the Community Services Commission	
Staff Report	5
Attachment I Resolution	6
Attachment II Letter.	7
Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2012 pursuant to California Government Code 22892 of the Public Employees Medical and Hospital Care Act	
Staff Report	8
Attachment I Resolution Minimum Medical	10
Execution of the East Bay Regional Communications System Authority (EBRCSA) Project Operating Agreement and Update on Federal Communications Commission Narrow Banding Initiative	
Staff Report	11
Attachment I	17
Attachment II	19
Attachment III	37
Attachment IV	51
Attachment V	59



CITY COUNCIL MEETING FOR NOVEMBER 1, 2011
777 B STREET, HAYWARD CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 5:30 PM

1. **PUBLIC COMMENTS**
 2. Conference with Labor Negotiators
Pursuant to Government Code 54957.6
 - Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager Morariu, Human Resources Director Robustelli, and Finance Director Vesely
 - Under Negotiation: All Bargaining Units
 3. Adjourn to Special Joint City Council/Redevelopment Agency/Housing Authority Meeting
-

**SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT AGENCY/
HOUSING AUTHORITY MEETING**
Council Chambers - 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Quirk

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

ACTION ITEMS: *(The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk anytime before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

CONSENT

1. Resignation of Flo Samuels from the Community Services Commission
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment II Letter](#)
 2. Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2012 pursuant to California Government Code 22892 of the Public Employees Medical and Hospital Care Act
[Staff Report](#)
[Attachment I Resolution Minimum Medical](#)
-

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

- *Disclosures*
 - *Staff Presentation*
 - *City Council Questions*
 - *Public Input*
 - *Council Discussion and Action*
-

LEGISLATIVE BUSINESS

3. Execution of the East Bay Regional Communications System Authority (EBRCSA) Project Operating Agreement and Update on Federal Communications Commission Narrow Banding Initiative
[Staff Report](#)
[Attachment I](#)
[Attachment II](#)
[Attachment III](#)
[Attachment IV](#)
[Attachment V](#)

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items

NOVEMBER 1, 2011



ADJOURNMENT

NEXT REGULAR MEETING – 7:00 PM, TUESDAY, NOVEMBER 15, 2011

PUBLIC COMMENT RULES: *The Mayor may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens or organization. Speakers will be asked for their name and their address before speaking and are expected to honor the allotted time. A Speaker's Card must be completed by each speaker and is available from the City Clerk at the meeting.*

PLEASE TAKE NOTICE *that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.*
PLEASE TAKE FURTHER NOTICE *that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.*

*****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. *****

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.

Please visit us on:



DATE: November 1, 2011
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Resignation of Flo Samuels from the Community Services Commission

RECOMMENDATION

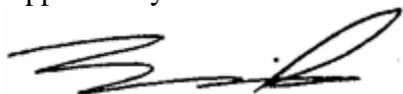
That the City Council accepts the resignation of Flo Samuels from the Community Services Commission.

BACKGROUND

Ms. Flo Samuels was appointed to the Citizens Advisory Commission on September 14, 2010. As a result of the Citizens Advisory Commission and Human Services Commission consolidation and creation of the Community Services Commission, Ms. Samuels was appointed to the Community Services Commission on October 11, 2011. Her resignation is effective October 18, 2011.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution Accepting the Resignation
- Attachment II Resignation Letter

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

Introduced by Council Member _____

RESOLUTION ACCEPTING THE WRITTEN RESIGNATION OF FLO SAMUELS FROM THE COMMUNITY SERVICES COMMISSION

WHEREAS, Ms. Flo Samuels was appointed to the Community Services Commission on October 11, 2011;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Council hereby accepts the resignation of Flo Samuels from Community Services Commission and commends her for her civic service to the City.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2011.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Quirk

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

From: FLO SAMUELS [<mailto:flosamuels@msn.com>]

Sent: Tuesday, October 18, 2011 6:22 PM

To: Olden Henson; Michael Sweeney; Marvin Peixoto; Mark Salinas; Hayward Kevin Dowling; City Manager; Fran David; Francisco Zermeno - Forward; Hayward Bill Quirk; Barbara Halliday; Anne Culver

Cc: pguernsey@sbcglobal.net; allisonnm@ca.rr.com; relifordb@aol.com; hallidahl@sbcglobal.net; cynthia@dreamagent.com; adthomas511@sbcglobal.net; netman@jwillis.com; lmoore3358@aol.com; emorales@chabotcollege.edu; lynnlinnen@yahoo.com; ray.bonilla@gmail.com; leppertandassociates@comcast.net; rlgilmore@hotmail.com; CAC Tom Kersten; bhende1616@aol.com; dianefagalde@att.net; ealarcon@sbcglobal.net; elizabethsamayoa@sbcglobal.net; jem820@polite.com; josdda@yahoo.com; joycedobro@aol.com; rlara1250@gmail.com; sarabjittoor@sbcglobal.net; demitod@aol.com; Shauna Darwin

Subject: Resignation

I am resigning from the Hayward Community Services Commission effective today for the following reason.

When I interviewed for an appointment to the Citizens Advisory Commission, a number of the City Council members appeared appreciative that I had experience in government budgeting and auditing. It appeared to me that those skills were needed on a Commission that advised City Council on the viability of the non-profits they funded.

For ten months I have requested information on the City audit procedures. This included reviewing the procedures and even participating in an audit. In all instances, I was denied.

I then spoke to a Council member who stated that he/she had requested the City Manager to set a meeting where he/she could review said procedures. (I say he/she to ensure that Council member's identity not be revealed.) I was told that I, as a Commission member, would not be allowed to attend that meeting. Evidently Commission members are not important enough to be privy to that level of information.

If Commission members are only to be rubber-stamps to decisions made by city staff (yes, we select who receives funding but then we are given only those who, in most instances, meet city staff approval) then our role is so restricted that we are basically not doing much. If our real skills are unused, i.e. those skills that can see issues with non-profits that receive funding from multiple sources, then what are we doing?

I realize many Commissioners see their role as important. But if we do not know how all monies are spent by the non-profits nor how they account for those monies, just how important is our role? I believe the majority of non-profits are above board but we will never know if we are not even allowed to see how our small share of the pie is spent let alone the totality of the non-profits' budgets. I would have thought the collapse of Alameda County Associated Community Action Program might have spurred Hayward to use citizen input to take a closer look at the non-profits operating within their borders but that was not to be.

I am sorry to have to resign but I saw my role as helping the City know where their money went. If I am denied even that role, there is not much point in continuing.

Sincerely

Flo Samuels

DATE: November 1, 2011

TO: Mayor and City Council

FROM: Human Resources Director

SUBJECT: Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2012 pursuant to California Government Code 22892 of the Public Employees Medical and Hospital Care Act.

RECOMMENDATION

That the City Council approves the attached Resolution authorizing the implementation of the mandatory minimum employer contribution to active and retiree medical premiums for Calendar Year 2012.

BACKGROUND

The City contracts with CalPERS to provide competitive health benefits to its active and retired employees. California Government Code Section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA) establishes the minimum health contribution required by employers. As of January 1, 2009, the employer contribution is adjusted annually by the CalPERS Board to reflect any change in the Medical Care Component of the Consumer Price Index, rounded to the nearest dollar. The table below shows the minimum employer contribution required by CalPERS for the last five (5) years, and the 2012 rate:

Calendar Year	Minimum Employer Contribution
2007	\$80.80
2008	\$97.00
2009	\$101.00
2010	\$105.00
2011	\$108.00
2012	\$112.00*

* = 39% increase for the period.

DISCUSSION

This action is necessary to meet the administrative requirement that the governing body adopt a resolution agreeing to the minimum contribution amount established by CalPERS. The City currently contributes to medical premiums in accordance with the terms of the existing agreements between each of the bargaining units, based on the health plan and family status the employee is eligible for and which they elect. For both retirees and employees, the total amount the City contributes towards medical benefit premiums meets and exceeds the statutory minimum contribution required by CalPERS.

FISCAL AND ECONOMIC IMPACT

This action is for administrative purposes only. There is no fiscal or economic impact associated with this report because the City's current contribution toward employee medical premiums as provided for in applicable Memoranda of Understanding has already been established and this action does not provide an increase to the current total City contribution towards medical premiums.

Prepared and Recommended by: Frances M. Robustelli, Human Resources Director

Approved by:



Fran David, City Manager

Attachment: Resolution establishing the City contribution for active and retiree medical premiums for Calendar Year 2012 pursuant to California Government Code 22892 of the Public Employees Medical and Hospital Care Act.

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

Introduced by Council Member

RESOLUTION AUTHORIZING MINIMUM EMPLOYER CONTRIBUTION TOWARD MEDICAL COST AS SET BY CALIFORNIA PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR CALENDAR YEAR 2012

WHEREAS, the City of Hayward provides medical coverage for its employees and their eligible dependents and to qualified retirees; and

WHEREAS, Government Code 22892 of the Public Employees Health and Medical Care Act (PEHMCA) provides that a local agency contracting under the Public Employees' Medical shall annually adopt a resolution authorizing the minimum employer contribution toward medical cost as set in the CalPers Public Employee Retirement System; and

WHEREAS, the California Public Employees Retirement System Board adjusts the minimum contribution rate annually based upon changes to the Consumer Price Index.

NOW, THEREFORE, BE IT RESOLVED, that effective January 1, 2012, the employer's contribution towards the cost of employee and retiree cost of health benefits shall be a minimum of \$12 per month as required by the California Public Employee Retirement System.

IN COUNCIL, HAYWARD, CALIFORNIA, _____ 2011.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT COUNCIL MEMBERS:

ATTEST:
City Clerk of the City of Hayward

APPROVED AST TO FORM:

City Attorney of the City of Hayward

DATE: November 1, 2011

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Execution of the East Bay Regional Communications System Authority (EBRCSA) Project Operating Agreement and Update on Federal Communications Commission Narrow Banding Initiative

RECOMMENDATION

That the Council adopts the attached resolution authorizing the City Manager to execute the Project Operating Agreement with the East Bay Regional Communications System Authority (EBRCSA). This operating agreement would act as the base service level agreement between the EBRCSA and the City of Hayward, and would constitute Hayward's participation in the East Bay Regional Communications System.

BACKGROUND

The East Bay Regional Communications System Authority (EBRCSA or Authority) was formed in early 2007 with the formation of a Joint Powers Authority (JPA). The City of Hayward joined EBRCSA in May 2007 by signing a Joint Powers Agreement. The JPA now consists of thirty-eight member agencies including Alameda and Contra Costa counties, thirty cities, four special districts, the University of California, and the California Department of Transportation. The Board of Directors is made up of twenty-three representatives consisting of elected officials, police chiefs, fire chiefs, and city managers who are responsible for the oversight of the development, implementation, and funding of the system. Currently, the cities within the two participating counties that have not executed Project Operating Agreements are Oakland, Piedmont, Orinda, and Hayward.

The City of Hayward has been working cooperatively with the EBRCSA by allowing the Authority, under a separate agreement, to install EBRCSA system equipment at both the Garin Water and Walpert Ridge Communication Towers. Additionally, City staff attends all meetings of the EBRCSA Board of Directors, and have recently served on both the Operations Committee and the Technical Advisory Committee.

Both Council and the Council Technology Application Committee (CTAC) have been discussing the City's level of participation in the EBRCSA since 2007, when the City first joined the JPA (Attachment II). In October 2008, the Interim Police Chief provided an update to City Council regarding the City's participation in East Bay Regional Communications System (EBRCS) (Attachment III) that discussed the value of participating in EBRCS at that time.

More recently, CTAC held two meetings, on May 25th and July 1st of this year to discuss the EBRCSA Project Operating Agreement and whether or not to recommend that the City execute this Agreement. At the July CTAC meeting, the Committee voted to recommend that the City enter into the agreement with the EBRCSA. Based on some lack of clarity and missing information, staff initially recommended to the CTAC on May 25, 2011 (Attachment IV) that the City delay signing the agreement. However, after several months of additional analysis of the City's interoperability requirements and system options, data gathering, and conversation with EBRCS staff and members, staff now recommends that City Council enter into the Project Operating Agreement with the EBRCSA. Staff is recommending a phased-in participation in the EBRCS, with the first phase constituting the purchase of new radios for the Fire Department as discussed further below.

DISCUSSION

This report recommends that the City of Hayward fully join the EBRCSA in order to come into compliance with federal requirements for the City's radio communication system, as well as to provide more robust radio interoperability for the City's first responders.

Deadline for Federal Communications Commission (FCC) Narrow Banding Requirements

Coinciding with the implementation of the EBRCSA System is the FCC mandate to meet Narrow Banding requirements by January 1, 2013: In December of 2004, FCC Docket No. 99-87 mandated that all radio equipment operating below 512 MHz must operate using narrow, 12.5 KHz channel spacing that replaces the current 25 KHz banding by that date. On January 1, 2013, all public safety and business industrial land mobile radio systems operating in the 150-512 MHz radio bands must cease using 25 kHz efficiency technology, and begin operating using at least 12.5 kHz efficiency technology. This deadline is the result of a FCC effort that began almost two decades ago to ensure more efficient use of the spectrum and greater spectrum access for public safety and non-public safety users. Migration to 12.5 kHz efficiency technology (referred to as Narrow Banding) will allow the creation of additional channel capacity within the same radio spectrum, and will support more users.

After January 1, 2013, licensees not operating at 12.5 KHz efficiency will be in violation of the Commission's rules and could be subject to FCC enforcement action, which may include admonishment, monetary fines, or loss of license. Currently, the Fire Department radios need to be replaced to comply with this requirement, as do some of the Public Works radios. The radios used by the Police Department meet these specifications and are not planned for replacement until 2017.

East Bay Regional Communications System & EBRCSA

The purpose of the EBRCSA is to implement and maintain an interoperable, regional, Project 25-compliant public safety radio system. Project 25, more commonly referred to as P-25, refers to interface standards for digital radio systems that enable equipment from different manufacturers to work together. These standards allow effective communication between different public safety agencies in emergencies. Since its creation in 2007, EBRCSA has continued to acquire and develop a P-25 compliant system.

EBRCS (the radio system of the EBRCSA) is based on a Motorola design with a Harris Stratex microwave system connecting the radio sites. To date, the EBRCSA has secured \$46.5 million in grant funding for the build-out of the system infrastructure (total cost of about \$64 million, excluding design costs). The remaining funds required to complete the system are funded through \$11 million in local revenue generated by participating agencies that pre-paid their Service Payments and \$6 million in issued debt. The repayment of this debt is included in the annual operating payments made by participating agencies (discounted for the pre-paying agencies). Per conversations with Bill McCammon, EBRCSA does not anticipate the need to issue additional debt for the system build-out. The radio system is scheduled to go live in June 2012, with the intent to have the migration of users onto the system by January 1, 2013 to meet the FCC Narrow Banding deadline.

EBRCSA Project Operating Agreement

In order for the City of Hayward to participate in EBRCS, the City must execute a Project Operating Agreement with EBRCSA. This commitment would require Hayward to agree to the terms of the agreement and to fund the City's proportional share of the \$6 million in debt incurred by the JPA, which would be paid through the collection of monthly operating payments.

The monthly operating payments (currently estimated at \$40/radio/month) are paid by each of the participating agencies and are based on a per-radio amount as described later in the report. This funds both the EBRCSA debt service and system maintenance and replacement. Given the completion date of the system of June 2012 – and commencement of debt payments in August 31, 2013 – operating payments from Hayward to the Authority will not be required until fiscal year 2014.

Participation with the EBRCSA also includes the provision of seven dispatch consoles to the City of Hayward police dispatch center. These consoles will enable the City of Hayward Dispatch Center to communicate with the EBRCS system. The cost of these units is included in the overall EBRCSA infrastructure costs, thereby reducing the direct costs to the City for this valuable equipment.

Analysis

Staff considered the advantages and disadvantages of either upgrading the City's current system and maintaining it independently or participating in the EBRCSA. While the City's current public safety system was designed to meet our specific needs at the time it was upgraded, EBRCS offers greater regional system coverage and interoperability, as well as the enhanced functionality of a digital system, which includes the ability to encrypt communications. The City would rely on equipment and maintenance support through the EBRCSA (via the City's recurring annual fees).

Signing the Project Operating Agreement increases Hayward's interoperability with other agencies and the regional system being created through the Bay Area Tier 1 Urban Area Security Initiative (UASI) commonly known as the Bay Area Regional Interoperable Communications System (BayRICS).

Not participating would mean that the City's interoperability is contingent upon the use of radio gateways commonly called Tactical Interoperability Communication (TIC) devices that are functional but not optimal. The City has used TIC devices during multi-agency events for interoperability with relative success. Alameda County has found the use of TIC gateway devices less than adequate because of transmission delays that are inherent with these types of gateway devices.

There have been several meetings with the CTAC and between the Police, Fire, and Technology Services Departments to explore the advantages and disadvantages of joining the EBRCSA. The consensus of all at this point is for the City to proceed with signing the Project Operating Agreement.

Phased-in Participation

Given the status of the City's current radio system and funding challenges, staff envisions a phased-in participation plan with EBRCSA. Radios in the Fire Department are far beyond the end of their useful life, do not comply with the upcoming FCC requirements, and are scheduled for replacement regardless of participation in the EBRCSA. Replacement of radios in the Fire Department will now constitute the first phase of joining the EBRCS.

Radios in the Police Department will reach the end of their useful life in 2017, and are planned as the second phase of implementation. Replacement of public works and maintenance units is critical to the full interoperability capability of the City (particularly during a major disaster): these will be phased-in over the next few years, likely in small quantities, as the City is able to fund these less costly radio purchases. Fewer radios are necessary for limited participation and FCC compliance, which will minimize the initial cost.

The City will look toward acquiring grants for the purchase of the remaining equipment and/or will include the cost in future capital budgets.

FISCAL IMPACT

The fiscal impact to the City for executing the Agreement with EBRCSA is dependent upon the number of radio units that are put onto EBRCS. The estimated cost of purchasing a radio unit that is compatible with EBRCS varies with the type of radio that will be used. A public safety radio is the most expensive due to the configuration and the "hardened" nature of the units; radios for public works and maintenance operations are significantly less expensive.

Cost of EBRCSA Full Participation

In order to fully join the East Bay Regional Communication System and comply with FCC regulations, the City of Hayward must replace its entire fleet of radio equipment (approximately 600 units) for Police, Fire, Public Works, and Maintenance Services over a period of time. Staff estimates that Public Safety (both Police and Fire) will need to replace about 500 radio units. This estimate may change as the Police Department refines its interoperability needs. The Public Works and Maintenance Services upgrade will require every vehicle and portable radio to be

replaced. Currently, their fleet deployment is limited; however, it is estimated that about 100 units will need to be replaced.

The cost of fully joining EBRCS with 600 radio units is a one-time investment of about \$3.4 million, with the majority of this cost attributed to radio purchases. With 600 units on the system, the recurring annual EBRCSA operating fee would be \$288,000 per year.

EBRCSA One-time Costs: The EBRCSA Operating Agreement requires an initial one-time \$200 buy-in cost per radio. This per unit is paid by each member agency for each of the units put into service on the system. The City already paid the JPA \$100,000 for up to 500 radio units upon joining the JPA in 2007 – so no additional buy-in fees are required at this time. The City will be required to pay the \$200 per radio fee for any radios in excess of 500, when our per-unit participation reaches that level.

EBRCSA Recurring Costs: Executing the Agreement also requires a recurring \$40 per radio monthly system operating fee for every radio in the system. The recurring \$40 per unit per month is a rate that has been forecast based on a number of assumptions related to future membership and expenses of the EBRCSA. It is likely that the monthly fee will decrease with increased member participation. A set portion of this fee is dedicated to funding the current debt service requirements of the EBRCSA infrastructure, with the balance allocated to maintenance. The City must execute the EBRCSA Project Operating Agreement in order to place any radios into EBRCS.

It should be noted that the EBRCSA considered the financial impact on member agencies and has agreed to capitalize interest payments for upcoming years and allow member agencies to begin paying debt service in fiscal year 2014, which defers the commencement of the annual service and operating payment of \$40/month/unit.

Cost of EBRCSA Phase One Implementation – FY 2012

Since the City is proposing a phased-in participation with EBRCSA, with an initial radio purchase of eighty-two units in FY 2012 for the Fire Department, the City’s cost for FY 2012 will be as follows:

Phase One Participation (Fire Department): Year 1 - FY 2012	Cost/unit	# of Units	One-Time	Recurring FY 2012 & FY 2013	Total
Public Safety Portable Units (1)	\$ 5,734	82	\$ 470,182	-	470,182
EBRCSA per unit One-time Buy-in fee	\$ 200	82	\$ 16,400	-	16,400
EBRCSA Buy-in fee paid in 2007/2008 with JPA for 500 units	\$ 200	82	\$ (16,400)	-	(16,400)
EBRCSA Annual Service & Operating Payment (\$40/month/unit)	\$ 480	82		\$ 39,360	39,360
Annual Service & Operating Payment deferred to FY 2014				\$ (39,360)	(39,360)
Phase One Cost Year One			470,182	-	470,182

(1) Based on September 2011 competitively bid pricing

Funding for the Fire Department radio purchase was included in the FY 2012 and FY 2013 Capital Improvement Project (CIP) budget in the amount of \$366,000 per year (Fire Capital Projects Fund 416, Project 7456). In order to fund the full purchase of \$470,182 in FY 2012, \$104,182 was transferred from other budgeted FY 2012 Fire CIP projects, with portions of these

projects deferred to FY 2013, since they are less critical and time sensitive than the radio purchases. Staff expects to complete the purchase of mobile units for the Fire Department in FY 2013 with the remaining available CIP Funds.

Since the City has already paid its initial buy-in fee of \$200 per radio, and payment of the recurring operating payment does not commence until fiscal year 2014, there is no additional cost anticipated in FY 2012 beyond the purchase of the radios. There will be no related costs in FY 2013 – since the start of the annual operating payment is being deferred to FY 2014 (i.e., \$39,360 for the initial 82 radio units.)

Cost of EBRCSA Future Hayward Implementation Phases

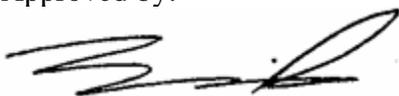
Funding for the balance of the radio purchases and EBRCS implementation for these radios will be addressed in future CIP budgets. Additionally, staff will actively pursue any available grant funding to offset this equipment cost. It should be noted that the Police Department radios will need to be replaced in FY 2017 regardless of bringing these radios on to EBRCS. It is not necessary for the City to add additional radios to EBRCS beyond the initial eighty-two units, should the City decide not to fully integrate on to EBRCS.

Following the implementation of Phase 1, the remaining full implementation cost will be about \$2.97 million (largely comprised of radio purchases), which will be necessary with or without participation in EBRCS – with a recurring annual EBRCS cost of \$288,000 once the City is fully operational with EBRCS.

Recommended by:

Craig Bueno, Hayward Fire Chief
Diane Urban, Hayward Police Chief
Clancy Priest, Technology Services Director
Tracy Vesely, Director of Finance

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution
- Attachment II: May 15, 2007 City Council Report on Joint Powers Authority
- Attachment III: October 7, 2008 City Council Report on EBRCS Participation
- Attachment IV: May 25, 2011 CTAC Report
- Attachment V: DRAFT EBRCSA Project Operating Agreement

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO
NEGOTIATE AND EXECUTE AN OPERATING AGREEMENT WITH
THE EAST BAY REGIONAL COMMUNICATIONS SYSTEM
AUTHORITY (EBRCSA) FOR PUBLIC RADIO COMMUNICATION
SERVICES

WHEREAS, in 2007, the City Council authorized the City of Hayward's participation in the East Bay Regional Communications System Authority (EBRCSA), a joint exercise of powers authority established for the purpose of developing the interoperability of communication systems among its member agencies, and directed the City Manager to execute a Joint Exercise of Powers Agreement (JPA) with EBRCSA ; and

WHEREAS, as authorized by the City Council, the City of Hayward paid an upfront amount of \$100,000 toward becoming a member agency of EBRCSA, which amount constituted the initial payment for 500 City public communication radios, at a cost of \$200 per radio to participate in EBRCSA, at such time as the City acquired said radios; and

WHEREAS, in addition to the JPA agreement, it is in the best interest of the City to execute a Project Operating Agreement with EBRCSA in order to benefit from the interoperable capabilities provided by EBRCSA for its members' public safety radio communications systems; and

WHEREAS, the EBRCSA operating agreement contemplates an initial, one-time user fee of \$200 per radio per member agency and annual, recurring service and operating payments in the amount \$40 per radio, with deferral of the annual service and operating payment until August 31, 2013; and

WHEREAS, the City Council appropriated \$470,182 in the approved FY 2012 Capital Improvement Program for the acquisition of radios for the Fire Department and no further appropriation is necessary to implement this project for FY2012.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Hayward that the City Manager is authorized to negotiate and execute a Project Operating Agreement with the East Bay Regional Communications System Authority (EBRCSA), in substantially the form presented in the accompanying staff report, and all documents needed to implement the Project Operating Agreement, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD
AGENDA REPORT

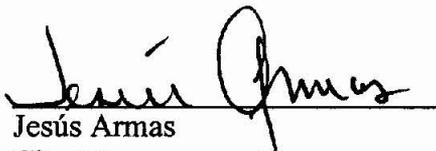
AGENDA DATE 05/15/07
AGENDA ITEM 7
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: City Manager
SUBJECT: East Bay Radio System Joint Powers Authority

As requested, attached is the most current version of the agreement establishing the East Bay Regional Communications Systems Authority. Enabling authority for establishment of joint powers authority rests in state law, and this agreement has been prepared in conformance with such provisions.

I draw your attention to a few sections in particular. In section one, the agreement describes the purpose of the authority, while section four delineates its powers. The composition of the governing board is contained in section six. Section twelve indicates how assets are to be disposed in the event the authority is terminated, and section thirteen addresses the obligations of member agencies in the event they care to discontinue their individual membership in the organization; that is, withdraw from the authority.

Staff continues to recommend membership in the joint powers authority and adoption of the accompanying resolutions.


Jesús Armas
City Manager

Attachment

FOR DISCUSSION ONLY

CLEAN DRAFT, 4/25/07

**JOINT EXERCISE OF POWERS AGREEMENT FOR THE
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**

THIS JOINT EXERCISE OF POWERS AGREEMENT FOR THE EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY (the "Agreement") is entered into as of the ____ day of _____, 2007, by and among the _____

(hereinafter collectively referred to as "Members" and individually as "Member").

RECITALS

A. WHEREAS, Chapter 5 of Division 7 of Title 1 of the California Government Code authorizes the Members to enter into an agreement for the joint exercise of any power common to them; and

B. WHEREAS, the Members have the common powers, under their respective sovereign and police powers, to acquire real, personal and intangible property and to plan, design, finance, construct, operate, and maintain public safety radio communication systems, facilities and related structures, and appurtenances and incidental improvements thereto; and

C. WHEREAS, the Members have determined that the public interest will be served by the joint exercise of these common powers through this Agreement and the creation of a joint powers authority to acquire, plan, design, finance, construct, operate and maintain a P25 compliant or equivalent (as defined herein) communications system serving Alameda and Contra Costa Counties and individual political jurisdictions therein; and

D. WHEREAS, the Members have further determined that such an East Bay Regional Communications System Project (the "EBRCS Project"), to which Members and non-members may subscribe (the "Subscribers") subject to the provisions set forth herein, should be undertaken in order to meet public safety communication needs of the Members, and that the EBRCS Project will have regional consequences beyond the Members' geographical jurisdictions, thus encouraging participation by other governmental agencies including but not limited to the State and Federal government.

NOW THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the Members agree as follows:

AGREEMENT

1. **Authority and Purpose.** This Agreement is made under the authority of and pursuant to the Joint Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the California Government Code (commencing with Section 6500 et seq.) (the "Act"), relative to the joint exercise of powers common to the Members and as otherwise granted by the Act. The purpose of this Agreement is to provide for the acquisition of real, personal and intangible property; and the planning, design, financing, regulation, permitting, environmental evaluation, public outreach, construction, operation, and maintenance of the EBRCS Project, or any identifiable portion of the EBRCS Project. Notwithstanding anything in this Agreement to the contrary, each Member also reserves all of its rights and powers to proceed

separately within its jurisdictional boundaries on any compatible public safety communications projects anticipated to become part of the EBRCS Project; provided, however, that the planning, design, and construction of such projects should be consistent with the Functional Specifications for the EBRCS Project dated _____ (the "Functional Specifications") or as subsequently amended by the Authority's Board of Directors and incorporated herein by this reference.

The general specifications and performance standards for the EBRCS Project are as follows: The EBRCS Project is designed as a P25 digital trunking system operating in the 800Mhz/700Mhz frequency spectrum. The system solution is a wide area, two county, IP-based architecture communications system that is compliant with the ANSI/EIA/TIA-102 suite of standards. The EBRCS Project will utilize sites strategically located throughout, but not limited to, Member jurisdictions. The EBRCS Project is also expected to meet typical public safety requirements of a Grade of Service of two percent busies during the busy hour with an estimated 90 percent of busy calls queued within 2.5 seconds.

For purposes of this Agreement, P25 compliant or equivalent means a common set of standards for first-responders that allows the highest level of interoperable communications in a digital mode.

2. Creation of Authority and Jurisdiction. Pursuant to the Act, the Members hereby create the East Bay Regional Communications System Authority (the "Authority"), a public entity separate and distinct from each of the Members. The jurisdiction of the Authority shall be all territory within the geographic boundaries of the Members, however the Authority may undertake any action outside such geographic boundaries as is necessary and incidental to the accomplishment of its purpose and the EBRCS Project.

3. Term and Termination. This Agreement shall be effective as of the date first above written. It shall remain in effect until the purpose stated in Section 1 of this Agreement is fully accomplished, or until terminated by the vote of a majority of the governing bodies of the Members; provided, however, that this Agreement may not be terminated, and no Member may withdraw its membership, until (a) all bonds or other instruments of indebtedness issued by the Authority and the interest thereon, if any, have been paid in full or provision has been made for payment in full and (b) all outstanding obligations and liabilities of the Authority have been paid in full or provision has been made for payment in full, except as set forth in Section 13.

4. Powers of the Authority.

a. Powers. The Authority shall have all powers necessary or reasonably convenient to carry out the purposes stated in Section 1 of this Agreement, including, but not limited to, the following:

- (1) To secure administrative office space and furnishings;
- (2) To make and enter into contracts including other joint powers agreements and Subscriber agreements;
- (3) To contract for, or employ, administrative, technical, legal and support staff, and consultants and contractors of any kind;

- (4) To acquire and maintain insurance of all types;
- (5) To lease or sublease real, personal and intangible property;
- (6) To acquire, hold, or dispose of real, personal or intangible property by negotiation, dedication or eminent domain provided, however, that the power of eminent domain shall be used to acquire real, personal or intangible property of a Member only with the consent of the governing body of such Member;
- (7) To own, lease, sublease, acquire, operate, maintain and dispose of materials, supplies, and equipment of all types including, but not limited to intangible property such as radio frequencies;
- (8) To plan, and to conduct environmental evaluation and other analyses in connection therewith, and design buildings, facilities or communications improvements of any kind;
- (9) To construct, operate, and maintain buildings, facilities or communications improvements of any kind, provided that (i) for new buildings, facilities or communications improvements located on property owned by a public entity, the Authority shall provide appropriate public notice of proposed action, but shall be exempt from all local land use and zoning regulations; and (ii) for new buildings, facilities or communications improvements located on private property, the Authority shall apply for and receive appropriate approvals under the applicable local land use and zoning regulations;
- (10) To accept, hold, invest (pursuant to the Act, including, without limitation, Section 6509.5 thereof), manage, and expend monies;
- (11) To obtain and secure funding from any and all available public and private sources including local, state, and federal government, including but not limited to, bond issuances, lease purchase agreements, public grants, public and private contributions, public and private loans, and other funds;
- (12) To incur debts, liabilities or obligations, subject to the provisions of this Agreement, provided that no debt, liability, or obligation shall constitute a debt, liability or obligation of the Members, either jointly or severally.
- (13) Subject to applicable legal authority, to impose, levy, collect, or cause to be collected, or to receive and use, public safety communication impact or development fees on new residential, commercial, and industrial development;
- (14) Subject to applicable legal authority, to form one or more special assessment districts under any legal authority that exists now or in the future, including, without limitation, the Improvement Act of 1911 (Streets & Highways Code Section 5000 et seq.), the Municipal Improvement Act of 1913 (Streets & Highways Code Section

10000 et seq.), the Improvement Bond Act of 1915 (Streets & Highways Code Section 8500 et seq.), and the Marks-Roos Local Bond Pooling Act of 1985 (Government Code Section 6584 et seq.);

- (15) Subject to applicable legal authority, to form one or more special tax districts under the Mello-Roos Community Facilities District Act of 1982 (Government Code Section 53311 et seq.) or any other authority that may exist now or in the future;
- (16) To negotiate and enter into reimbursement agreements when monies to construct project improvements are advanced;
- (17) Subject to applicable legal authority, to cause taxes, assessments, fees or charges to be levied in accordance with applicable State and Federal law, and in a manner to accomplish the purposes of the Authority;
- (18) To issue bonds and sell or lease any facilities for purposes of debt financing;
- (19) To carry on technical and other investigations of all kinds necessary to further the purposes of the Authority;
- (20) To sue and be sued;
- (21) To amend the Functional Specifications; and
- (22) To exercise all powers incidental to the foregoing including, but not limited to, contracting for services from Members, reimbursing Directors for expenses incurred as permitted by law and adopting personnel rules and regulations.

- b. Limitation of Imposition of Powers. The provisions of subsection a. notwithstanding, the Board of Directors shall have no power to impose taxes, assessments, fees or charges within any Member's jurisdiction unless the Member's governing body adopts a resolution approving the tax, assessment, fee or charge.
- c. Additional Powers to be Exercised. In addition to those powers common to each of the members, the Authority shall have those powers that may be conferred upon it by subsequently enacted legislation.
- d. Restriction on Exercise of Powers. Pursuant to Section 6509 of the Act, the County of Alameda is designated as the Member for determination of the restrictions upon the Members in exercising the powers set forth in this Agreement.
- e. Debts, Liabilities and Obligations. The debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of the Members, either jointly or severally.

5. Duties. The Authority shall have the duty to do the following within the times specified or, if no time is specified, within a reasonable time:

- a. To retain legal counsel for all Authority business, including litigation;
- b. To evaluate the need for, and acquire and maintain if necessary, liability, errors and omissions, or other insurance;
- c. To conduct an annual audit as required by the provisions of Subsection 6.d(3); and
- d. To use its best efforts to develop and adopt within six (6) months of execution of this Agreement: (i) a Capital Plan specifying a means or formula for determining the timing and sequencing of construction of the EBRCS Project consistent with the Functional Specifications referenced in Section 1 of this Agreement and (ii) a funding plan specifying a means or formula for funding the Authority's operations and any EBRCS Project phases that are the responsibility of the Authority (the "Funding Plan"), which Funding Plan will include an allocation of costs among the Members, Subscribers to the EBRCS Project and other funding sources.
- e. To administer the EBRCS Project in accordance with the purposes set forth in Section 1.
- 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.
- g. To encourage other governmental and quasi-governmental agencies including but not limited to the State and Federal government, and special districts to participate as Subscribers in the EBRCS Project.
- h. To establish system participation pricing including start-up costs, and ongoing Subscriber/Member unit pricing to cover system operations, technical upgrades, and system replacement reserves.
- i. To establish policies and procedures for the voluntary transfer and/or lease of assets from Member jurisdictions including but not limited to frequencies, transmitter sites and associated equipment.
- j. To enter into agreements with Members, or, in the event that a particular skill or service is unavailable from Members, with outside vendors to perform maintenance of the system.
- k. To provide yearly performance review of the EBRCS Project and to report thereon as directed by the Board of Directors.

6. Administration.

- a. Governing Board - Membership. The Authority shall be administered by a Board of Directors (the "Board") consisting of twenty-three (23) Directors and their respective alternates. Directors and alternates shall be appointed as follows and, at the time of such

appointment and for the duration of such service, shall be employees or officers of Member agencies:

- (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, County Administrator
- (1) Alameda County Sheriff
- (1) Contra Costa County Sheriff
- (3) Contra Costa County City Managers (to be selected by the Association)
- (3) Alameda County City Managers (to be selected by the Association)
- (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)

Alternates shall serve as Directors in the absence of their respective Directors and shall exercise all rights and privileges thereof. Each Director and each alternate for such Director shall serve at the pleasure of the appointing entity and may be removed at any time without notice.

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).

c. 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.
- (2) The Board may adopt by resolution rules of procedure, not inconsistent with the provisions of this Agreement, to govern the conduct of its meetings. Such rules of procedure shall be in accordance with the Ralph M. Brown Act (Government Code Section 54950 *et seq.*).
- (3) Directors of the Board and designated officials and employees, if any, shall comply with the Political Reform Act of 1974, Title 9 of the California Government Code (commencing with Section 81000 *et seq.*).

d. Fiscal Matters.

(1) Treasurer and Auditor.

- (A) Except as provided in Subsection (C), below, the treasurer and auditor of _____ County, respectively, are designated the Treasurer and Auditor of the Authority with the powers, duties, and responsibilities specified in the Act, including, without limitation, Sections 6505 and 6505.5 thereof.
- (B) The Board shall designate a certified public accountant as the independent auditor of the Authority with the powers, duties, and responsibilities specified in the Act, including, without limitation, Sections 6505 and 6505.5.
- (C) Notwithstanding Subsection (A) above, the Board may at any time appoint one or more of the Authority's officers or employees to either or both of the positions of Treasurer or Auditor as provided in the Act.

(2) Custodian of Property. The Treasurer and Auditor of the Authority shall be the public officers who have charge of, handle, and have access to, the Authority's property and shall file with the Authority an official bond in the amount set by the Board.

(3) Accounts and Reports. The Board shall establish and maintain such funds and accounts as may be required by generally accepted public accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times to the Members and their respective representatives. The accounts shall be prepared and maintained by the Treasurer and Auditor of the Authority. The Authority shall, within one hundred twenty (120) days after the close of each fiscal year, cause an independent audit of all financial activities for such fiscal year to be prepared by the independent certified public accountant employed by the Authority in accordance with Government Code Section 6505. The Authority shall promptly deliver copies of the audit report to each member of the Board and the Members.

(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.

(5) Contributions. Within 90 days of execution of this Agreement, the Board will establish by two-thirds (2/3) vote of the Board the amount of start-up funds to be contributed to the Authority by each Member. Additional contributions shall be specified in the Funding Plan to be adopted by two-thirds (2/3) vote of the Board, in accordance with Section 5.d. and Section 7.a.

(6) Fiscal Year. The fiscal year of the Authority shall be the period from July 1st of each year to and including the following June 30th.

7. Voting. Each member of the Board shall have one vote. The Board may take action by the affirmative vote of the majority of the entire Board. However, the following actions may only be taken with the affirmative vote of at least sixteen (16) Directors.

- a. Establish start-up contributions from Members, as referenced in Section 6.d.(5) of this Agreement and adopt a Funding Plan, as referenced in Sections 6.d.(5) and 5.d.;
- b. Levy and collect, or cause to be collected, communication impact fees on new residential, commercial, and industrial development, as authorized by local, state, and federal law;
- c. Form a special assessment district under any legal authority that exists now or in the future, including, without limitation, the Improvement Act of 1911 (Streets & Highways Code Section 5000 et seq.), the Municipal Improvement Act of 1913 (Streets & Highways Code Section 10000 et seq.), and the Improvement Bond Act of 1915 (Streets & Highways Code Section 8500 et seq.), as authorized by local, state, and federal law;
- d. Form a special tax district under the Mello-Roos Community Facilities District Act of 1982 (Government Code Section 53311 et seq.) or any other authority that may exist now or in the future;
- e. Cause taxes, assessments, fees or charges to be levied as authorized by local, state, and federal law, and in a manner to accomplish the purposes of the Authority;
- f. Issue bonds or other forms of debt; and
- g. Exercise the power of eminent domain.

8. Reserved.

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.

10. Liability of Board, Officers and Employees.

- a. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. They shall not be liable to the Members for any mistake of judgment or other action made, taken, or omitted by them in good faith, nor for any action made, taken, or omitted by any agent, employee, or independent contractor selected with reasonable care, nor for loss incurred through the investment of the Authority's funds, or failure to invest the same.
- b. To the extent authorized by California law, no Director, officer, or employee of the Authority shall be responsible for any action made, taken, or omitted, by any other member of the Board, officer, or employee. No member of the Board, officer, or employee of the Authority shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement, except as provided in Subsection 6.d (2).
- c. The funds of the Authority shall be used to defend, indemnify, and hold harmless the Authority and Director, officer, or employee of the Authority for actions taken in good faith and within the scope of his or her authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide coverage for the foregoing indemnity.

11. Rules. The Board may adopt, from time to time, such policies, procedures, bylaws, rules and regulations for the conduct of the Authority's affairs as the Board deems necessary and appropriate.

12. Disposition of Property upon Termination. In the event of termination of the Authority pursuant to Section 3 herein and where there will be a successor public entity which will carry on the functions of the Authority and assume its assets and liabilities, the assets of the Authority shall be transferred to the successor public entity. If upon termination pursuant to Section 3, there is no successor public entity which will carry on the functions of the Authority and assume its assets, the assets shall be returned to the Members as follows: (a) all real property and any improvements thereon shall be conveyed to the Member which owned the property prior to the formation of the Authority, and (b) all other assets shall be divided among the Members in proportion to their respective contributions during the term of this Agreement. If upon termination pursuant to Section 3, there is a successor public entity which will carry on some of the functions of the Authority and assume some of the assets, the Authority's Board shall allocate the assets between the successor public entity and the Members.

13. New Parties and Termination and Withdrawal of Existing Parties. The Board shall have plenary authority to establish rules, standards and charges for the admission of new parties to this Agreement and for the termination and withdrawal of existing parties to this Agreement, subject to the provisions set forth in this Agreement. Admission of a new member shall not require amendment to this Agreement. New parties may become members on any conditions prescribed by the Board including payment of special fees and charges. The Board shall further have plenary authority to establish conditions for non-member Subscribers to the EBRCS Project whether such non-member Subscribers are or are not public entities. In the event that a Member seeks to withdraw from the Authority prior to issuance of bonds or other instruments of indebtedness, the withdrawing Member shall be charged an amount which shall represent a fair and equitable pro rata share of the costs, expenses and

obligations incurred by the Authority at that time, as determined by the Board.

14. Successors: Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members. No Member may assign any rights or obligations hereunder without the unanimous consent of the governing bodies of the other Members; provided, further, that no such assignment may be made if it would materially and adversely affect (a) the rating of bonds issued by the Authority, or (b) bondholders holding such bonds.

15. Amendments. This Agreement may be amended only by the mutual agreement of all the governing bodies of the Members. So long as any bonds of the Authority are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds and the documentation relating thereto, this Agreement shall not be amended, modified or otherwise revised, changed or rescinded, if such action would (a) materially and adversely affect (1) the rating of bonds issued by the Authority, or (2) bondholders holding such bonds, or (b) limit or reduce the obligations of the Members to make, in the aggregate, the payments under the Funding Plan which are for the benefit of the owners of the bonds.

16. Notices. Any notices to Members required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

Notices under this Agreement shall be deemed given and received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any Member may amend its address for notice by notifying the other Members pursuant to this Section.

17. Severability. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

18. Liberal Construction. The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Authority.

19. Headings. The headings used in this Agreement are for convenience only and have no effect on the content, construction, or interpretation of the Agreement.

20. Counterparts. This Agreement may be executed in any number of counterparts, and by

different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

21. Agreement Complete. The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing above. Any such agreements merge into this Agreement.

IN WITNESS WHEREOF, the Members have entered into this Agreement effective on the date first above written.

[signature pages to follow]

942861_5; 1191.002



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE

05/08/07
~~04/24/07~~

AGENDA ITEM

8 10

WORK SESSION ITEM

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Participation in the East Bay Radio Communication System Joint Powers Authority

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolutions authorizing Hayward's participation in the Joint Powers Authority and appropriating \$75,000.

BACKGROUND:

The Bay Area is no stranger to disasters, which underscores the importance of having a coordinated communication system in order to successfully respond to and mitigate the effects of any type of disaster. We have seen firsthand the negative consequences that ensue when communication systems fail, as was painfully evident during the September 11 tragedy and Hurricane Katrina disasters.

The public agencies of Alameda and Contra Costa counties face the same challenges as other metropolitan areas with communication systems that have developed over time utilizing different spectrum and proprietary technologies. The disparity of systems makes seamless communication extremely difficult, requiring, in many cases, incorporating technology patches that are extremely inefficient and complicated to set up and operate. The situation is compounded by the fact that most of the systems in use today are nearing the end of the useful lives and need replacing.

The two counties have been working together over the last few years as part of the federally sponsored Urban Area Security Initiative (UASI) to establish priorities for homeland security funding. Through the assistance of the federally funded Urban Area Security Initiative (USAI), a group of technical advisors from the Interoperable Communications Technical Assistance Program (ICTAP) worked to evaluate the status of existing communications systems and develop different alternatives to achieve the goal of interoperability. From this work, it became clear that the most cost effective and technically superior solution for both counties, and the numerous public safety agencies located within both counties, is to construct a shared regional communication system. Interoperability and funding the build out of such a communication system has become the highest priority for the UASI.

To this end, committees with representatives from both counties have been working over the last two years to develop the technical parameters for the system, establish a governance model, and obtain political support from the jurisdictions within the two counties.

A system design has been completed which is capable of serving both counties from 31 sites strategically located throughout the region, with an estimated infrastructure cost of about \$60 million. The system will be a Project 25 compliant system providing interoperable communications between all the agencies that subscribe to the system. Assuming a decision is made to implement a regional communication system, it is anticipated it will take between two to three years to complete the project.

Federal Homeland security funding has been allocated over the past three years to begin to build out the system. Significant progress has been made towards completing a digital microwave system linking sites in both counties, purchase of the master site controller which will operate the system, and finally the purchase of equipment to build out 10 of the proposed sites. Efforts are underway to secure federal grants to support the build out of the remainder of this infrastructure, and the prospect of receiving such funding is promising. Indeed, it was recently reported that both Senators Dianne Feinstein and Barbara Boxer indicated to a delegation of area elected officials that formation of a comprehensive, coordinated communication system is essential to receipt of federal funds.

The system described above represents the backbone of a two-county communication system. Because it is the backbone (the network, if you will), it also means that each jurisdiction may still have to make certain improvements to its own specific communication system. As described elsewhere in this agenda, Hayward has already made a significant investment in this regard. Some, but not all of the features contained in the City's upgrade will be transferable to the new system.

COSTS AND FINANCING:

There are three components of cost that must be considered in order to participate in the system. The build out of the infrastructure is expected to cost in the neighborhood of \$60 million. While grant funding has been received to date, and more is expected to be available in the near future, that source of funding will likely be insufficient to cover the entire cost of the system. Ultimately, it is expected that local jurisdictions that elect to utilize this communication system will be responsible to pay a proportionate share of the remaining build out costs. While final financial figures have not been developed, it is presently anticipated that it may be necessary to finance this project by issuing long term debt in the amount of between \$45 and \$50 million. Once the specific amount is known, the cost to each member will be identified. A number of factors will influence this amount, including the term and cost of borrowing, together with the number of participating agencies. Assuming the cost-sharing formula described below, and a fifteen-year financing period, Hayward's share would be approximately between \$230,000 and \$250,000 per year. However, additional Council action will be necessary before committing the City to this obligation.

The second component is the cost associated with purchasing new radios to use on the new system. Each jurisdiction will be responsible for the radios they plan to use on the system. By

buying in large quantities to address the needs of multiple agencies, it should be possible to use the related purchasing power to obtain the lowest possible price for the radios. Lastly there will be a cost associated with the maintenance, technological upgrades and system reserve for the replacement of the system. Again, Council action will be required to earmark funds for this purpose.

A variety of approaches were examined relative to the development of a cost sharing formula, including population, calls for services and a number of other methods. From these discussions, a consensus emerged to employ a method which would allocate costs to each jurisdiction based on the quantity of the radios utilized by each jurisdiction. Each jurisdiction will be responsible for a proportionate share of the infrastructure costs, along with an ongoing subscriber fee for operating expenses. Subscriber pricing will be determined and adjusted as necessary as new users come on to the system. It is also anticipated that once the system is operational there will be opportunities to increase revenue by attracting new users.

In 2005, the Council was advised that to make the City's communication system fully interoperable would require an expenditure in excess of \$10 million. Staff reported that even after investing such a substantial sum of money, there was no assurance that full interoperability would be realized. As a result, staff recommended waiting to make such an investment, in anticipation that the concept of establishing a regional system would mature and ultimately become a reality. Tonight, the Council is being asked to make a decision that moves the City in this direction.

As an initial investment, to demonstrate that agencies are serious about moving forward with establishing a regional communication system, agencies are being asked to contribute \$100 per radio to this effort. As Hayward has 750 radios, this equals \$75,000. No other financial commitment is being made as a result of your decision tonight.

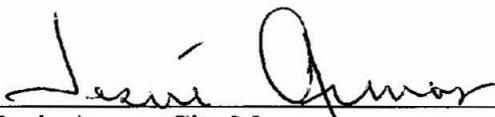
ORGANIZATIONAL STRUCTURE AND CONCLUDING REMARKS:

In order to manage the system, a governance model has been developed to assume responsibility for managing overall system implementation and operations while providing all users a voice in the management of the system. There are several working models throughout the United States where large regional areas have formed regional communication systems, with shared governance. A task force of elected officials, city and county administrators and public safety representatives from both counties has been working to develop a specific governance model. What emerged from this work is a recommendation to form a joint powers authority, which, if formed, would have overall responsibility for designing, constructing and operating a system that provides seamless communication capabilities across jurisdictional boundaries. Proposed to be named the East Bay Regional Communications System Joint Powers Authority, the JPA will include a Board of Directors of 23 members, representing elected and appointed officials from both counties, including Mayors, Councilmembers, and County Supervisors; City Managers and County Administrators; as well as Police and Fire Chiefs, and Sheriffs. In its oversight capacity, the Board will appoint technical and operational committees as necessary to address system implementation issues.

Achieving true interoperability, an important and critical objective, can only be realized if there is a commitment on the part of cities and the counties in both Alameda and Contra Costa to work

together. The other cities in Alameda County are scheduled to take action on formation of the JPA during the months of May and June. A favorable response is expected, particularly since formation of the JPA has been reviewed and endorsed by the Alameda County Mayor's Conference, and a positive response has also been expressed by jurisdictions in Contra Costa County.

Staff therefore recommends that the City Council adopt the attached resolutions which both authorize our participation in the JPA and appropriate \$75,000. Approval of the resolutions represent a key first step toward achieving the goal of enabling public agencies to communicate with one another when responding to a disaster, whether natural or man-made.



Jesús Armas, City Manager

DRAFT
HAYWARD CITY COUNCIL

ATTACHMENT II

RESOLUTION NO. 07-

Introduced by Council Member _____

Mal
4/20/07

**RESOLUTION AUTHORIZING THE CITY OF HAYWARD'S
PARTICIPATION IN THE EAST BAY RADIO
COMMUNICATION SYSTEM JOINT POWERS AUTHORITY**

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute an agreement with public agencies of Alameda and Contra Costa counties to participate in the East Bay Radio Communication System Joint Powers Authority, in an amount not to exceed \$75,000 in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 07-

Introduced by Council Member _____

Mac
4/20/07

RESOLUTION AMENDING RESOLUTION 06-080, AS AMENDED, THE BUDGET RESOLUTION FOR FISCAL YEAR 2006-07, RELATING TO AN APPROPRIATION OF FUNDS TO PARTICIPATE IN THE EAST BAY RADIO COMMUNICATION SYSTEM JOINT POWERS AUTHORITY

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that Resolution No. 06-080, as amended, the Budget Resolution for fiscal year 2006-07, is hereby amended by approving an appropriation of \$75,000 from the General Fund (Fund 100) to participate in the East Bay Radio Communication System Joint Powers Authority.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



WS 2

DATE: October 7, 2008

TO: Mayor and City Council

FROM: Interim Police Chief

SUBJECT: East Bay Regional Communication System (EBRCS) Participation

RECOMMENDATION

That Council receives and reviews this report.

SUMMARY

In 2007, the East Bay Regional Communications System Agency (EBRCS), a joint powers agency, was formed to procure, install and maintain a digital 800/700 MHz P25 trunked radio system for both Alameda and Contra Costa Counties. There are 39 member agencies that have joined the EBRCS, including Hayward. In Alameda County, the cities of Oakland, Piedmont, and Berkeley have not joined EBRCS and are performing needs assessment to determine their participation. Hayward just recently completed a system upgrade and has the newest radio system in Alameda County (outside of the new EBRCS system).

The EBRCS has awarded the contract to Motorola, who has already begun to install equipment for the new system. CTA Communication Consultants was retained by EBRCS and the City of Oakland to provide an independent verification of the Motorola system design and to make funding recommendations to EBRCS. The EBRCS has estimated the cost of infrastructure to be \$68,116,171. The EBRCS has received or is receiving \$33,974,135 in Federal grants or earmarks. This leaves an estimated unfunded cost of \$34,142,036.

While Hayward is committed to providing interoperability, the City currently can provide interoperability without discarding the recent equipment upgrades. By continuing to use the new equipment for the next couple of years, Hayward can get more return on its investment and begin to save for the transition to a new system.

BACKGROUND

Organization: In 2003, the City of Oakland and Alameda and Contra Costa Counties began meeting to discuss how to improve interoperability between the counties and the cities contained therein. Meanwhile, Alameda County's trunked 800 MHz radio system was beginning to experience serious maintenance problems. Due to the age of the equipment and availability of parts, it was becoming very hard to maintain.

In 2005, Alameda County released a Request for Proposal (RFP) for a new P25¹ 800 MHz trunked system to replace their Motorola SmartNet System. The RFP was written to replace Alameda County's system only. Since the RFP was an Alameda County only procurement, other agencies were not involved in the procurement of the new system. Alameda County's RFP required that the new system be backward compatible with their current proprietary SmartNet System. This was required to provide for smoother migration for current users. However, that requirement eliminated other vendors, since the SmartNet system was a Motorola proprietary system. Alameda County eventually entered into negotiations with Motorola and awarded them the contract.

Motorola began delivering the initial system in late spring of 2006. Part of the Motorola procurement included a comprehensive system design. This was based on Alameda County's primary concern to improve their current system. Knowing that Contra Costa had a desire for a county wide system, Motorola offered to provide a two-county system design.

Contra Costa County and its staff began discussions with Alameda County on the conceptual design and formation of a two county radio system. Contra Costa County was very concerned that (a) the original Alameda County RFP was not competitive, and that (b) the system design would not meet the needs of its users.

Based on their concerns, Contra Costa County hired CTA Communications, Inc., a consultant, to render a third-party opinion on the viability of the Motorola design and pricing. CTA's report seemed to support the plan of a two-county radio system. However, the report identified system design concerns for Contra Costa County. CTA also discussed that the pricing that Motorola provided was "high."

Both counties realized from the onset that they would need some form of joint governance in order for the system to grow. On September 11, 2007, the East Bay Regional Communications System Authority (EBRCS) was formed as a joint powers authority among both counties and all but three (3) of the cities within Alameda County: Oakland, Piedmont, and Berkeley, and the City of Orinda in Contra Costa County. Currently there are thirty five (35) member agencies

¹ **Project 25 (P25)** is a set of standards produced through the joint efforts of the Association of Public Safety Communications Officials International (APCO), the National Association of State Telecommunications Directors (NASTD), selected Federal Agencies, and the National Communications System (NCS), and standardized under the Telecommunications Industry Association (TIA)... The P25 suite of standards involves digital Land Mobile Radio (LMR) services for local, state, and national (federal) public safety organizations and agencies. Although developed primarily for North American public safety services, P25 technology and products are not limited to public safety alone and have also been selected and deployed in other private system application, worldwide.¹¹¹

consisting of 29 cities and 4 special districts (see attachment). The Board of Directors is made up of 23 representatives allocated among the various entities as follows:

EBRCS

The Board of Directors: 23 members made up of equal representation from both counties.

- | | |
|---|---|
| <p>(2) Police Chiefs Association*</p> <p>(2) County Fire Chiefs Assn*</p> <p>(1) Special District</p> | <p>(1) Alameda County (CAO)</p> <p>(1) Contra Costa County (CAO)</p> <p>(2) County Sheriffs*</p> |
| <p>(3) City Managers Contra Costa County**</p> <p>(3) City Managers Alameda County**</p> <p>(3) Elected Officials Alameda County***</p> <p>(3) Elected Officials Contra Costa County***</p> <p>(2) One member of each Board of Supervisors</p> | |

*one representative from Contra Costa and one from Alameda

**selection to be determined by each County's City Managers Association

*** selection to be determined by the Mayor's conference of each County

Under the direction of the board, the JPA hired Retired Fire Chief Bill McCammon as Executive Director. According to the EBRCS Bylaws, the Executive Director is appointed by a majority of the Board of Directors.

Base Technology: In the 1990's, the Association of Public Safety Communications Officials (APCO) appointed a committee to explore the possibility of establishing an open, standards-based protocol for digital radio systems. This committee became known as the Project 25 Committee.

P25 created an open standard, which allows equipment adhering to the standard to be compatible regardless of the manufacturer. Until the creation of P25, some radio systems used proprietary protocols to communicate with the base stations. This did not always allow equipment from different manufacturers to be compatible across radio systems. This created incompatible systems and large communication gaps for public safety personnel.

The P25 standard also created the opportunity for competition and more favorable purchasing, since equipment can be purchased from more than one manufacturer. P25 is a work in progress. Although several standards have been created, the Committee is still in the process of defining some interfaces including the Console Subsystem Interface (CSSI) and the Inter RF Subsystem Interface (ISSI). These interfaces will further expand the capability of a digital network by using internet protocol (IP) technology to allow systems to interconnect from base station to base station.

In early 2008, the P25 Compliance Assessment Program (CAP) was developed to assure that equipment being advertised as P25 compliant actually was. The P25 CAP has four (4) long-term goals: (1) ensure that the technologies meet the needs of field end users; (2) assist governments in making informed purchasing decisions regarding P25 equipment; (3) provide standard testing procedures across all vendors; and (4) support the eventual implementation of standards-based infrastructure for first-responder communications. (See Exhibit 1 from Homeland Security.)

In 2004-2005, the Alameda County Grand Jury noted that most agencies in the county had a concern about “interoperability” (i.e., the ability of first responders in all jurisdictions within the County to communicate with one another using a common platform.) The Grand Jury Report for that year noted:

“Investigation by the Alameda County Grand Jury of local agencies discovered a common concern regarding interoperability. Mutual Aid in the mitigation of local incidents depends on quick response from the nearest district. Communication is hampered when the assisting districts cannot identify the needs of the local department managing the incident because of the differences in communication equipment. The injection of a terrorist attack or major disaster would compound this problem. Interagency cooperation and coordination are critical. The disparity in communication systems of individual rescue agencies is a hindrance. Coordination for saving lives and property in a disaster could be hampered. One problem with achieving interoperability in the Bay Area is various agencies using different radio systems. In addition, available airwave systems for public safety agencies are almost depleted.”

The Alameda County Grand Jury again reviewed the issue of interoperability and the new JPA. The 2006-2007 report states:

“Both national and state reports were in general agreement that governmental organizations created to improve interoperability should develop a vision with specific supporting goals and objectives. The decision-making process should include as many affected jurisdictions as possible, rely on their assessment of local needs and vulnerabilities, enhance communication, coordination, and cooperation among them, provide for dispute resolution, and prevent turf wars. Both of these reports also agreed that moving directly to an optimum system at their respective level is not financially feasible, and that solutions must be found which allow affected jurisdictions to “leverage existing systems while migrating gracefully but expediently to the ideal.” The California Statewide Integrated Public Safety Communications Strategic Plan emphasized that training and exercises that practice communications interoperability are essential to ensuring that the technology works and that responders use it effectively during emergency operations.

The goal of promoting wide membership in order to facilitate public funding would seem to argue for inclusion, or at least provision for collaboration and coordination with as many potential members and subscribers as possible. There is conflicting information on the extent of inclusion and coordination prior to adopting the JPA. Whatever the case, from here forward, every attempt should be made to be as inclusive as possible.

The Grand Jury believes that the ultimate goal of radio communications interoperability is worthy, particularly in view of the Bay Area’s susceptibility to flood, fire, major earthquake, and possible terrorist attack. Once individual cities have the opportunity to decide whether to

join the JPA, future Grand Juries should closely monitor the cost of the EBRCS and its implementation. While there is a general, although not unanimous, feeling that high levels of interoperability are desirable for disasters such as 9/11 and Katrina, a lesser degree of capability may be sufficient for day-to-day police and fire operations. Federal grants should be aggressively pursued. Independent cost analysis should be obtained to determine if there are costs savings. Competitive bidding should be utilized. Comprehensive operating procedures including training and regularly scheduled exercises should be developed.

Ultimately, the public will benefit from a truly inclusive JPA that will provide the capability to deal at an acceptable level with major disasters anywhere in the Bay Area, as well as ongoing daily interactions in local jurisdictions. This system will hopefully include the potential for long range integration into a statewide system, backward compatibility allowing cities to enter the system using present equipment effectively, and a capability to upgrade to the ideal level, as local conditions and financial circumstances permit.”

The EBRCS System: Motorola has been awarded a contract to build the EBRCS P25 system. The system proposed by Motorola will consist of five (5) geographic zones and 32 transmitter sites spread throughout the two counties. These five (5) zones will work as sub-systems within the larger system. This design will allow for more efficient use of available frequencies between the two counties.

Hayward will be located in the Alameda County West Cell. The current system design has identified the following sites to provide coverage to the City of Hayward –Walpert Ridge, San Leandro Hills, Garin Water Tank, and Coyote Hills. Each of these sites will transmit at the same time providing radio coverage from South Oakland to San Jose. Each of the users within each of the sub systems should have complete system access in their local area coverage. Coverage while roaming outside of your home area has not been completely defined. However, the goal will be to provide at least some level of radio coverage while roaming within the two county system footprint.

Motorola has produced coverage maps using these proposed sites. Based on Motorola’s maps, coverage in most of Hayward appears to be within normal limits. However, the map also shows some coverage gaps in the commercial west end and along the Mission Blvd. area. While these maps give a good predicted coverage area, true tests will need to be conducted when the system goes live.

The new system was designed to use both 800 MHz and 700 MHz frequencies. 800 MHz frequencies are currently being used in the Alameda County System. They are owned and licensed to Alameda County and ready to be used. The 700 MHz frequencies² are scheduled to become available in February 2009. The 700 MHz frequencies will supplement the current 800 MHz channels. Most of the new 800 MHz radio equipment is compatible with both frequency ranges.

² The 700 MHz spectrum was previously used for analog television broadcasting, specifically UHF channels 52 through 69. The FCC has ruled that the impending switch to digital television will make these frequencies no longer necessary for broadcasters, due to the improved spectral efficiency of digital broadcasts, thus placing them up for auction and use by others.

The EBRCS is interested in utilizing both the Walpert Ridge and Garin Water Tank sites in the new P25 System. For the Walpert Ridge Site, the EBRCS would like to replace one of the older communications buildings with a newer, more stable facility. This new building will house the new P25 EBRCS equipment. The EBRCS has also identified that the power on the site will need to be upgraded to a 400 Amp service.

At the Garin site the EBRCS, would like to co-locate their equipment in our existing communications building. Their engineers have determined that there is sufficient space for their equipment to be co-located with ours. The electrical service at Garin will also need to be upgraded to a 200 Amp service. The EBRCS would also like to add an additional 20 ft extension onto our 60 foot communications tower. This extension is required to provide sufficient clearance from the new water tank that will be installed at a later date.

Both of these sites are very important in Motorola's system design. In fact, Motorola's current system design has already identified the use of both of these Hayward sites in the new system. These sites provide coverage not only to Hayward but to some of the surrounding areas. The Garin site will be very critical to the coverage in Union City, Newark and North Fremont.

However, Hayward is still waiting for an official agreement from the EBRCS. Currently, the EBRCS has begun planning for some upgrades to each of the sites. If use is granted, Executive Director Bill McCammon has verbally agreed to perform the necessary power upgrades for both Garin and Walpert Ridge, presumably at no cost to the City of Hayward. Mr. McCammon has also discussed that the EBRCS would be willing to pay their proportionate share of all utility and maintenance costs for the sites. However, the EBRCS does not appear willing to pay for the use of any property from member agencies (i.e., lease the tower and other sites they want to use.)

DISCUSSION

City of Hayward's Current System: In 2002, the City of Hayward's Public Safety Radio Network was failing, and the safety of the public and employees was being affected. In 2005, the City of Hayward began upgrading its entire Public Safety Radio Network. The project included upgrading the following: the microwave radio system, site infrastructure, base stations, antennas, dispatch consoles, replacement radios for the Police Department, and level three interoperability enhancements.

The City of Hayward operates a Conventional UHF Simulcast Public Safety Network. The system supports both Police and Fire operations for the City of Hayward and Fire operations for the Community of Fairview. The system is operated using four radio towers strategically placed throughout the City: Garin Ridge, Walpert Ridge, Hesperian (water pump station), and the Police facility. The primary site is the police facility located on West Winton Avenue. This site houses the primary controllers and provides an interface to the Public Safety Communications Center co-located in the police facility. Each of the remote sites is connected via a microwave system. This system was designed to provide protected and reliable connectivity to the other remote sites. This new microwave system also serves as the backbone for the city's wireless network.

The City of Hayward has completed the Public Safety Radio Upgrade it began in 2005. The following system and sub-systems have been upgraded as a result of this project:

1. Installation of new site in South Hayward on Garin Ridge.
2. Provide enhanced portable coverage with 97% coverage and 92 % reliability throughout coverage area
3. Provide new digital microwave system with expanded capacity to support digital data network
4. Provide new dispatch consoles for dispatch center, providing each position with radio capabilities. These consoles will provide the following enhancements
 - a. Improved radio interoperability
 - b. Provide Police and Fire Fighter Emergency Assistance Alerts
 - c. Provide expanded radio identification features
5. Expand dispatch consoles for each position in the Communications Center
6. Provide the Police Department with upgraded portable radios which will
 - a. Allow for consistent portable radio configurations
 - b. Allow for emergency officer down function for each radio

We have finally finished the last phase of the installation which included the interoperability patch with the Alameda County GSA System. This final phase provides interoperability with Alameda County, Union City, Fremont, San Leandro, Newark, CSU East Bay, and BART (In progress).

This interoperability must be managed in the Public Safety Communications Center. In the Communications Center, the Communication's Supervisor can patch a Hayward channel to a channel of one of our neighbors. When this patch is activated users can talk between systems without having to swap radios. This will allow us to patch statewide mutual aid channels or other common channels together during emergency situations.

On the EBRCS System, users will share the same frequencies. It is envisioned that every portable radio will be programmed similarly allowing for users to switch to any other participating agency's channels without dispatcher intervention. From a field user's position, this would allow for more flexibility since they would have control over which talk group they can join. It may not be operationally necessary for that to occur. From an end user perspective, both solutions provide a means for a Hayward officer or fire fighter to have the ability to communicate with its neighbors, who may use a different system.

Benefits and Impacts of Remaining in EBRCS: Hayward's presence on the EBRCS has several benefits from a design and implementation perspective. Our presence in the design process is allowing us to provide input to Motorola early in the process, and influencing the placement of equipment and sites as feasible. As the EBRCS becomes more active, they will be relying on participating agencies to determine the policies and practices of the JPA. Being a part of the development is definitely in the interest of any potential or current member.

From a radio coverage perspective, there is a benefit to having larger roaming capabilities that will be offered by being a part of a large regional system. This expanded "footprint" will definitely provide some flexibility for our employees.

Operationally, a trunked radio system uses frequencies much more efficiently than a conventional system, like Hayward. This efficiency allows for more talk groups and system capacity. Interoperability will be enhanced since every individual user will have the ability to talk to any other participating agency without dispatcher intervention.

The EBRCS system model is a state of the art digital system. This system has the potential to allow some enhanced capabilities including the use of both data and voice on the network. Again, the JPA will need to make the decision on what specific features they ultimately decide to implement.

However, there is some concern about a digital system. There is still a lot of discussion among public safety, especially fire departments, over the use of a digital system for mission critical communication. Most recently the International Association of Fire Chiefs (IAFC) studied the differences between analog and digital radio systems. In their report the IAFC found that analog communication was more intelligible than digital in six of nine high noise environment tests (i.e., communications \ could be heard better by those dependent on them in the field.)

It is assumed that the EBRCS system, like many new installations, will have design or implementation problems. For public safety, communication failures can be disastrous. Minimizing failures and providing predictable reliable communications is essential. There is rarely much benefit being one of the first users of a new digital system. In fact, it may be stressful to first responders as the system stabilizes.

There is a risk that the current Motorola system design may need to be expanded. While Motorola would argue that they will be able to provide sufficient coverage for the participating agencies, Motorola is making an assumption that every agency will be agreeable to the coverage the system is set to provide. Some agencies will be satisfied with system coverage. However, there will be some agencies that will not. As mentioned earlier, Motorola's coverage study shows some areas for concern in the commercial west area of Hayward and along the Mission Blvd. corridor. Hayward will not accept a lower level of coverage than what it has through its current system. What has not been determined is who will pay to provide this "enhanced" coverage. It can be assumed that eventually all members of the JPA will pay for the increased costs either individually or co-operatively.

The 2007 CTA report identified that the cost of the system appeared to be less competitive than they have seen in comparable installations. The report also identified that there may be infrastructure costs that were not identified as either equipment or services. However, it should be noted that the EBRCS is in the process of re-negotiating the purchase of the remaining equipment. It is hoped that the EBRCS may realize more competitive pricing in this 2nd phase of procurement.

Based on data provided by the EBRCS, dated August 2008, there remains \$34,143,036 in unfunded project costs. This assumes that the project does not exceed its contingency funding of \$5,556,999.

In any case, it is not unreasonable to expect that unfunded costs will need to be shared by participating agencies.

Currently EBRCS is billing participating agencies a \$100 per-unit, per-year fee. These monies are being used to support administrative costs and matching fund requirements. However, it's safe to assume that as administrative costs begin to increase, per unit fees will also need to increase. CTA Consultants has been retained by the EBRCS to provide a funding plan for the future.

Impacts and Risks of Leaving EBRCS: As mentioned above, leaving EBRCS could provide Hayward less of an influence in the process. However, based on the Alameda County Grand Jury 2007 report, staff believes that the EBRCS will continue to be inclusive and collaborate with as many potential users as possible. While it may not allow for a seat on any decision making board, it could allow Hayward continued influence on a technical and operational level.

However, as mentioned earlier, Hayward is in the unique position of having a new radio system. This system, while not trunked, provides for reliable and effective communications within our borders and surrounding areas. Leaving the EBRCS is not as critical for us as it is for some of our neighbors. Current members of the Alameda County 800 MHz system are becoming very anxious about the condition and performance of the current system. However, many of those agencies have been purchasing P25 compatible radios for the last year. This will allow them to phase in the costs of replacement units.

Hayward does not have that benefit. For Hayward, other than the digital microwave, none of the current equipment is compatible with the new P25 system.³ Therefore, joining the EBRCS for Hayward will likely require the replacement of all current radio equipment with new equipment compatible with the EBRCS system. While the costs for this equipment vary, it is not unreasonable to believe these costs to be in excess of \$1,000,000.

Another factor is the risk of loss of momentum. The reality is there are many others looking at the synergy of the project. As mentioned above, there are already cities that are not part of the EBRCS. Hayward would be the first participating agency to drop its membership. While we have conditions that are unique to Hayward, we may open the door for other agencies to leave EBRCS. Currently Hayward is paying more to support EBRCS than any other participating agency. Hayward's lack of participation will impact other agencies, since it's assumed that they would need to compensate for our lack of financial support.

Currently the EBRCS is considering establishing a founding members group and a new members group. It's unknown how EBRCS might treat Hayward if we were to request to join at a later date.

Considering the financial impact, the condition of Hayward's Public Safety Communication Network, and that interoperability patches that the City has installed, it seems a strong possibility

³ Motorola offered the City exceptional pricing and financing at a time that the old radios were failing. Staff made the determination that it was not in the best interests of first responder safety to wait any longer on radio replacement, and that given the likely implementation schedule of EBRCS, we would get good value from the equipment before it had to be replaced going into the two-county system.

that Hayward should remove itself from EBRCS. This will allow Hayward the opportunity to get more return on the investment the City just completed.

However, if the City does make this decision, it is imperative that Hayward should continue to cooperate and collaborate with the EBRCS as much as possible. Assuming that EBRCS would allow it, Hayward could continue to participate on the various technical committees that currently are associated with the two-county system.

FISCAL AND ECONOMIC IMPACT

Costs to EBRCS: In their proposal, Motorola estimated the cost at \$68,116,171 for both counties. However, that estimate did not include buildings or upgrades to any infrastructure. The CTA Consultants' report in April 2007 estimated that there is a potential for another \$20,000,000 in upgrades for infrastructure between the two counties.

This contract award did not provide for any portable or mobile radios. Each member agency is responsible for the purchase of their portables and mobiles. Estimates from CTA's 2007 report estimates that between the two counties those radios could cost as much as \$37,000,000. There is some discussion that the JPA may offer a lease/purchase option to help member agencies meet the replacement costs of portable and mobile radios.

Based on data from the EBRCS, the JPA has only received \$33,974,135 in grants from Homeland Security Grants and Federal earmarks. This leaves unfunded costs at \$34,142,036. The JPA, through the Bay Area Super Urban Area Security Initiative SUASI, is continuing to apply for grant funding each year. However, based on the trend of lower allotments, it is reasonable to believe that grant funding will not be able to fund the entire project.

Costs to the City of Hayward: Currently EBRCS is billing Hayward \$75,000 annually. Staff is reviewing the potential to lower this cost to approximately \$45,000. While EBRCS has not committed to its future funding amounts, it is safe to assume that there will be an increase in fees as the system becomes active. Any estimate on the potential costs would be inaccurate. We must wait for the EBRCS report before making any assumptions.

However, there is an expectation that participating agencies will go "live" when the system becomes operational in their jurisdictional coverage area. For Hayward, EBRCS is moving quickly to install equipment. This feasibly places us at a late 2009 or early 2010 implementation.

When an agency goes "live" on the system, there will be a monthly or annual system fee for each unit. Again, CTA Consulting is in the process of identifying those funding requirements. It is reasonable to assume that those fees will be between \$20 - \$60 per month per piece of equipment. Based on the current number of users, Hayward could pay \$108,000 - \$324,000 annually.

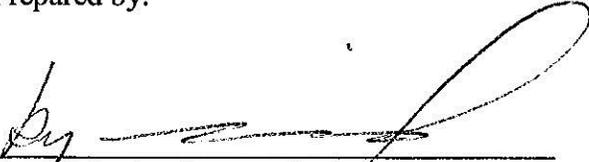
Based on current estimates from Motorola representatives, it is not unreasonable for Hayward to expect upward of \$1,800,000 in new equipment purchases for just mobiles and portables.

SCHEDULE

Meeting information is posted at <http://www.ebrcsa.org>

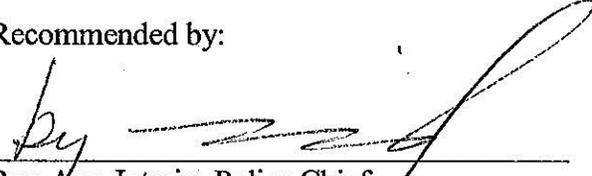
Meetings of EBRCS are generally at the Office of Homeland Security and Emergency Services, located at 4985 Broder Boulevard, Dublin. It is likely that EBRCS leadership and members will be looking for a response from Hayward at next meeting as to continued membership.

Prepared by:



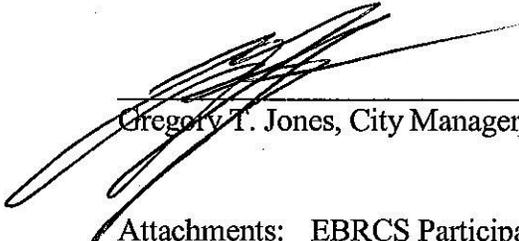
Desi Calzada, Communications Manager

Recommended by:



Ron Ace, Interim Police Chief

Approved by:



Gregory T. Jones, City Manager

Attachments: EBRCS Participants
EBRCS Financial Overview
EBRCS Board Members

East Bay Regional Communications System Authority

Participating Counties:	
Alameda County	http://www.acgov.org
Contra Costa County	http://www.co.contra-costa.ca.us
Participating Cities:	
City of Alameda	http://www.ci.alameda.ca.us
City of Albany	http://www.albanyca.org
City of Antioch	http://www.ci.antioch.ca.us
City of Brentwood	http://www.ci.brentwood.ca.us
City of Clayton	http://www.ci.clayton.ca.us
City of Concord	http://www.ci.concord.ca.us
Town of Danville	http://www.ci.danville.ca.us
City of Dublin	http://www.ci.dublin.ca.us
City of El Cerrito	http://www.el-cerrito.org
City of Emeryville	http://www.ci.emeryville.ca.us
City of Fremont	http://www.ci.fremont.ca.us
City of Hayward	http://www.ci.hayward.ca.us
City of Hercules	http://www.ci.hercules.ca.us
City of Lafayette	http://www.ci.lafayette.ca.us
City of Livermore	http://www.ci.livermore.ca.us
City of Martinez	http://www.cityofmartinez.org
Town of Moraga	http://www.ci.moraga.ca.us
City of Newark	http://www.ci.newark.ca.us
City of Oakley	http://www.ci.oakley.ca.us
City of Pinole	http://www.ci.pinole.ca.us
City of Pittsburg	http://www.ci.pittsburg.ca.us
City of Pleasant Hill	http://www.ci.pleasant-hill.ca.us
City of Pleasanton	http://www.ci.pleasanton.ca.us
City of Richmond	http://www.ci.richmond.ca.us
City of San Leandro	http://www.ci.san-leandro.ca.us
City of San Pablo	http://www.ci.san-pablo.ca.us
City of San Ramon	http://www.ci.san-ramon.ca.us
City of Union City	http://www.ci.union-city.ca.us
City of Walnut Creek	http://www.ci.walnut-creek.ca.us
Non Participating Cities:	
City of Oakland	http://www.oaklandnet.com
City of Piedmont	http://www.ci.piedmont.ca.us
City of Berkeley	http://www.ci.berkeley.ca.us
City of Orinda	http://www.ci.orinda.ca.us
Participating Special Districts:	
East Bay Regional Park District	http://www.ebparcs.org
Kensington Police Community Services District	http://www.kensingtonpolicecsd.org
Rodeo-Hercules Fire Protection District	http://www.rhfd.org
San Ramon Valley Fire Protection District	http://www.srvfpd.dst.ca.us

**East Bay Regional Communications System Authority (EBRCSA)
Financial Overview August 2008**

GRANTS RECEIVED/PENDING

Year	Grant Fund End Date	Source	Alameda County	Contra Costa County	Total	Status
2004		UASI	\$5,400,000	\$0.00	\$5,400,000	Received
2004		SHSGP	\$5,519,819	\$150,000	\$5,669,819	Received
2005		UASI	\$1,473,114	\$737,732	\$2,210,846	Received
2005		SHSGP	\$0.00	\$346,854	\$346,854	Received
2006	03/2008	SUASI	\$2,000,000	\$1,000,000	\$3,000,000	Received
2006	03/2008	SHSGP	\$1,300,000	\$835,000	\$2,135,000	Received
2007	03/2010	SHSGP	\$1,457,912	\$831,755	\$2,289,667	Received
2007	03/2010	SUASI	\$645,425	\$551,425	\$1,196,850	In Process
2007	09/2010	COPS	\$500,000	\$1,500,000	\$2,000,000	In Process
2007	09/2010	COPS*			\$500,000	In Process
2008	03/2009	Earmark			\$808,000	In Process
2008		SHSGP	\$1,358,767	\$850,000	\$2,208,767	In Process
2008	06/2011	PSIC**			\$4,966,666	Requested
2008		PSIC*			\$1,241,666	Requested
GRAND TOTAL					\$33,974,135	

* A local match is required in order to receive the grant allocation.

** The City of Oakland may receive a portion of this funding.

ESTIMATED INFRASTRUCTURE PROJECT COSTS

*Motorola Proposal less Microwave	\$55,569,990
Contingency @ 10%	\$5,556,999
Harris Microwave	\$6,989,182
** Total Estimated Project Costs	\$68,116,171

* The Motorola proposal was requested by Alameda County. Motorola is currently under contract with Alameda County for \$16 million to build existing infrastructure. A new bid will be issued for the final phases of the project, which will change the total infrastructure cost.

** This cost is for infrastructure and does not include the cost of subscriber units required to operate on the system.

PROJECTED FUNDING GAP

Total Estimated Infrastructure Project Costs	\$68,116,171
Grants Received/Pending	\$33,974,135
Total Estimated Unfunded Project Costs	\$34,142,036

As of 9/2/08

EBRCSA CURRENT BOARDMEMBERS

County Representatives

Scott Haggerty, President, Alameda County Board of Supervisors

Susan Bonilla, Supervisor, Contra Costa County

Warren Rupf, Sheriff, Contra Costa County

Greg Ahern, Sheriff, Alameda County

Susan Muranishi, County Administrator, Alameda County

David Twa, County Administrator, Contra Costa County

City Representatives

Jennifer Hosterman, Mayor, City of Pleasanton

Beverly Johnson, Mayor, City of Alameda

Janet Lockhart, Mayor, City of Dublin

Leonard McNeil, Councilmember, City of San Pablo

Bill Shinn, Mayor, City of Concord (Currently serving as Board Chair)

Abram Wilson, Mayor, City of San Ramon

Brock Arner, City Manager, City of San Pablo

Linda Barton, City Manager, City of Livermore

Joe Calabrigo, Town Manager, Town of Danville

June Catalano, City Manager, City of Pleasant Hill

Larry Cheeves, City Manager, City of Union City

John Jermanis, City Manager, City of San Leandro

Public Safety Representatives

Dale Attarian, Police Chief, City of San Leandro

Scott Kirkland, Police Chief, City of El Cerrito

Keith Richter, Fire Chief, Contra Costa County Fire Department

Bill Cody, Fire Chief, Livermore/Pleasanton Fire Department

Special District Representative

Tim Anderson, Police Chief, East Bay Regional Park District



DATE: May 25, 2011

TO: Council Technology Application Committee

FROM: Clancy Priest, Technology Services Director
Ron Ace, Police Chief

SUBJECT: East Bay Regional Communications System Authority (EBRCSA) Upgrade and Narrow Banding Initiative

RECOMMENDATION

The City of Hayward should remain actively involved in the continued deployment and development of the East Bay Regional Communication System (EBRCS), should postpone signing the operating agreement, and delay joining the EBRCSA System; and the City should deploy other more cost effective interoperability solutions and re-evaluate Public Safety communications needs in or around 2017.

BACKGROUND

In 2007, the City of Hayward joined the East Bay Regional Communications System Authority (EBRCSA) by signing a Joint Powers Agreement (JPA). The JPA consists of thirty-five agencies including two counties, twenty-nine cities, and four special districts. The Board of Directors is made up of twenty-three representatives consisting of elected officials, police chiefs, fire chiefs, and city managers.

The City of Hayward has been working cooperatively with the EBRCSA by allowing the Authority, under a separate agreement, to install EBRCS equipment at the Garin Water Tower and Walpert Ridge Communication Towers. Additionally, City staff attends all meetings of the EBRCSA Board of Directors, and has recently served on both the Operations Committee and the Technical Advisor Committee.

The EBRCS is now ready to acquire debt to complete the installation and deployment of the system. EBRCS has prepared an operating agreement for member agencies. This operating agreement would act as the base operating document between the JPA and the City of Hayward.

Coinciding with the implementation of the EBRCSA project is the FCC mandate to meet Narrow Banding requirements. In December of 2004, FCC Docket No. 99-87 mandated that all radio equipment operating below 512 MHz must operate using a narrow 12.5 KHz channel spacing, replacing the current 25 KHz banding, by January 1, 2013. In order to be compliant with the

FCC Narrow Banding Initiative, the City of Hayward will either need to join EBRCS or upgrade any non-compliant equipment before the January 2013 deadline.

DISCUSSION

East Bay Regional Communications Authority

The purpose of EBRCSA is to implement and maintain an interoperable, regional, P-25 compliant public safety radio system. Project 25, more commonly referred to as P-25 compliance, refers to standards for digital radio systems that enable communication between different public safety agencies in emergencies. Over the last couple of years, the EBRCSA has continued to acquire and develop a P-25 compliant system. While the Authority had hoped to complete the project using an assortment of grants, those funding sources are becoming more difficult to acquire.

In January 2010, the consulting firm Communications Technology Associates (CTA) Communications and EBRCSA Executive Director Bill McCammon presented a comprehensive report to the Authority's Board of Directors. This report concluded that the EBRCSA would have a funding shortfall of approximately \$31,987,000 in order to complete the radio system implementation by the narrow banding deadline of January 1, 2013. Since it is not feasible or reasonable to assume that the remaining funds will be secured using grant or Federal funds, the Authority must look to the member agencies to fund remaining phases of the project.

The EBRCSA has now begun to incur debt through the issuance of bonds and is looking for each of its member agencies to commit to providing debt service payments for the issued bonds. In order for the Authority to obligate member agencies to the debt, each member agency will have to essentially "recommit" and assume their portion of the EBRCSA debt as part of the Joint Powers Agreement.

The Authority has provided Hayward with an Operating Agreement and is asking for the City of Hayward's continued commitment. This commitment would require Hayward to agree to the terms of the operating agreement and fund the City's portion of the debt incurred by the JPA. Debts would be paid through the collection of monthly subscriber fees and the initial setup fee. Payments to the Authority would not be required until January 2014.

Operating Agreement

The operating agreement will function as the base operating document between the Authority and each of the member agencies. There are several key areas of the agreement of which Council should be aware:

Section 1.01- The Authority has the ability to issue Bonds “from time to time.”

Section 2.03- defines that bonds are to be “...issued, sold and delivered... as the authority deems necessary.”

Section 2.04 defines the term of this operating agreement as the date of execution and terminates when “there are no bonds outstanding.”

Based on the language in the operating agreement, there is no ceiling or other express limitation on the bond issuance authority of the JPA. There is nothing in this agreement that prevents the JPA from entering into another trust agreement to issue bonds.

Section 4.04 of the Agreement addresses competitive projects. This section may restrict the ability for the City of Hayward to engage in activities that the Authority would consider being competitive with its own project. However, based on the language in the contract, and discussions with EBRCSA staff, any restriction seems to be limited to the deployment of or participation in a system that involves a competing “regional” system.

It has not been clarified by EBRCSA what the ramifications are if Hayward simply remains a member and does not sign the operating agreement. According to the documentation, as long as the City does not assign radio units to the EBRCS, it will not be obligated to sign the agreement. However, once the City assigns radio units to the system, and thereby becomes a user of EBRCS, the City is then obligated to sign the agreement.

Current Radio Configuration

The City of Hayward operates two different base station radio systems, one for Public Safety, which incorporates both Police and Fire, and the other for Public Works and Maintenance Services. In addition to the base station equipment, each system supports both portable and mobile radio devices.

The Public Safety Radio System currently has the capability of communicating with other jurisdictions through our dispatch center, which in turn patches the other jurisdiction into our radio system. Some police vehicles used by sergeants and lieutenants have radios that can specifically switch to other jurisdictions directly.

Public Safety

The Public Safety Radio System is a conventional analog UHF simulcast radio system. It is operated and maintained by the Police Department. The base station components were upgraded in 2007. This system utilizes remote transmitters that are geographically dispersed at four locations throughout the city. The City of Hayward base station equipment will only need to have minor programming changes in order to meet the FCC narrow band mandate. Portable and mobile radios are a separate component of the radio system networks. A number of these units will need to be replaced in both the Police and Fire departments. However, the majority of the

portable and mobile equipment will only require minor programming changes to meet the FCC narrow band mandate.

Police

In 2007, the Police Department replaced all of the portable radios. All of the replaced units are narrow band compliant and will require only minor programming changes to meet the FCC requirements. There are approximately one hundred Police mobile radios that are mounted in vehicles; seventy have been replaced with compliant units through attrition with a remaining thirty that will require replacement.

Fire

The Fire Department's mobile and portable radio equipment is from the late 1990s and early 2000s. The majority of this equipment is narrow band compliant and will only need some minor programming to meet the FCC requirements. The Fire Station base units are being replaced with compliant radios as part of the Computer Aided Dispatch/Records Management (CAD/RMS) project for station alerting purposes. With the station unit replacement, the Fire Department will be narrow band compliant with the exception of approximately ten mobile units.

Public Works and Maintenance Services

The use of radio communications by Public Works and Maintenance Services is primarily for emergency preparedness. The normal communication used during the average work day is either cell phones or push-to-talk radio system functionality with mobile phones.

The Public Works and Maintenance Services units operate off of two separate VHF simplex analog radio channels. This system has not been changed since the 1980s and based on the preliminary evaluation, this system and all of the components are not compliant and will need to be replaced.

Staff Analysis

To become compliant with the FCC narrow band mandate, the City has two options. The City can either join the EBRCSA or upgrade its existing system. The cost of these two options is discussed below.

In 2007, the City of Hayward upgraded the base stations and infrastructure for the public safety communications system for \$1,800,000. Those upgrades are operating well and can be easily configured to meet the FCC Narrow Banding Requirements of January 2013. However, Public Works and Maintenance Services will require a complete replacement of their system in order to meet the FCC mandate. The Police and Fire Departments will also require some replacement equipment, but those costs will be very limited. Based on the preliminary estimates, the replacement costs for Police, Fire, Public Works, and Maintenance Services are estimated to be under \$300,000.

This replacement equipment will provide for improved emergency communication and very low annual operating costs. There will be some increase in annual maintenance costs in order to properly maintain the added infrastructure, but the increase is estimated to be under \$30,000 annually, for an estimated total annual cost of between \$75,000 and \$90,000. Entering into the operating agreement for the EBRCS will require City expenditure of approximately \$1,845,000 in known equipment costs and an annual operating expense of \$288,000.

The communications ability of the City will not be significantly impacted if we do not fully participate with EBRCSA. The Interoperability Continuum standard has five levels of functionality; the City currently is functioning at level four. If the City undertakes the internal upgrade path, the system will be closer to level five. Should the City choose to fully participate with EBRCSA, this would enable full level five compliance.

The quality of the City's existing system exceeds the quality of the proposed EBRCSA system in certain areas. The City uses VHF frequencies to communicate through an analog system. The clarity of the voice quality is excellent by all standards. There is an argument that the proposed EBRCSA digital system has a tendency to pick up ambient noise such as sirens, motors, and other audio, which can cause confusion and distortion of communications.

During the review of the options for upgrading the City's system or fully participating in EBRCSA, the advantages and disadvantages were weighed. If the City upgrades the current system, the ability to reach level five interoperability will not be fully realized. There will also be some restrictions on "roaming" into larger regional systems, which may be addressed during the upgrade. Should the City decide to fully participate in EBRCSA, level five interoperability will be reached and roaming ability with regional systems will be increased. The City will also rely on equipment and maintenance through EBRCSA.

It is recommended that the City of Hayward remain actively involved in the continued deployment and development of EBRCS. However, due to the fiscal impact full participation would have on Hayward's operating budget, it is recommended that the City of Hayward postpone signing the operating agreement, delay joining the EBRCSA System, and re-evaluate the City's public safety communications needs in or around 2017.

This will be a disappointment to EBRCSA, which has relied upon member agencies' commitment to fund their project. The subscriber fee charged to member agencies will be used to fund the debt service for the issued bonds. Ultimately, the EBRCSA will need to reallocate the loss of Hayward's monthly subscriber fees among other member agencies.

Staff recommends that the City of Hayward proceed with an upgrade of its existing system to meet FCC narrow banding requirements by January 2013, and re-evaluate entering into an agreement to join the East Bay Regional Communication System in 2017.

FISCAL IMPACT

EBRCSA Cost Estimates

In order to join the East Bay Regional Communication System, the City of Hayward must replace its entire fleet of radio equipment for Police, Fire, Public Works, and Maintenance Services. Staff's current estimates are that Police and Fire would require the replacement of 500 pieces of radio equipment. For Police and Fire, it is estimated that the City would need to replace 350 portable radios at an estimated cost of \$2,700 each or a total of \$945,000. The City would also need to replace 150 vehicle radios as an estimated cost of \$4,000 each or a total of \$600,000. While these numbers are only estimates, these figures were compiled using information from East Bay Regional Communications Systems sources. The City would also need to consider some installation and associated hardware costs, which include fire station and police station monitors at an estimated cost of \$100,000.

The Public Works and Maintenance Services upgrade will require every vehicle and portable radio to be replaced. Currently, their fleet deployment is limited; however, it is estimated that one hundred units will need to be replaced at an average cost of \$2,000 each or a total of \$200,000.

In addition to equipment costs, each radio on the East Bay Regional Communications System requires a monthly subscriber fee of \$40 per month per subscriber for maintenance of the units. These monthly fees are the debt payments to the East Bay Regional Communications System.

This per unit per month fee will be paid by each member agency for each of the units put in service on the system. For the City of Hayward, staff has estimated that 500 Public Safety and 100 Public Works and Maintenance Services subscriber units will be activated onto the system.

Based on the current monthly fee estimate, set by the Authority, the City's annual debt obligation to the Authority is estimated to be approximately \$24,000 monthly or \$288,000 per year. There will be limited maintenance cost outside of the Authority's payments.

It should be noted that the EBRCSA considered this financial impact on member agencies and has agreed to capitalize interest payments for years 2010, 2011, and 2012. Therefore, member agencies will not begin paying debt service until 2014.

Upgrading Current System

The police and fire equipment that was replaced in 2007 is narrow band compliant. However, both police and fire will have some mobile and portable equipment that requires replacing in order to meet the FCC requirements at the user level.

The Public Works and Maintenance Services Departments' equipment has not been replaced since the 1980s. All of the equipment will need to be replaced in order to meet the January 2013 FCC Narrow Banding deadline. The City's Communication Division is investigating a replacement system for Public Works and Maintenance Services that will provide them with the

ability to have peer to peer communications, GPS tracking, and VoIP integration. This replacement system would not only operate in emergencies, but could potentially replace city cell phones. The added ability to replace cell phones requires further study and evaluation.

While specific model and unit numbers have not been finalized, the City has some preliminary budgetary numbers for the upgrade. Based on current estimates, it is estimated that Public Works and Maintenance Services will need approximately one hundred portable and twenty mobile radios at a cost of \$800 and \$2,000 each respectively. The largest budgetary number would come from the infrastructure and installation costs, which are estimated to be approximately \$132,000.

These replacement units will be narrow band compliant and may decrease the need for cellular phones in some positions. In addition, replacement radios and their supporting system infrastructure upgrade will be used to create a city wide interoperability network providing for emergency communications between Police, Fire, Public Works and Maintenance Services, and Airport staff.

The cost of maintaining the Public Works and Maintenance Services replacement radio system will be minimal. An accurate estimate cannot be completed without a final system design. However, based on current maintenance costs, the vendor's budgetary number is between \$15,000 and \$30,000 annually over the next seven years of ownership. The Police Department maintains Police and Fire infrastructure at an annual cost of \$60,000. The combined total annual operating cost is estimated to be between \$75,000 and \$90,000.

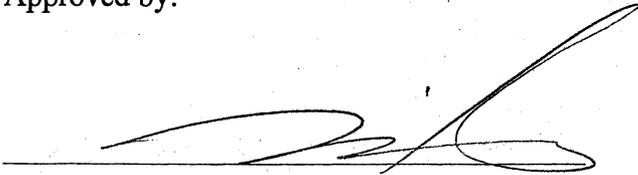
Total Cost Comparison

	EBRCS Transition	Upgrade Existing System
One-Time Equipment Costs		
Public Safety Portables	\$945,000	\$48,000
Public Safety Vehicles	\$600,000	
Public Works/Maint Svcs Portables/Vehicles	\$200,000	\$120,000
Station Installations/Infrastructure	<u>\$100,000</u>	<u>\$132,000</u>
Total One-Time Equipment Costs	\$1,845,000	\$300,000
Annual Debt Obligation/Operating Cost	\$288,000	\$90,000

Prepared by: Desiderio Calzada, Communications Manager

Recommended by: Clancy Priest, Technology Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'Fran David', is written over a horizontal line. The signature is stylized with a large, sweeping flourish that extends to the right and loops back under the line.

Fran David, City Manager

Attachments: EBRCSA Operating Agreement

EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

PROJECT OPERATING AGREEMENT

This PROJECT OPERATING AGREEMENT (the "Operating Agreement"), made and entered into as of _____, 2010, (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") that are signatories to a Joint Exercise of Powers Agreement dated as of September 11, 2007 (the "JPA Agreement"), and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for the purpose of paying the cost of public capital improvements within the State of California, including a P25 compliant or equivalent communications system serving Alameda and Contra Costa Counties and individual political jurisdictions therein as further described in Exhibit B hereto (the "Project"); and

WHEREAS, User and the Authority propose to enter into this 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

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 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: [Name, Address and Facsimile Number

Attention: [City Manager and/or Finance Department and/or User Department]

Trustee: [Name, Address and Facsimile Number]

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.

The User and the Authority may at any time amend or modify any of the provisions of this Operating Agreement, but only with the prior written consent of the Bond Owners of a majority in aggregate principal amount of the outstanding Bonds.

No such amendment shall adversely affect the rights, obligations, immunities or indemnities of the Trustee hereunder without the Trustee's written consent. The Authority shall

obtain and cause to be filed with the Trustee an opinion of Bond Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment have been satisfied. Promptly following the effective date of any amendment or modification pursuant to this Section, the Authority shall mail written notice thereof to each rating agency which then maintains a rating on the Bonds.

Section 6.14. Business Days.

Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

IN WITNESS WHEREOF, the Authority and the undersigned User has entered into this Operating Agreement effective on the date first written above.

[Signature Pages to Follow.]

AUTHORITY:

East Bay Regional Communications System Authority

By: _____
[Name and Title]

APPROVED AS TO FORM:

By: _____
[Name and Title]

USER:

[Name of Entity]

By: _____
[Name and Title]

ATTEST:

By: _____
[Name and Title]

APPROVED AS TO FORM:

By: _____
[Name and Title]

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 prepays 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 31st 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 31st 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): _____

Date of Payment of Initial Payment (if applicable): _____

Radio count: _____

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