



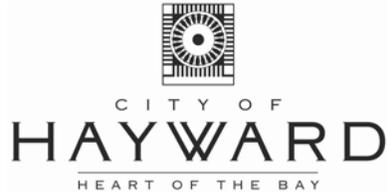
CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
FEBRUARY 28, 2012

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

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CITY COUNCIL MEETING FOR FEBRUARY 28, 2012
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, Finance Director Vesely, and Assistant City Attorney Roufougar
 - Under Negotiation: All Bargaining Units
 3. Adjourn to City Council Meeting
-

CITY COUNCIL MEETING
Council Chambers - 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Quirk

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PRESENTATION Business Recognition Award - La Quinta Inns & Suites

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. Larrabee Sidewalk Repair - Woodland Avenue to Garin Avenue: Approval of Plans and Specifications and Call for Bids
[Staff Report](#)
[Attachement I Resolution](#)
[Attachment II Location Map](#)
2. Authorization for the City Manager to Execute a Master Programs Funds Agreement with the Alameda County Transportation Commission
[Staff Report](#)
[Attachment I Resolution](#)

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. Approval of the City's Participation in the Alameda County Waste Management Authority's Ordinance to Regulate the Use of Carryout Bags and Promote the Use of Reusable Bags (***Report from Public Works Director Ameri***)
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment Ia Ordinance](#)
[Appendix A](#)
4. Approval of City's Participation in Phase 1 of Alameda County Waste Management Authority Ordinance No. 2012-1 Regulating Recycling by Multi-Family Residences, Businesses, and Self-Haulers (***Report from Public Works Director Ameri***)
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment Ia Ordinance](#)
[Appendix A](#)

FEBRUARY 28, 2012



5. Bay Area Regional Interoperable Communications System (BayRICS) Update and Request for Authorization to Join the BayRICS Joint Powers Authority and Execute a Site Agreement with Motorola Solutions, Inc. (*Report from Technology Services Director Priest*)

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II BayRICS JPA Agreement](#)

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

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

ADJOURNMENT

NEXT MEETING – 7:00 PM, TUESDAY, MARCH 6, 2012

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:



FEBRUARY 28, 2012



3

DATE: February 28, 2012

TO: Mayor and City Council

FROM: Director of Public Works – Engineering & Transportation

SUBJECT: Larrabee Sidewalk Repair – Woodland Avenue to Garin Avenue: Approval of Plans and Specifications and Call for Bids

RECOMMENDATION

That Council adopts the attached resolution approving the plans and specifications for the Larrabee Sidewalk Repair – Woodland Avenue to Garin Avenue project; and calls for bids to be received on March 27, 2012.

BACKGROUND

The project consists of removing and replacing sections of sidewalk and existing driveways on Larrabee Street, between Woodland Avenue and Garin Avenue. After receiving complaints of broken driveways, gutters, and lifted pavements in front of multiple properties, staff visited the site to investigate and determine the cause of these issues. Due to the soil movement from the hills behind the affected properties, the driveway apron, curb and gutter at these locations have slowly shifted over six inches into the asphalt pavement in the street. Drainage in front of these locations has been severely restricted due to breaks in the gutters. The resulting raised asphalt pavement further exacerbates the problem as it creates large areas of standing water in the street.

As part of the project, the existing broken or raised portions of the sidewalk within the project limits will also be removed and replaced to eliminate trip hazards. The proposed improvements will provide safe and continuous pedestrian access and restore proper drainage at the gutter. A location map that graphically depicts the limits of work is attached (see Attachment II).

DISCUSSION

This project will restore the displaced sidewalks, curb, gutter, and driveways to their proper locations. New driveways with underground retaining curb will be installed. The retaining curb will penetrate eighteen inches deep into the ground at the back of the sidewalk to restrain soil movement toward the street from displacing the curb, gutter, and driveways.

All of the work will be performed in the public right-of-way. No easements or right-of-entry authorizations will be required. Positive responses have been received from residents with whom staff has been in contact.

The project is categorically exempt under Sections 15301 (b) and (c) of the California Environmental Quality Act Guidelines for the operation, repair, maintenance, or minor alterations of existing facilities.

FISCAL IMPACT

The estimated project costs are as follows:

Construction Contract	\$80,000
Design and Administration	17,000
Inspection and Testing	23,000
<hr/>	
Total	\$120,000

The FY12 Capital Improvement Program includes \$120,000 in the Street System Improvement Fund for the Larrabee Sidewalk Repair – Woodland Avenue to Garin Avenue project.

PUBLIC CONTACT

As discussed above, staff has been in contact with the property owners along Larrabee Street. After the project is awarded, staff will send notification letters to all affected residents regarding the project schedule.

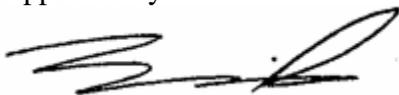
SCHEDULE

Open Bids	March 27, 2012
Award Contract	April 24, 2012
Begin Work	May 21, 2012
Complete Work	June 18, 2012

Prepared by: Yaw Owusu, Assistant City Engineer

Recommended by: Morad Fakhrai, Director of Public Works – Engineering & Transportation

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution
- Attachment II: Project Location Map

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR THE LARRABEE
SIDEWALK REPAIR – WOODLAND AVENUE TO GARIN AVENUE PROJECT, PROJECT
NO. 5182, AND CALL FOR BIDS

BE IT RESOLVED by the City Council of the City of Hayward as follows:

WHEREAS, those certain plans and specifications for the Larrabee Sidewalk Repair – Woodland Avenue to Garin Avenue Project, Project No. 5182, on file in the office of the City Clerk, are hereby adopted as the plans and specifications for the project;

WHEREAS, the City Clerk is hereby directed to cause a notice calling for bids for the required work and material to be made in the form and manner provided by law;

WHEREAS, sealed bids therefor will be received by the City Clerk’s office at City Hall, 777 B Street, 4th Floor, Hayward, California 94541, up to the hour of 2:00 p.m. on Tuesday, March 27, 2012, and immediately thereafter publicly opened and declared by the City Clerk in the Public Works Conference Room, 4D, located on the 4th Floor of City Hall, Hayward, California;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council will consider a report on the bids at a regular meeting following the aforesaid opening and declaration of same.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the project is categorically exempt under section 15301(c) of the California Environmental Quality Act Guidelines for the operation, repair, maintenance, or minor alteration of existing facilities.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

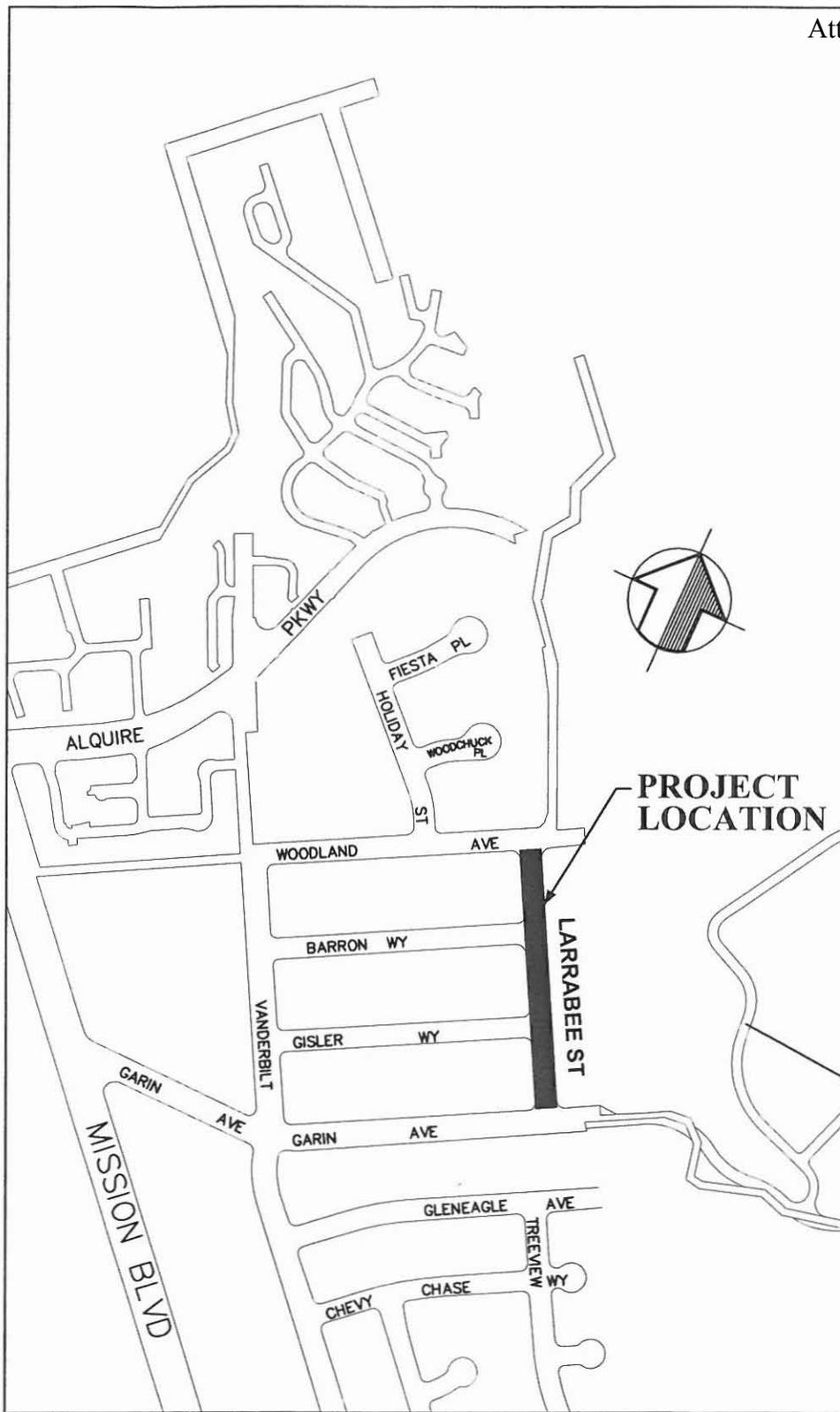
ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



**PROJECT LOCATION MAP
LARRABEE SIDEWALK REPAIR - WOOLAND AVENUE TO GARIN AVENUE
ATTACHMENT II**

DATE: February 28, 2012

TO: Mayor and City Council

FROM: Director of Public Works – Engineering and Transportation

SUBJECT: Authorization for the City Manager to Execute a Master Programs Funds Agreement with the Alameda County Transportation Commission

RECOMMENDATION

That Council approves the attached resolution authorizing the City Manager to execute the Master Programs Funding Agreement (MPFA) with the Alameda County Transportation Commission (Alameda CTC) for the pass through funding from Measure B and the Vehicle Registration Fee (VRF).

SUMMARY

The City currently has an agreement with the Alameda County Transportation Improvement Authority (ACTIA) for the allocation of the programmatic (pass through) funds (i.e., local streets and roads, bicycle, and pedestrian) from 2000 Measure B. This agreement expires on March 31, 2012. In addition, ACTIA no longer exists as a separate entity since it was merged with the Alameda County Congestion Management Agency to form the Alameda CTC. Consequently, a new agreement to cover the pass through funding from Measure B and from the new Vehicle Registration Fee is required to be executed with the Alameda CTC to continue funding for local streets and roads projects in Hayward utilizing this funding source.

BACKGROUND

Voters approved Measure B in November 2000 to impose a countywide one-half cent sales tax for transportation purposes, and collection of the sales tax began on April 1, 2002. Agreements were executed with transit agencies, Alameda County, and local jurisdictions to receive Measure B pass through funds for four types of programs: bicycle and pedestrian; local streets and roads; mass transit; and paratransit. The Hayward City Council authorized the City Manager to execute the pass through funding agreement with ACTIA on March 26, 2002. This agreement expires on March 31, 2012, the ten-year midpoint of the current 2000 Measure B Sales Tax.

Voters also approved Measure F, the Alameda County Vehicle Registration Fee (VRF) Program, on November 2, 2010. The additional annual \$10 per vehicle fee will generate about \$11 million per year countywide. The Alameda CTC will distribute these funds to four main types of programs,

including local streets and roads (60%), transit (25%), local transportation technology (10%), and bicycle and pedestrian projects (5%). Under the VRF legislation, fund usage must demonstrate a relationship or benefit to those paying the fee.

In July 2010, the Alameda County Congestion Management Agency and the Alameda County Transportation Improvement Authority merged to form the Alameda County Transportation Commission. The goal of the merger was to build upon the successes of the prior agencies relative to transportation project planning and funding, to save tax dollars, streamline operations and eliminate redundancies, and make certain that tax dollars were spent efficiently and wisely. In the first year of operations, about \$3 million was saved.

The adoption of the new MPFA by all local jurisdictions, the county, and transit operators that are the current recipients of Measure B programmatic pass through funds and future recipients of VRF funds, will integrate funding requirements of the two sources and streamline eligibility, monitoring, and reporting. This effort aims to improve the efficiency of the reporting requirements for the agencies and for Alameda CTC's oversight of the funds.

DISCUSSION

Alameda CTC staff has developed a ten-year MPFA and Implementation Guidelines that address each funding source as well as specify definitions, eligibility, and fund uses. The CTC may update the Implementation Guidelines on a more frequent basis than the MPFA to respond to the County's changing transportation needs over the next ten year period. Alameda CTC has noted that updates to the Implementation Guidelines will not require subsequent amendments to the MPFA. However, the City's adoption of a Complete Streets Policy and an updated Bicycle and Pedestrian Plan are required by the Bicycle and Pedestrian Implementation Guidelines.

Master Programs Funding Agreements

The MPFA specifies the types of funds that the agencies/jurisdictions can receive from the Alameda CTC, including Measure B and VRF pass-through and grant funds. For example, a single MPFA captures all the following types of distributions:

- Bicycle and Pedestrian Safety: Measure B pass-through funds, grants, and VRF funds
- Local Streets and Roads: Measure B pass-through funds and VRF pass-through funds
- Mass Transit: Measure B pass-through funds, grants, and VRF grant funds, which could apply to paratransit services as well
- Paratransit: Measure B pass-through funds, grants, and stabilization funds, including base program and minimal service level funds, and VRF transit funds
- Transportation Technology Funds: VRF funds
- Transit Center Development Funds: Measure B funds

Implementation Guidelines: The MPFA includes Implementation Guidelines for each program that specify the requirements local jurisdictions must follow in their use of Measure B and VRF funds.

SCHEDULE

The new MPFA must be fully executed by all recipient jurisdictions prior to March 31, 2012, to ensure that current Measure B funds continue to flow and the new VRF funds can be allocated accordingly. There are two additional deadlines associated with the MPFA, which are the City's adoption of a Complete Streets Policy by June 30, 2013, and an updated Bicycle and Pedestrian Plan completed by December 31, 2015.

FISCAL IMPACT

Execution of the MPFA prior to March 31, 2012, will allow an uninterrupted flow of transportation funds to the City from Measure B and an increase in funding as a result of voter approval of the VRF. In FY2013, the current Measure B will provide an estimated \$1.8 million for local streets and roads, \$370,000 for bicycle and pedestrian projects, and \$630,000 million for paratransit services in Hayward. Moreover, the VRF will provide another \$490,000 for local streets and roads maintenance during the first year of the fee collection.

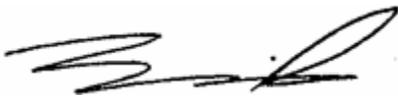
PUBLIC CONTACT

The Alameda CTC presented the Implementation Guidelines before appropriate Alameda CTC Committees that provide oversight on certain funds. On December 16, 2011, the Alameda CTC adopted the final MPFA and Implementation Guidelines.

Prepared by: Don Frascinella, Transportation Manager

Recommended by: Morad Fakhrai, Director of Public Works – Engineering and Transportation

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution

HAYWARD CITY COUNCIL

Resolution No. _____

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE MASTER PROGRAMS FUNDING AGREEMENT WITH THE ALAMEDA COUNTY TRANSPORTATION COMMISSION

WHEREAS, voters approved the 20-year Measure B half-cent transportation sales tax in 2000, and the funding agreement to the midpoint of the measure, between the Alameda County Transportation Improvement Authority (ACTIA) and City of Hayward needs renewal prior to March 31, 2012; and

WHEREAS, voters approved the Vehicle Registration Fee (VRF) of \$10 in 2010, which also authorizes entering into an agreement with City of Hayward through June 30, 2022 for receipt and eligibility of funds; and

WHEREAS, the Alameda County Transportation Commission (Alameda CTC) is a joint powers authority resulting from the merger of the Alameda County Congestion Management Agency and ACTIA and is responsible for distributing to local jurisdictions the Measure B and VRF revenues for bicycle and pedestrian safety, local streets and roads, local transportation technology, mass transit, paratransit, and transit center development programs; and

WHEREAS, the Alameda CTC has developed a new master programs funding agreement (MPFA) that specifies the Measure B and VRF funding distributions, Alameda CTC's responsibilities, and the recipient's responsibilities; and

WHEREAS, implementation guidelines for each program are incorporated into the MPFA and guide fund eligibility and expenditures; and

NOW THEREFORE BE IT RESOLVED, that the City Council of Hayward authorizes the City Manager to execute the MPFA with the Alameda CTC; and be it further

RESOLVED, that City of Hayward and its agents shall comply with the Alameda CTC MPFA; and be it further

RESOLVED, that City of Hayward shall use these local funds for local transportation programs.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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:

Michael Lawson, City Attorney

DATE: February 28, 2012

TO: Mayor and City Council

FROM: Director of Public Works – Utilities & Environmental Services

SUBJECT: Approval of the City’s Participation in the Alameda County Waste Management Authority’s Ordinance to Regulate the Use of Carryout Bags and Promote the Use of Reusable Bags

RECOMMENDATION

That Council adopts the attached resolution approving the City’s participation in Alameda County Waste Management Authority Ordinance No. 2012-2, regulating the use of carryout bags and promoting the use of reusable bags.

SUMMARY

The purpose of the ordinance is to prohibit distribution of specific single-use plastic bags currently offered consumers at the point of sale and to regulate the distribution of paper bags and reusable carryout bags. Proposed State legislation that would have banned single-use plastic bags failed Senate approval in 2010. Since 2010, several municipalities have adopted or attempted to adopt a ban on single-use plastic bags. In response, a coalition of plastic bag manufacturers has sued or indicated its intent to sue those municipalities. The suits assert that, under California law, the ordinances are subject to the California Environmental Quality Act and, thus, require preparation of an EIR. For these reasons, several municipalities, including San José, Sunnyvale, and Los Angeles County have prepared an EIR and adopted an ordinance regulating single-use plastic bags.

The Alameda County Waste Management Authority (Authority) conducted an environmental assessment, prepared an EIR, and drafted a proposed ordinance for implementation County-wide. The Authority Board certified the EIR at its December 14, 2011 meeting.

The Authority’s ordinance will regulate the distribution of single-use carryout bags at the point of sale (i.e., at check-out). Customers may continue to bring bags of any type to the store or carry away goods not placed in a bag. The California Grocers’ Association supports the ordinance. If the Council adopts the resolution “opting-in” to the single-use ordinance, City and Authority staff will work with local businesses to phase out single use bags by December 2012.

BACKGROUND

In Alameda County, waste reduction planning and programs are provided by the Alameda County Waste Management Authority Board and the Source Reduction and Recycling Board. The Authority Board consists of elected officials from each of the municipalities in Alameda County. The Authority operates according to the terms of the Joint Exercise of Powers Agreement (JPA) for the management of waste. According to the JPA, the Authority has the power to enact County-wide ordinances and is responsible for preparing planning documents to meet State requirements, implementing County-wide diversion programs and determining landfill disposal needs.

Staff prepared reports to the Council Sustainability Committee (CSC) regarding the Authority's then-proposed ordinance regulating the distribution of single-use bags and presented them to the CSC at its December 1, 2010, October 5, 2011, and January 4, 2012 meetings.

Those reports summarized:

- the adverse environmental impacts of single-use bags and key provisions of other municipalities' ordinances banning single-use carryout bags, several of which have been challenged by the plastic bag industry (December 1, 2010 CSC Report);
- the Draft Environmental Impact Report (DEIR), which evaluated a Countywide single-use bag ordinance (October 5, 2011 CSC Report); and
- the ordinance regulating single-use carryout bags, the estimated costs, and timeline for implementation (January 4, 2012 CSC Report). CSC agreed to request City Council approval to participate in the ordinance.

The Authority's Final EIR (FEIR) was completed in December 2011. Links to each of the CSC reports, and the DEIR and FEIR are included in Appendix A.

Current State law requires large grocery and drug stores to provide reusable bags for purchase and plastic carryout bag recycling bins accessible to consumers. This law will sunset on January 1, 2013, unless extended. State law establishes that a municipality may not impose a plastic carryout bag fee upon a store that is in compliance [(PRC 42254(b)(2)]. The ordinance would not conflict with the State law in that the ordinance does not impose a fee on plastic carryout bags; it does, however, prohibit such plastic bags and establishes a minimum charge of \$0.10 per paper bag and reusable bag, which is retained by that store. The purpose of the fee is to help discourage the use of single-use bags of any kind. The idea behind charging for even reusable bags is to discourage their use as a single-use bag; that is, if any type of bag is given out for free, consumers may not attach any value to them and discard them after they are brought home. Reusable bags are durable bags intended for reuse and made of plastic or plant-based materials.

The City of Hayward's adopted Climate Action Plan has policies related to waste reduction, reuse, and recycling. Applicable policies include *Action 6.4 – Ban certain materials from landfill*, and *Action 6.6 – Encourage waste reduction*. These policies are applicable to efforts to reduce the use of plastic and other single-use bags.

This report summarizes the Authority's ordinance (Attachment Ia), the estimated costs, and timeline for implementation.

DISCUSSION

Affected Businesses – Under the proposed ordinance, after January 1, 2013, supermarkets, drug stores, pharmacies, and other retail stores that sell milk, bread, soda, and snack foods would be prohibited from distributing free single-use carryout paper or plastic bags at checkout. Retail stores subject to the ordinance include full-line, self-service establishments with gross annual sales of \$2,000,000 or more that sell dry grocery, canned goods, or nonfood items and some perishable items. Stores with at least 10,000 square feet of retail space would also be subject to the ordinance. The Authority has estimated about 1,900 businesses throughout Alameda County would be subject to the ordinance. Staff estimates that about 200 of those businesses are located in Hayward.

Paper & Reusable Carryout Bags – Affected businesses would not be required to provide paper bags at the point of sale, though such bags, if distributed, must contain at least 40% recycled content. Reusable bags would be allowed if they have a minimum volume of 15 liters, have handles, are machine washable, do not contain lead or any other heavy metals in toxic amounts, and, if made of plastic, are a minimum of 2.25 mils thick. Reusable bags that would comply with the ordinance are currently sold at major supermarkets, (e.g., bags made of non-woven polypropylene that appear to resemble canvas.) Such bags are sold (for about \$1.00 each) at those stores in order to comply with State law.

Store Charge (Retained by Each Store) – A store may offer for sale a paper bag or a reusable bag for a minimum price of ten cents (\$0.10). Affected businesses would be required to itemize the paper carryout bag or the reusable bag on the receipt as a sale. The store charge for each paper bag is the average cost to a retail establishment to provide a paper carryout bag and is consistent with the ordinances already adopted by the cities of San José and Santa Monica, unincorporated Santa Clara County, and Marin and Los Angeles counties. No other municipalities have instituted a store charge for reusable bags, based on data provided by the Authority. The \$0.10 per bag charge will increase to \$0.25 per bag on January 1, 2015, unless the Authority Board finds, before that date, the current charge of \$0.10 successfully reduced the use of single-use bags.

A charge for reusable bags is proposed to: (1) discourage the use of single-use bags and encourage shoppers to use reusable bags for a nominal fee that will establish a value for those bags; and (2) allow shoppers to choose whether to pay the cost of the bag or bring their own bag. The charge for reusable bags will help prevent the shift from thin single-use bags to thicker reusable bags that may still be considered “single-use” by consumers and used only one time. According to San Francisco staff, this shift from thin plastic bags to the thicker bags, which were still used just once, became one of the unintended consequences of its ordinance and they recommend charging for reusable bags. Authority staff has confirmed that the affected retail associations, including the California Grocers Association, have accepted this provision. Authority staff acknowledges that it is difficult to project with accuracy the exact types of behavioral changes that would result from charging for all types of bags. However, Washington,

D.C. instituted a charge for single-use bags and reduced its single-use bags by 50-80% after the first month.

Exclusions from the Ordinance - Excluded from the ordinance are plastic or paper bags used by customers or the retail establishment to protect or contain meat, fresh produce, food prepared at the establishment, or other goods that must be protected from moisture, damage, or contamination, and that are typically placed inside a carryout bag at the point of sale. Restaurants or take-out food establishments that receive revenue primarily from the sale of food, cooked or otherwise, prepared at the establishment would be exempt. Such establishments are excluded because they frequently use bags to hold hot food, which may be needed for public safety. In recognition of the potential financial hardship for certain customers, retail establishments may continue to provide recycled content paper bags at no cost for food purchases paid for by Federal grant programs, including Women, Infants and Children Nutrition Program and Supplemental Nutrition Assistance Program. Nonprofit charitable reuse organizations would also be exempt because many already use donated bags for their sales, and their work supports the County's efforts to promote reuse and recycling of donated items.

Recordkeeping and Inspections – From July 1, 2012 through December 31, 2013, stores will be required to maintain records of the number of recycled paper bags and reusable bags bought and sold each month. These records will need to be provided to Authority staff or its designees on request.

Enforcement – Prior to January 1, 2013, the Authority will notify affected stores via public education and outreach activities. The Authority or its agents will assume enforcement responsibilities. Enforcement actions will only be taken with written approval by staff from participating jurisdictions. The Authority will create a complaint hotline to allow the public to identify non-compliant stores. City staff will assist Authority staff in coordinating compliance by contacting store managers to discuss the ordinance's provisions and due dates for compliance.

The ordinance establishes that the County and each of the cities that do not opt out of the ordinance will be responsible for approving enforcement actions within their respective boundaries. City staff does not expect this to have an unreasonable impact on current workload based on our experience with implementing the polystyrene ban. City staff would be responsible for coordinating compliance by businesses throughout incorporated Hayward, including those located in the Oro Loma Sanitary District service area. Businesses subject to the ordinance located in the Oro Loma Sanitary District service area are along a portion of West A Street, Hesperian Boulevard, and Foothill Boulevard.

The Authority's Estimated Costs – County-wide costs that the Authority will incur are estimated to be \$518,000 in FY2013, and \$200,000 annually, thereafter. This estimate assumes that all jurisdictions will participate. First year costs are higher due to greater outreach efforts and the need to establish forms, processes, and materials for both retailers and the public. Projected FY2013 costs are as follows:

Public Education/Outreach Costs	\$120,000
Administrative Costs (1.5 Staff)	233,000
Enforcement Costs (1.5 Staff)	125,000
Third-Party Bag Testing/Verification	40,000
Total:	\$518,000

Authority staff has indicated that the agency could assume the first-year costs, but is seeking funding assistance from member agencies or the Countywide Stormwater Program to cover on-going costs. Decisions regarding on-going funding will be made later. At this time, the on-going cost is estimated at \$200,000 per year, which, theoretically, would estimate the City's share at \$20,000 per year. It is noteworthy that, for practical reasons, the City should not opt out of the program after the program has been in effect for some time. However, the City can, through its participation on the Authority Board, influence the level of Authority staff involvement, thus costs of the program in future years. (For additional information, please see the link to the Agenda of the Alameda County Waste Management Authority Meeting of the Programs and Administration Committee, November 10, 2011 item in Appendix A.)

Public Review - The ordinance has been revised in response to comments received, primarily, from jurisdictions in Alameda County. The ordinance was discussed at meetings of the Waste Management Authority (WMA) and the Recycling Board held in November and December. The WMA Board conducted a public hearing for the draft ordinance and the EIR at its November 16, 2011 meeting. Approval of the DEIR and first reading of the ordinance occurred at the December 14 WMA Board meeting. The WMA Board unanimously approved the ordinance at its January 25, 2012 meeting. The link to the January 25 report is in Appendix A.

Opt-Out Provisions - Jurisdictions may choose not to participate in the ordinance by March 2, 2012. Should Council elect not to participate, staff will bring this matter back with the appropriate resolution for Council adoption.

Staff Recommendation; Other Confirmed Participants - City staff recommends participation in the ordinance. Staff has confirmed with the cities of Fremont, Newark, Union City, San Leandro and Oakland that each will participate in the ordinance. Staff from Alameda County has advised that a report will be prepared for consideration by the Board of Supervisors at the February 28 meeting.

Environmental Impacts; Response by Plastic Bag Industry - No significant environmental impacts were identified in the DEIR. The Save the Plastic Bag Coalition, a group of plastic bag manufacturers and distributors, has indicated in its written comments to the report its intent to litigate if the ordinance is approved, because the report does not acknowledge that the ordinance would result in a substantial increase in the use of single-use paper bags after the ordinance becomes effective. The report indicates that no documented study illustrating such an increase was identified and that the amount of any such increase is not known. The report proposes that Alameda County residents would change behavior quickly with sufficient information about the superiority of reusable bags and the adverse impacts of single-use bags, combined with a store charge. Authority staff has advised that as of February 17, it had not been notified of or served with any law suit.

ECONOMIC IMPACTS

The economic impacts to customers as a result of a potential single-use carryout bag ordinance include: (1) the additional store charge required for paper and reusable bags in order to deter requests for paper and encourage use of reusable bags; and (2) the additional costs to purchase reusable bags. As a result of the regulation, the stores' own costs will be slightly less (no more free single-use bags handed out) and consumers' costs slightly more (for those who choose not to bring their own reusable bags and, instead, to pay for single-use paper bags). Stores may opt to pass on the revenues generated from the sale of single-use paper bags to consumers in the form of slightly lower costs. Consumers using re-usable bags will not incur increased transaction costs, aside from the nominal initial cost of purchasing reusable bags.

FISCAL IMPACTS

Fiscal impacts to the City would include staff costs to convene meetings with stakeholders and to disseminate informational literature describing the ordinance using Recycling Fund monies. There will be no impact to the General Fund. Solid Waste Program staff would also be responsible for assisting stores to comply with the ordinance: staff does not expect this to add more than 10% time to staff's current workload. The ordinance would help the City meet storm water permit requirements to reduce trash in storm drains and creeks.

PUBLIC CONTACT

The Authority solicited comments regarding the ordinance from a variety of groups, including the Alameda County City Managers' Association, the Chambers of Commerce, the Mayors' Conference, organizations representing large businesses, and representatives from member agencies. The Authority plans to prepare informational literature in the spring for mailing to businesses using databases that will be provided by the City. Staff from participating member agencies and the Authority will determine other modes of communication to inform residents and businesses of the ordinance's provisions for distribution in July.

City staff issued a notice that was published in the *Daily Review* on February 18 advising residents and businesses that the City Council will consider whether to participate in the Authority's ordinance at the February 28 meeting. Staff also mailed letters to all affected businesses on February 17 summarizing the ordinance and advising that the City Council will consider participating in the ordinance at its meeting on February 28. The letter also indicated that a Spanish or Mandarin translation of the letter is available.

Staff recommends convening two community meetings in April or May, one during the day and a second in the evening, to allow business owners and managers to discuss questions regarding the ordinance's provisions. Staff will continue to coordinate outreach efforts with the Chamber of Commerce and the Latino Business Roundtable. Information will also be included on the City's website and a PowerPoint presentation on the City's community access channel, KHRT.

SCHEDULE

Authority issued a press release and FAQs	January 2012
Mailed letter to affected businesses summarizing the ordinance and the City Council's consideration of the ordinance	Feb 17, 2012
Published notice in the <i>Daily Review</i> regarding the City Council's consideration of the ordinance	Feb 18, 2012
Update City's website and community access channel with information	April 2012
Convene meetings with businesses and business groups to discuss the ordinance's provisions	April/May 2012
Authority to start distributing information to residents and businesses	July 2012
Implementation date of the ordinance	January 2, 2013

Prepared by: Vera Dahle-Lacaze, Solid Waste Manager

Recommended by: Alex Ameri, Director of Public Works – Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution Approving the City's Participation in Alameda County Waste Management Authority Ordinance 2012-2 To Regulate the Use of Carryout Bags and Promote the Use of Reusable Bags
- Attachment I-a: Ordinance 2012-2: An Ordinance to Regulate the Use of Carryout Bags and Promote the Use of Reusable Bags
- Appendix A: Reference Documents

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-_____

Introduced by Council Member _____

RESOLUTION APPROVING PARTICIPATION OF THE CITY OF HAYWARD IN ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY ORDINANCE NO. 2012-2 TO REGULATE THE USE OF SINGLE-USE CARRYOUT BAGS AND PROMOTE THE USE OF REUSABLE BAGS

WHEREAS, on January 25, 2012, the Board of the Alameda County Waste Management Authority (ACWMA) adopted Ordinance No. 2012-2 to regulate the use of carryout bags and promote the use of reusable bags, which is attached hereto as "Attachment I-a," and

WHEREAS, the ACWMA Board certified the final Environmental Impact Report for Ordinance No. 2012-2 at its meeting on December 14, 2011; and

WHEREAS, the City Council for the City of Hayward considered ACWMA Ordinance No. 2012-2 at its February 28, 2012 meeting; and

WHEREAS, for the reasons in Section 2, Findings, of ACWMA Ordinance No. 2012-2, the City Council finds it in the best interest of the residents of the City of Hayward that the City participate in ACWMA Ordinance No. 2012-2.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the participation of the City of Hayward in Alameda County Waste Management Ordinance No. 2012-2.

BE IT FURTHER RESOLVED that the City Council hereby reserves the right to enact local legislation and to opt-out of ACWMA Ordinance No. 2012-2 should it determine such action to be in the best interest of the City.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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

ORDINANCE 2012-2**AN ORDINANCE TO REGULATE THE USE OF CARRYOUT BAGS AND PROMOTE THE USE OF REUSABLE BAGS**

The Board of the Alameda County Waste Management Authority (“Authority”) ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Section 1 through Section 11.

SECTION 2 (Findings)

- (a) The purpose of this Ordinance is to reduce the use of single use carryout bags and promote the use of reusable bags at the point of sale in Alameda County.
- (b) The Authority has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA grants the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan (“CoIWMP”), and pursuant to Section 5.m of the CoIWMP, the power to adopt ordinances necessary to carry out the purposes of the JPA.
- (c) Reducing single use bag use is reasonably necessary to carry out the purposes of the JPA and implement the CoIWMP, including the following goals and policies.
- (d) Goal 1 of the CoIWMP is to promote environmental quality, ensure protection of public health and safety, and to minimize environmental impacts in all aspects of solid waste management. Policy 1.4.1 includes reduction of hard to recycle materials.
- (e) Goal 2 of the CoIWMP calls on the Authority and its member agencies to “achieve maximum feasible waste reduction” and to “reduce the amount of waste disposed at landfills through improved management and conservation of resources.”
- (f) Policy 2.1.1 adopts a waste management hierarchy that ranks management of waste through source reduction and then recycling and composting above landfill disposal.
- (g) Goal 7 of the CoIMWP is to "Promote Inter-jurisdictional Cooperation." Policy 7.1.3 states that the Authority shall coordinate with other organizations as needed to fulfill its countywide role including coordinating on related issues such as water and litter. Objective 7.8 states that the Authority will coordinate and facilitate program implementation by individual or subregional groupings of member agencies.

- (h) Numerous studies have documented the prevalence of plastic carry-out bags littering the environment, blocking storm drains and fouling beaches.
- (i) Plastic bags are a substantial source of marine debris.
- (j) Plastic bags cause operational problems at County landfills and transfer stations and contribute to litter countywide.
- (k) The Authority has participated in a campaign with The Bay Area Recycling Outreach Coalition to promote reusable bags countywide for several years. Despite these efforts, plastic bags comprise 9.6% of litter collected during coastal cleanup days (based on 2008 data) in Alameda County. Additionally, plastic bags continue to cause processing equipment problems at County transfer stations.
- (l) There are several alternatives to single-use carry-out bags readily available.
- (m) Studies document that banning single use plastic bags and charging for single use paper bags will dramatically reduce the single use of both types of bags.
- (n) The Authority prepared the Mandatory Recycling and Single Use Bag Reduction Ordinances Environmental Impact Report, which considered two separate projects and included the environmental review required by the California Environmental Quality Act for this Ordinance. The Authority certified those portions of the EIR relevant to this Ordinance.

SECTION 3 (Definitions)

The definitions set forth in this Section shall govern the application and interpretation of this ordinance.

- (a) “Alameda County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.
- (b) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management (JPA).
- (c) “Authority Representative” means any agent of the Authority designated by the Enforcement Official to implement this Ordinance, including Member Agency employees, or private contractors hired for purposes of monitoring and enforcement.
- (d) "Covered Jurisdiction" means a Member Agency of the JPA that has not opted out of coverage under this Ordinance pursuant to Section 9 of this Ordinance.
- (e) “Customer” means any Person obtaining goods from a Store.
- (f) “Enforcement Official” means the Executive Director of the Authority or his or her authorized designee.
- (g) “Executive Director” means the individual appointed by the Authority Board to

- act as head of staff and perform those duties specified by the Authority Rules of Procedure and by the Board.
- (h) "Member Agency" means a party to the JPA. Current member agencies are the County of Alameda, the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, and the Castro Valley and Oro Loma Sanitary Districts. The service areas for the purpose of Section 9 of this Ordinance are:
- (1) The legal boundaries of each of the 14 incorporated municipalities within Alameda County.
 - (2) The unincorporated sections of the County.
- (i) "Nonprofit Charitable Reuse Organization" means a charitable organization recognized as having Section 501 (c)(3) status by the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.
- (j) "Person" means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.
- (k) "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- (l) "Primary Enforcement Representative" is the chief executive of a Covered Jurisdiction or a qualified designee who will coordinate with the Authority regarding implementation of the Ordinance. A qualified designee shall have at least two years of municipal code enforcement experience or have undergone at least the level one municipal code compliance training program of the California Association of Code Enforcement Officers, or equivalent training program approved by the Enforcement Official.
- (m) "Public Eating Establishment" means a restaurant, take-out food establishment or other business that receives 90% or more of its revenue from the sale of foods and/or drinks prepared on the premises.
- (n) "Recycled Paper Bag" means a paper bag provided by a Store to a Customer at the check stand, cash register, point of sale, or other location for the purpose of transporting food or merchandise out of the Store and that contains no old growth fiber and a minimum of forty percent (40%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words "Recyclable," the name and location of the

- manufacturer, and the percentage of post-consumer recycled content.
- (o) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: 1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; 2) has a minimum volume of 15 liters; 3) is machine washable or is made from a material that can be cleaned or disinfected; 4) does not contain lead, cadmium or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; 5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and 6) if made of plastic, is a minimum of at least 2.25 mils thick.
- (p) "Single-Use Carryout Bag" means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of the Store. Single-Use Carryout Bags do not include bags that are integral to the packaging of the product, or bags without handles provided to the Customer (i) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Store to the point of sale, (ii) to hold prescription medication dispensed from a pharmacy, or (iii) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag.
- (q) "Store" means any of the following stores located within Covered Jurisdictions:
- (1) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
 - (2) A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
 - (3) A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that include milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

SECTION 4 (Carryout Bag Restrictions)

- (a) No Store shall provide a Single-Use Carryout Bag or Reusable Bag to a Customer at the check stand, cash register, point of sale or other location for the purpose of

- transporting food or merchandise out of the Store after January 1, 2013 except as provided in this Section.
- (b) On or before January 1, 2015, a Store may make available for sale to a Customer a Recycled Paper Bag or a Reusable Bag for a minimum price of ten cents (\$0.10).
 - (c) On or after January 1, 2015, a Store may make available for sale to a Customer a Recycled Paper Bag or a Reusable Bag for a minimum price of twenty-five cents (\$0.25). This restriction, however, shall not apply if the Authority finds, after January 1, 2014, that the Ordinance has achieved its goal to substantially reduce the environmental impacts of the use of Single Use Carryout Bags, in which case the minimum ten cents (\$0.10) per bag price provided in Section 4(b) shall apply.
 - (d) No Store may make available for sale a Recycled Paper Bag or Reusable Bag unless the amount of the sale of the Recycled Paper Bag and Reusable Bag is separately itemized on the sales receipt.
 - (e) A Store may provide a Reusable Bag at no charge if it is distributed as part of an infrequent and limited time promotion. An infrequent and limited time promotion shall not exceed a total of 90 days in any consecutive 12 month period.
 - (f) A Store may provide free Reusable Bags or free Recycled Paper Bags at the point of sale to a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, as necessary to carry the items purchased at the Store by each such Customer.

SECTION 5 (Permitted Bags)

Nothing in this Ordinance prohibits Customers from using bags of any type that they bring to the Store themselves or from carrying away goods that are not placed in a bag.

SECTION 6 (Exemptions)

This Ordinance does not apply to:

- (a) Single-Use Carryout Bags or Reusable Bags distributed to Customers by food providers for the purpose of safeguarding public health and safety during the transportation of take-out foods and drinks prepared on the food provider's premises but intended for consumption at or away from the food provider's premises.
- (b) Single-Use Carryout Bags or Reusable Bags used by Public Eating Establishments or Nonprofit Charitable Reuse Organizations

SECTION 7 (Recordkeeping and Inspection)

- (a) Every Store shall keep complete and accurate records of the number of Recycled Paper Bags and the number of Reusable Bags purchased and sold each month at the Store during the period commencing July 1, 2012 and ending December 31, 2013. The store shall also keep complete and accurate records of the days on which free Reusable Bags are distributed pursuant to section 4(e) of this Ordinance. All records required by this Ordinance shall be available for inspection within 7 days of the Authority's request at no cost to the Authority during regular business hours by any Authority Representative authorized to enforce this Ordinance. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store address.
- (b) The provision of false information including incomplete records or documents to the Authority shall be a violation of this Ordinance.
- (c) Authority Representatives are authorized to conduct any other inspections reasonably necessary to further the goals of this Ordinance, subject to applicable laws.

SECTION 8 (Enforcement and Phasing)

- (a) An enforcement action shall not be taken in any Covered Jurisdiction without written approval from the Primary Enforcement Representative of that Covered Jurisdiction. The Primary Enforcement Representative shall provide approval or disapproval of a proposed enforcement action in a timely manner.
- (b) Violation of any provision of this Ordinance shall constitute grounds for assessment of a notice of violation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or reorganized. Where an enforcement action is necessary to enforce this Ordinance, the Enforcement Official will typically issue a notice of violation as authorized in this subsection prior to taking the actions authorized pursuant to sections 8(c) or 8(d) of this Ordinance. A separate notice of violation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts detailed for misdemeanors in Section 8(d) of this Ordinance. The notice of violation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the notice of violation. The fine must be paid within 30 days of the notice of violation and must be deposited prior to any requested hearing. A hearing, by a hearing officer, will be held only if it is requested within 30 days of the notice of violation. Evidence may be presented at the hearing. If it is determined that no violation occurred, the amount of the fine shall be refunded within 30 days. The Authority shall serve the final order on the Person subject to the notice of violation by first class, overnight or certified mail.
- (c) Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.

- (d) Violation of any provision of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500 for the first violation, a fine not to exceed \$750 for the second violation within one year and a fine not to exceed \$1000 for each additional violation within one year. Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year and a fine not to exceed \$500 for each additional violation within one year. There shall be a separate offense for each day on which a violation occurs.
- (e) Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Executive Director, counsel, or any Authority Representative. In any enforcement action, the Authority shall be entitled to recover its attorneys' fees and costs from any Person who violates this Ordinance.
- (f) Enforcement of this ordinance shall be phased on the following schedule. Prior to January 1, 2013, Stores will be notified and public education and outreach activities will take place. Warnings and enforcement actions will be taken as needed after January 1, 2013.

SECTION 9 (Local Regulation and Opt-Out and Opt-In Provisions)

- (a) Local Regulation. Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the distribution of Single-Use Carryout Bags and Reusable Bags, including more stringent requirements than those in this Ordinance.
- (b) Opt-Out Provision. Any Member Agency by a resolution of its governing body prior to March 2, 2012 may choose to exclude its service area from this Ordinance.
- (c) Opt-In Provision. Any Member Agency that chooses to exclude its service area may request of the Authority by a resolution of its governing board to be re-included in coverage of the Ordinance at any subsequent time. Such coverage under the Ordinance, however, shall not occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.
- (d) Dispute Resolution. In the event of a dispute between the Authority and a Covered Jurisdiction regarding the implementation of this Ordinance, either party may request a meeting, in which case the Enforcement Official and the Primary Enforcement Representative for the Covered Jurisdiction (or other designee of the chief executive of the Covered Jurisdiction) shall meet to discuss implementation of the Ordinance. After such meeting, the parties may agree to enter into mediation to resolve any disputes between the parties related to implementation of the Ordinance. In addition, after meeting to seek to resolve any disputes between the parties and possible mediation, the Authority Board or the governing body of the Covered Jurisdiction, with at least 30 days public notice, may by resolution

choose to exclude the service area of the Covered Jurisdiction from this Ordinance.

SECTION 10 (Severability)

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 11 (Notice and Verification)

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

Passed and adopted this by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO. 2012-2.

GARY WOLFF
EXECUTIVE DIRECTOR

272512.1

REFERENCE DOCUMENTS

December 1, 2010 CSC Report:

<http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2010/CSC-CCSC120110.pdf>

October 5, 2011 CSC Report:

<http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2011/CSC-CCSC100511.pdf>

January 4, 2012 CSC Report: <http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2012/CSC-CCSC010412.pdf>

Draft Environmental Impact Report: Mandatory Recycling and Single-Use Bag Reduction Ordinances, August 2011: http://www.stopwaste.org/docs/deir_bags.pdf

Amendment to the Final Environmental Impact Report: Mandatory Recycling and Single-Use Bag Reduction Ordinances, December 2011:
http://www.stopwaste.org/docs/final_eir_bags_mandatory.pdf

Agenda of the Alameda County Waste Management Authority Meeting of the Programs and Administration Committee, November 10, 2011:
<http://www.stopwaste.org/docs/11-10-11-pa-packet.pdf>
Report includes a summary of the mandatory recycling and single-use bag ordinances and ACWMA's estimated costs to implement each, among other documents.

Agenda of the Alameda County Waste Management Authority Meeting of the Programs and Administration Committee, January 25, 2012:
<http://www.stopwaste.org/docs/01-25-12-packet.pdf>
Report includes a summary of the mandatory recycling and single-use bag ordinances.

DATE: February 28, 2012

TO: Mayor and City Council

FROM: Director of Public Works – Utilities & Environmental Services

SUBJECT: Approval of City’s Participation in Phase 1 of Alameda County Waste Management Authority Ordinance No. 2012-1 Regulating Recycling by Multi-Family Residences, Businesses, and Self-Haulers

RECOMMENDATION

That Council adopts the attached resolution approving the City’s participation in Phase 1 of Alameda County Waste Management Authority Ordinance No. 2012-1 regulating recycling by multi-family residences, businesses and self-haulers.

SUMMARY

A recently enacted State law requires that all businesses with four cubic yards or more of weekly trash service and all multi-family complexes have recycling services in place effective July 1, 2012. In response, the Alameda County Waste Management Authority (Authority) enacted its own ordinance, which will satisfy and go beyond the requirements of State law. The ordinance identifies specific recyclables for collection in each of two phases. Also included are compliance provisions for regulated haulers and enforcement protocols, among other provisions.

If the Council adopts the resolution to participate in the ordinance, City and Authority staff would work with businesses, and property owners and managers of multi-family complexes to implement recycling services.

BACKGROUND

In Alameda County, waste reduction planning and programs are provided by the Alameda County Waste Management Authority Board and the Source Reduction and Recycling Board. The Authority Board consists of elected officials from each of the municipalities in Alameda County. The Authority operates according to the terms of the Joint Exercise of Powers Agreement (JPA) for the management of waste. According to the JPA, the Authority has the power to enact County-wide ordinances and is responsible for preparing planning documents to meet State requirements, implementing County-wide diversion programs and determining landfill disposal needs.

The goal of this ordinance is to respond to the member agencies' stated goals and commitments to reduce landfilled waste, and to landfill no more than 10% by weight of all readily recyclable and compostable materials originating in Alameda County by 2020. All of the municipalities in Alameda County have long expressed a desire to reduce landfilled waste and, in fact, have adopted the goal to achieve a 75% diversion rate. In the City of Hayward, about 70% of all materials sent to landfill continue to be generated by businesses and multi-family complexes. Thus, these goals can only be accomplished if businesses and multi-family complexes participate in recycling services.

Staff prepared reports for the Council Sustainability Committee (CSC) regarding the Authority's mandatory recycling ordinance for multi-family dwellings and businesses and presented the reports at the Committee's October 5, 2011 and January 4, 2012 meetings. The October 5 report summarized various aspects of the Authority's Draft Environmental Impact Report (DEIR), which evaluated a County-wide mandatory recycling ordinance. The January 4 report summarized State legislation approved by the Governor in October, as well as the Authority's ordinance, estimated costs, and timeline for implementation. At that meeting, CSC members agreed to recommend City Council approval to participate in the ordinance. The Final EIR, including changes associated with air quality impact mitigations, was completed in December 2011. Links to both CSC reports and the DEIR and FEIR are included in Appendix A to this report.

This staff report summarizes:

- The recycling services currently available to multi-family residents and businesses;
- State legislation (AB 341) relative to mandatory recycling signed by the Governor in early October; and
- The Authority's ordinance, the estimated costs, and timeline for implementation.

The City of Hayward's adopted Climate Action Plan has policies related to waste reduction and recycling for each of the topics addressed in this report. Applicable policies include:

- *Action 6.1 – Increase participation in the recycling services offered businesses through the City's contract with its franchisee;*
- *Action 6.5 – Evaluate the viability of requiring that residents and/or businesses participate in the recycling programs offered through the City's franchisee;*
- *Action 6.6 – Develop a program that encourages overall reduction of solid waste in residential and commercial sectors. This would include increasing participation in recycling services at multi-family properties and to eventually make recycling by commercial businesses mandatory.*

DISCUSSION

Recycling Services Currently Available to Multi-Family Residents and Businesses – The City's contract with Waste Management of Alameda County (WMAC) provides recycling services to multi-family residents and businesses. WMAC's subcontractor, Tri-CED, offers weekly collection of mixed recyclables, including various types of paper, plastic, glass, and metal food and beverage containers, and clean metal or Teflon™-coated pots and pans. WMAC also collects Christmas trees for recycling. Staff offers plastic recycling containers for indoor storage

of recyclables and a brochure printed in four languages, and will continue to do so. Staff estimates about 95% of all multi-family dwelling complexes have access to recycling services. A total of twenty complexes, or about 300 dwelling units, do not have access to the service because the property owners or managers have declined to participate in the service. Multi-family dwellings are not offered collection of organics (e.g., food scraps, food-soiled paper, yard trimmings, and untreated wood). Multi-family complexes typically contract with a landscaper to maintain the property and remove the yard trimmings.

The City's contract with WMAC also offers businesses weekly collection of mixed recyclables and organics. Mixed recyclables collection is available at no additional charge to businesses because the fee for the service is included in the garbage rates. Organics collection is also subsidized and is available at half the price of regular garbage collection. Although not always the case, numerous businesses, including restaurants and food processors, have been able to reduce their garbage service and cost after implementing one or both services. WMAC estimates that about 70% of all businesses with four cubic yards or more of weekly trash service recycle their trash using WMAC's services. This figure is consistent with staff's estimate of 68%. Staff's estimate includes businesses that subscribe to mixed recyclables collection and businesses whose large capacity roll-off container is sorted for recycling at WMAC's San Leandro transfer station. The number of participating businesses more than doubled during calendar years 2009 and 2010, as a result of technical assistance provided by a consultant retained by the City and through staff's efforts.

Businesses that have declined to participate cite as reasons the limited time available for staff to source separate their recyclables; businesses and multi-family property managers also cite space constraints and scavengers who leave uncollected materials outside the containers.

Approved State Legislation Mandating Recycling – The State of California recently adopted regulations based on the State legislation (AB 341) signed by the Governor in October. Those regulations provide that all municipalities in California require businesses and multi-family complexes to arrange for recycling services by July 1, 2012. Businesses generating four cubic-yards or more of trash each week are included, as are all owners of multi-family complexes (with five or more units). In lieu of separate collection of recyclables, businesses and multi-family complexes may arrange for collection of their garbage to be sorted for recycling at a mixed waste processing facility. Other elements of the legislation include a municipality's obligation to provide outreach to businesses to educate them about the law and notification to non-compliant businesses. Specific materials targeted for collection are left to the jurisdiction to determine, as is enforcement.

Authority's County-wide Mandatory Recycling Ordinance – The Authority's ordinance (Attachment Ia) is more stringent than the State legislation because it specifies which materials are targeted for collection, establishes compliance provisions for regulated haulers, transfer stations and landfills, and includes enforcement protocols. State law authorizes local agencies to enact more stringent requirements than mandated by the State. The Authority's ordinance meets the State's timeline. Following is a summary of the ordinance's provisions:

Implementation Schedule: Phases 1 and 2

- Effective July 1, 2012 (Phase 1): Businesses with four cubic-yards or more of weekly garbage collection service (typically, larger businesses) and all multi-family property owners would be required to have recycling services. All self-haulers (for example, small residential projects) would also be required to comply. Recyclables targeted for collection would include a variety of paper types, as well as food and beverage containers made of glass, metal and plastic.
- Effective July 1, 2014 (Phase 2): All businesses, regardless of the garbage service level, and multi-family owners would be required to have recycling service. Materials required for collection would include all of the above-listed recyclables, as well as food and compostable paper.

Informational Materials - Required informational materials would be disseminated by haulers or franchisees under contract with participating jurisdictions. Authority staff has indicated that its focus over the next several years will be to educate businesses about the ordinance, rather than to assess fines and penalties.

Enforcement and Inspection Protocols - Inspections at businesses would be performed by Authority staff, its agents or staff from participating jurisdictions. Enforcement will similarly be performed by the same designated staff. Notices of violation may only be issued beginning January 2013, and only after a warning has been issued and assistance to implement a recycling program has been offered. In addition, such notices may only be issued by the Authority with written approval by staff from participating jurisdictions. The Authority has proposed a three-year cycle during which time the recycling programs for all affected businesses and multi-family dwellings would be evaluated for compliance.

Compliance Requirements and Waivers - Transfer stations and landfills would also be required to develop and submit compliance plans to the Authority describing their efforts to keep recyclables and compostables separate from garbage. Waivers may be issued for, among other reasons, space constraints; to allow more time to comply; or if only minimal amounts of the targeted recyclables are generated.

Materials Targeted for Collection - The materials targeted for collection beginning July 1, 2012 are generally higher-value commodities, whereas food scraps and food-soiled paper have a lower value. Establishing a later date for food scraps collection is useful to allow collection and processing systems for organic materials to mature and because there are no permitted composting facilities located in Alameda County.

Opt-Out Provisions - Jurisdictions may choose not to participate in Phase 1 of the ordinance by March 2, 2012, and by January 1, 2014 for Phase 2. Should Council elect not to participate in Phase 1 of the ordinance, staff will bring back the appropriate resolution for adoption. Jurisdictions may also alter the implementation schedule on behalf of businesses or property owners to request more time to implement a compliant

program. If the City opts out of the Authority's ordinance, it will still be required to implement the state regulations.

Landfill Diversion Goal - The Authority has recommended adoption of this County-wide ordinance to achieve a goal, already approved by the Waste Management Authority Board, to landfill no more than 10% by weight of all readily recyclable and compostable materials originating in Alameda County by 2020.

Authority's Estimated Costs – County-wide costs the Authority will incur are estimated to be \$1,005,000 in FY2013 and \$825,000 in FY2014. The Authority's estimates assume that all jurisdictions will participate, and that about 7,000 businesses will be subject to the ordinance. Costs associated with public education and enforcement for the estimated 7,361 multi-family complexes are also included. Estimated FY2013 costs are as follows:

Public Education/Outreach	\$ 270,000
Direct Technical Assistance	220,000
Enforcement	475,000
Customer Management Software	<u>\$ 40,000</u>
Total:	\$1,005,000

The cost estimates will be refined after all municipalities have determined whether to participate in the ordinance or opt-out. County-wide costs are projected to increase to \$1,470,000 in FY2015 and \$1,330,000 in FY2016 due to the addition of organics collection and requirements that businesses with less than four cubic-yards of weekly garbage service implement a recycling program. To reduce projected expenses, the Authority has offered a possible option whereby smaller businesses would not be required to comply with the ordinance because their total waste disposed comprises about 20% of the commercial waste generated County-wide but represents about 13,000 additional accounts to monitor. This option can be considered prior to January 1, 2014. (For additional information, please see the link to the Agenda of the Alameda County Waste Management Authority Meeting of the Programs and Administration Committee, November 10, 2011 item in the Appendix.)

Staff Recommendation; Other Confirmed Participants - City staff recommends participation in Phase I and returning to the Council in late 2013 with its evaluation of compliance and a recommendation regarding participation in Phase 2.

Oro Loma Sanitary District staff has advised that if the City Council decides to participate in Phase 1 of the Authority's ordinance, it will honor that decision by ensuring that recycling services are provided to businesses in incorporated Hayward in accordance with OLSD's solid waste contract with WMAC. This area, primarily in the northern part of the City, includes about 3,300 single-family and multi-family residences and businesses located along a portion of Hesperian Boulevard, West A Street and Foothill Boulevard.

Staff has confirmed with the cities of Fremont, Newark, Union City, San Leandro, and Oakland that each will participate in Phase 1 of the ordinance. Staff from Alameda

County has advised that a report will be prepared for consideration by the Board of Supervisors at the February 28 meeting.

Public Review - The ordinance has been revised in response to comments received from jurisdictions, franchised haulers, and operators of transfer stations and landfills. The Waste Management Authority (WMA) and the Recycling Boards discussed the ordinance at meetings held in November and December. The WMA Board conducted a public hearing for the draft ordinance and the EIR at the November 16, 2011 meeting. Approval of the DEIR and first reading of the mandatory recycling ordinance occurred at the December 14 WMA Board meeting. The WMA Board passed and adopted the ordinance with one dissenting vote at the January 25, 2012 meeting. The link to this report is in Appendix A.

Waste Reduction and Recycling Act of 1990 (Measure D & Definition of an Adequate Commercial Recycling Program) – This ballot initiative, passed by Alameda County voters in 1990, establishes various recycling policy goals identified in AB939 and provides revenue to support the recycling programs offered in Alameda County. Measure D includes a requirement for an “adequate” commercial recycling program. The definition is broad as it includes a program to collect discarded materials from businesses and institutions. Minimum standards and the timeframe for implementation are important because there is a wide range of commercial recycling services offered among the member agencies.

Authority staff recommends setting a new standard for an “adequate” commercial recycling program during the first part of 2012, following the outcome of the mandatory recycling policy issue and discussions with staff representing the member agencies. The Alameda County Recycling Board endorsed the statement that participation by member agencies in a mandatory recycling ordinance adopted by the Authority is not necessary (but will be considered sufficient) for each member agency’s commercial recycling program to be deemed adequate under the County Charter. The Recycling Board is a separate legal body created with passage of the Alameda County Charter Amendment (Measure D). A decision will be made later this fiscal year regarding compliance with the Measure D provision for an adequate commercial recycling program by those jurisdictions that opt-out of the ordinance. This is noteworthy in that if a jurisdiction is deemed not to have “adequate” commercial recycling, that status could impact its eligibility to continue to receive Measure D Funds.

Concerns Raised at January 4 CSC Meeting – CSC members expressed some concerns regarding the potential cost impact to implement this ordinance. CSC also asked staff to investigate whether this process can be used to compel apartment owners to take an active role in responding to removal of illegally dumped debris from their premises.

Most of the overall implementation cost is planned to be borne by the Authority without a direct impact on jurisdictions’ rate payers. The operations costs related to commercial recycling is not unique to this ordinance and can occur with or without this ordinance. For example, staff has been working with businesses for the past several years and has been successful in implementing recycling programs for about 68% of all businesses with four cubic yards or more of weekly trash service, as well as many smaller businesses. This ordinance will place the majority of the remaining businesses on recycling services more expeditiously than if staff continued to work

with businesses without the help of this ordinance. Regarding the cost structure, staff recommends that any changes be addressed at the time the City re-negotiates or re-bids its existing contract.

During CSC discussions, members indicated specific concerns regarding disposal of bulky household items by multi-family residents in the public right-of-way and the resulting costs to the City to remove those items. Staff will redouble its efforts to perform education and outreach to apartment complex owners, managers, and residents, and to outline available legal and appropriate disposal options. Staff will also work with Waste Management Company to explore practical ways to address this problem. This important issue can also be reviewed and addressed in the next waste hauling contract in the coming years.

ECONOMIC IMPACT

Refuse rates typically increase on June 1 of each year, in accordance with the Franchise Agreement with WMAC approved by Council in January 2007. The rate adjustment prescribed in the Franchise Agreement is based primarily on 80% of the change in the annual Bay Area Consumer Price Index and changes in fuel costs. City staff has met with WMAC representatives to discuss the ordinance's provisions. WMAC has submitted satisfactory documentation indicating that its projected expenses to comply with the ordinance would be \$155,252, or a 0.44% rate increase, if all remaining eligible accounts opted for the new services as of July 1, 2012. In reality, the rate impact should be below the estimated figure as not all remaining businesses may be required to comply because some could obtain a waiver from the ordinance. WMAC's actual costs to comply with the ordinance will be based on documented tonnage of recyclables collected from June 1, 2012 through May 31, 2013, as required in the Franchise Agreement. Staff has confirmed that there will be no additional charge to implement recycling services for non-participating multi-family complexes, as required by Phase 1 of the ordinance. WMAC's projected expenses will be separate from the Authority's estimated costs cited previously.

The City's contract with WMAC applies the same annual rate increase to all residents and businesses. If Council indicates an interest, variable rate increases for residents and businesses can be incorporated into the next contract. City staff anticipates preparation of the next contract will begin in 2014.

FISCAL IMPACT

The City's Solid Waste Program staff will work with the Authority to coordinate implementation and enforcement of the ordinance. These costs are separate from those cited previously as the Authority's costs. Recycling Fund monies will be used to fund these activities; there will be no impact to the General Fund.

PUBLIC CONTACT

City staff mailed letters on February 16 to property owners/managers of non-participating multi-family complexes summarizing the State law and the ordinance's provisions. Staff also mailed a similar letter to the Rental Housing Owners Association (RHOA). Both letters advised that the

City Council will decide whether to participate in the Authority's ordinance at the February 28 meeting and described the recycling services available under the City's contract with WMAC.

Staff from Tri-CED, WMAC and the City will contact property managers or owners of non-participating multi-family complexes beginning in March to initiate implementing recycling services. Staff will respond to questions posed by managers and schedule presentations to residents, as needed. Other assistance will include providing brochures printed in four languages (Spanish, Mandarin, Vietnamese and English) and distributing plastic containers for temporary indoor storage of recyclables. Since 2009, staff from Tri-CED and the City have distributed about 1,800 plastic containers to multi-family residents, along with brochures and made presentations to residents, on request.

The Authority solicited comments regarding the ordinance from a variety of groups, including the Alameda County City Managers' Association, the Chambers of Commerce, the Mayor's Conference, franchised haulers, organizations representing large businesses, and representatives from member agencies.

City staff issued a notice for publication in the *Daily Review* on February 18 advising businesses and multi-family dwelling property owners and managers of the State law and that the City Council will consider whether to participate in the Authority's ordinance at the February 28 meeting. In addition, letters were mailed on February 17 to all businesses with weekly trash services of 4-cubic yards or more, summarizing the State law and the ordinance and advising that the City Council will decide whether to participate in the ordinance at the February 28 meeting. The letter also indicated that a Spanish or Mandarin translation of the letter is available.

In spring, staff anticipates that the Authority will prepare and mail a letter to multi-family complexes and affected businesses. Staff recommends mailing a letter to all affected businesses to convene two community meetings in March or April, one during the day and a second in the evening, to allow business owners an opportunity to discuss questions regarding the ordinance's provisions and to emphasize the focus on assistance to implement effective recycling programs. Staff will continue to coordinate outreach efforts with the Chamber of Commerce and the Latino Business Roundtable. Staff will also include information on the City's website. More information about the Authority's plans and implementation schedule will be available in the spring.

SCHEDULE

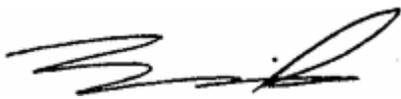
Authority issued a Press Release and FAQs	Jan. 2012
Published notice in the <i>Daily Review</i> advising businesses of the City Council's consideration of the Authority's ordinance	Feb. 18, 2012
Mailed letter to all property owners of multi-family complexes and businesses summarizing the ordinance and the City Council's consideration of the ordinance	Feb. 17, 2012
Initiate outreach to property owners/managers of multi-family complexes	March 2012

Authority to mail a letter to affected businesses and multi-family property owners or managers	Spring 2012
Update City's website with informational literature	March 2012
Convene meetings with businesses to discuss the ordinance's provisions	March/April 2012
Effective Date of Phase 1 of the Ordinance	July 1, 2012
Submit Status Report to the Council Sustainability Committee	Late 2013

Prepared by: Vera Dahle-Lacaze, Solid Waste Manager

Recommended by: Alex Ameri, Director of Public Works – Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution Approving the City's Participation in Phase 1 of Alameda County Waste Management Authority Ordinance No. 2012-1 Regulating Recycling by Multi-Family Residences, Businesses and Self-Haulers
- Attachment I-a: Alameda County Waste Management Authority Ordinance No. 2012-1 Regulating Recycling by Multi-Family Residences, Businesses and Self-Haulers
- Appendix A: Reference Documents

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-_____

Introduced by Council Member _____

RESOLUTION APPROVING PARTICIPATION OF THE CITY OF HAYWARD IN PHASE 1 OF ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY ORDINANCE NO. 2012-1 REGULATING RECYCLING BY BUSINESSES, MULTI-FAMILY RESIDENCES AND SELF HAULERS

WHEREAS, on January 25, 2012, the Board of the Alameda County Waste Management Authority (ACWMA) adopted Ordinance No. 2012-1 to regulate recycling by businesses, multi-family residences and self-haulers, which is attached hereto as "Attachment I-a"; and

WHEREAS, the ACWMA Board certified the final Environmental Impact Report for Ordinance No. 2012-1 at its meeting on December 14, 2011; and

WHEREAS, the City Council for the City of Hayward considered Ordinance No. 2012-1 at its February 28, 2012 meeting; and

WHEREAS, for the reasons enunciated in Section 2, Findings, of ACWMA Ordinance No. 2012-1, the City Council finds it in the best interest of the residents of the City of Hayward that the City participate in Phase 1 of ACWMA Ordinance No. 2012-1.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the participation of the City of Hayward in Phase 1 of Alameda County Waste Management Ordinance No. 2012-1.

BE IT FURTHER RESOLVED that the City Council hereby reserves the right to enact local legislation and to opt-out of Phase 1 of ACWMA Ordinance No. 2012-1 should it determine such action to be in the best interest of the City.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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

ORDINANCE 2012-1**AN ORDINANCE REQUIRING ACTIONS TO REDUCE LANDFILLING OF RECYCLABLE AND ORGANIC SOLID WASTES FROM BUSINESSES, MULTI-FAMILY RESIDENCES, AND SELF HAULERS**

The Board of the Alameda County Waste Management Authority (“Authority”) ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Section 1 through Section 15.

SECTION 2 (Findings)

- (a) The purpose of this Ordinance is to reduce the amount of recyclable and organic solid wastes deposited in landfills from businesses, multi-family residences, and self haulers.
- (b) The Authority has the power to adopt ordinances necessary to carry out the purposes of the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA provides the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan (“CoIWMP”), and Section 5.m of the JPA specifically enumerates the power to adopt ordinances necessary to carry out the purposes of the JPA.
- (c) The prohibition of certain recyclable and compostable materials at Alameda County landfills is necessary to carry out the purposes of the JPA and implement the CoIWMP, including the following goals and policies. Goal 2 of the CoIWMP calls on the Authority and its member agencies to “achieve maximum feasible waste reduction” and to “reduce the amount of waste disposed at landfills through improved management and conservation of resources.” Objective 2.1 is to “achieve countywide waste reduction of 75 percent by 2010.” Objective 2.4 is to reduce the amount of readily recyclable and compostable materials originating in Alameda County and deposited in landfills to no more than 10% of total materials originating in Alameda County and landfilled by 2020.
- (d) The State of California through its Integrated Waste Management Act of 1989, Assembly Bill 939 (AB 939), required that each local jurisdiction significantly increase its diversion of discarded materials from landfills to 50% by December 31, 2000, and thereafter maintain or exceed that diversion rate.
- (e) The Waste Reduction and Recycling Act of 1990 (Measure D), a charter amendment passed by the voters of Alameda County, established the Alameda County Source Reduction and Recycling Board and the policy goal of reducing

- the total tonnage of landfilled materials generated in Alameda County by 75% by a date to be chosen by the Recycling Board and to thereafter establish a date (or dates) to reduce, recycle, and compost further quantities of discarded materials. In 2003, the Recycling Board and Authority approved 2010 as the date by which 75% diversion was to be obtained. In July 2010 the Recycling Board and Authority approved a year 2020 objective to reduce the amount of readily recyclable and compostable materials originating in Alameda County and deposited in landfills to no more than 10% of total materials originating in Alameda County and landfilled.
- (f) The California Department of Resources Recycling and Recovery was developing a mandatory commercial and multifamily recycling regulation as part of implementing statewide efforts to reduce greenhouse gas (GHG) emissions pursuant to AB 32. The steps required to supply recycled materials to industry (i.e., collection, processing and transportation) use less energy than the steps to supply virgin materials (i.e., extraction, refining, processing, and transportation). These energy savings reduce GHG emissions.
 - (g) The use of composted organics (plant debris, food and compostable paper) reduces the need for chemical fertilizers and pesticides, which are energy intensive to manufacture and transport. The use of compost also conserves water in landscapes, and can help mitigate the decline in soil quality in California and Alameda County expected to result from climate change.
 - (h) The State of California has adopted legislation (AB 341) that requires multi-family property owners and businesses that generate more than 4 cubic yards of solid waste service per week to provide recycling collection service unless physical space to do so does not exist.
 - (i) The Countywide Waste Characterization Study conducted in 2008 found that about 60% of solid waste originating in Alameda County and disposed in landfills was readily recyclable or compostable. Significant quantities of recyclable and compostable materials continue to be landfilled (around 700,000 tons in 2008). Recycling or composting this material will aid the Cities in Alameda County and the County in achieving the GHG reduction goals contained within their Climate Action Plans, create jobs at processing facilities, and implement the CoIWMP, AB 939, AB 32, and Measure D.
 - (j) There are permitted facilities available that can effectively recycle cans, bottles and all recyclable paper grades discarded in Alameda County, or compost food and food-soiled paper, thereby achieving the goals and objectives cited above. Facilities that can also extract energy from organic waste through anaerobic digestion prior to composting are being developed or investigated by numerous parties.
 - (k) The Authority prepared the Mandatory Recycling and Single Use Bag Reduction Ordinances Environmental Impact Report, which considered two separate projects

and included the environmental review required by the California Environmental Quality Act for this Ordinance. The Authority certified those portions of the EIR relevant to this Ordinance.

SECTION 3 (Definitions)

The following definitions govern the use of terms in this Ordinance:

- (a) “Alameda County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.
- (b) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management (JPA).
- (c) “Authority Representative” means any agent of the Authority designated by the Authority or the Enforcement Official to implement this Ordinance, including Member Agency employees, the County Local Enforcement Agency or private contractors hired for purposes of monitoring and enforcement.
- (d) “Business” means any commercial or public entity, including but not limited to: proprietorship, firm, partnership, association, venture, trust, or corporation that is organized as a for-profit or nonprofit entity. Business includes, but is not limited to, industrial or manufacturing, restaurant, retail, office, hotels, shopping centers, theaters and government entities, but for purposes of this Ordinance, does not include Multi-Family Buildings.
- (e) “Compliance Plan” means the plan required pursuant to Section 7 of this Ordinance.
- (f) "Composting" means the controlled biological decomposition of organic Solid Waste that is kept separate from the Refuse stream, or that is separated at a centralized facility.
- (g) "Covered Jurisdiction" means a Member Agency of the JPA that has not opted out of coverage under this Ordinance pursuant to Section 12 of this Ordinance.
- (h) “Covered Material” means corrugated cardboard, newspaper, white paper, mixed recyclable paper, recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE (high density polyethylene) bottles and PET (polyethylene terephthalate) bottles, and discarded food and compostable paper, that are Recyclable. Per the definition of Recyclables in Section 3(u) of this Ordinance, unmarketable processing residuals are not Covered Materials. A particular Covered Material becomes subject to this Ordinance pursuant to the Implementation Schedule in Section 13 of this Ordinance.
- (i) “Deposit in Landfill(s)” or “Deposited in Landfill(s)” means final deposition of Solid Waste, in landfills permitted by the State of California, above liners (or above the permitted base of the landfill if a liner is not required) and below final

- cover within the permitted fill area. Any Solid Waste used to create a foundation layer for final cover in excess of three (3) feet on average shall be considered “Deposited in Landfill(s)” unless a greater thickness of foundation layer is specifically required by the Regional Water Quality Control Board.
- (j) “Enforcement Official” means the Executive Director of the Authority or his or her authorized designee.
- (k) “Executive Director” means the individual appointed by the Authority Board to act as head of staff and perform those duties specified by the Authority Rules of Procedure and by the Board.
- (l) “High Diversion Mixed Waste Processing Facility” is a Mixed Waste Processing Facility that: (i) Recycles Covered Materials except as provided in Subsection (l)(ii) of this Section; (ii) results in Solid Waste Deposited in Landfills containing no more than ten percent (10%) by weight of the Covered Materials from Solid Waste Originating in Alameda County Covered Jurisdictions from collection locations that do not have Source Separated Recycling service; and (iii) has complied with Section 8(g) of this Ordinance.
- (m) “Landfill” means a state and locally permitted facility in California that accepts Solid Waste for burial.
- (n) “Member Agency” means a party to the JPA. Current member agencies are the County of Alameda, the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, and the Castro Valley and Oro Loma Sanitary Districts. The service areas of each Member Agency for the purpose of Section 12 of this Ordinance are:
- (1) The legal boundaries of each of the Castro Valley and Oro Loma Sanitary Districts
 - (2) The legal boundaries of each of the 14 incorporated municipalities within Alameda County, except those portions of the Cities of Hayward and San Leandro that are within the boundaries of the Oro Loma Sanitary District.
 - (3) The unincorporated sections of the County not included within the above.
- (o) "Mixed Waste Processing Facility" means a processing facility that separates Covered Materials from Solid Waste.
- (p) "Multi-Family Building" means a structure with five or more residential dwelling units.
- (q) “Operator” means a Person that has received approval from the State of California and local government agencies with applicable land use authority or health regulatory authority to operate a Landfill or Transfer Station.

- (r) “Person” includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
- (s) “Primary Enforcement Representative” is the chief executive of a Covered Jurisdiction or a qualified designee who will coordinate with the Authority regarding implementation of the Ordinance. A qualified designee shall have at least two years of municipal code enforcement experience or have undergone at least the level one municipal code compliance training program of the California Association of Code Enforcement Officers, or equivalent training program approved by the Enforcement Official.
- (t) “Property Owner” means the Person or Persons that hold title to a property as shown on the most recent assessment roll.
- (u) “Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting Solid Wastes and returning them to the economic mainstream in the form of raw materials that can be sold in competitive markets and satisfy all applicable Federal, State and local standards for such materials. Recycling includes Composting so long as the compost or soil amendment created by Composting can be sold in competitive markets and satisfies all applicable Federal, State and local standards for such materials. “Recyclables” are materials that can undergo Recycling. A “Recycled” material is one that has undergone Recycling.
- (v) “Refuse” means Solid Waste that is neither Covered Materials, nor Recyclable materials that are acceptable to a Member Agency for co-placement in containers for Covered Materials within its service area.
- (w) “Regulated Hauler” means a Person that collects Solid Waste (other than Solid Waste generated by a permitted building project) originating in Alameda County for Deposit in Landfill(s) or Recycling facilities and does so under a contract, franchise agreement or permit with a Covered Jurisdiction or the Authority.
- (x) “Self Hauler” means a Person who delivers Solid Waste to a Landfill or a Transfer Station, but is not a Regulated Hauler or a Transfer Station Operator.
- (y) “Solid Waste” means all materials of any kind or nature as defined in Public Resources Code section 40191.
- (z) “Solid Waste Originating in Alameda County” means all Solid Waste discarded within Alameda County unless it was brought into the County for Recycling. To have “originated” within a particular jurisdiction means the Solid Waste was discarded in that jurisdiction unless it was brought into that jurisdiction for Recycling.
- (aa) “Source Separated” means to have undergone the process of removing Recyclable materials from other Solid Waste, by or for the Waste Generator on

the premises at which the Recyclable materials were generated, for the purpose of Recycling.

- (bb) “Transfer Station” means a facility in California that is permitted by the State of California as a transfer station and considered as a transfer station under 14 Code of Regulations section 17402, or as that section may be amended.
- (cc) “Waste Generator” means a Person who produces Solid Waste.

SECTION 4 (Restrictions on Waste Generators in Covered Jurisdictions)

- (a) Businesses that are Waste Generators in Covered Jurisdictions shall not discard Covered Materials such that they will be Deposited in Landfill(s). They shall comply with this requirement by either: (i) separating Covered Materials from other Solid Wastes for collection in separate Recycling containers, or (ii) providing for all Solid Waste to be taken to and processed through a High Diversion Mixed Waste Processing Facility.
- (b) Businesses that are Waste Generators in Covered Jurisdictions shall not place Refuse in containers designated for Covered Materials.
- (c) Waivers of these restrictions may apply pursuant to Section 10 of this Ordinance.
- (d) These restrictions are implemented in phases pursuant to Section 13 of this Ordinance.

SECTION 5 (Restrictions on Property Owners and their Agents in Covered Jurisdictions)

Each Property Owner of a Business or Multi-Family Building shall be responsible for the following:

- (a) Provide container(s) for Source Separated Covered Materials and other Source Separated Recyclable materials at the same location as the Property Owner provides container(s) for Solid Waste collection, unless all Solid Waste from the property is taken to and processed through a High Diversion Mixed Waste Processing Facility. The container(s) shall:
 - (1) Be of sufficient number and size to hold the Recyclable and Refuse quantities reasonably anticipated to be generated at the location;
 - (2) Bear prominent signage on or near the containers clearly describing the proper segregation and storage of Recyclable and Refuse materials.
- (b) Provide for Solid Waste removal service that ensures that Source Separated Covered Materials generated at its property are collected and transported to facilities that Recycle the Covered Materials or that all Solid Wastes are taken to and processed through High Diversion Mixed Waste Processing Facilities.

- (c) Provide information at least annually for tenants, employees and contractors of Waste Generator obligations under this Ordinance (if any) to keep Covered Materials separate from Refuse (when applicable) and the location of containers and the rules governing their use at each property. This same information shall also be provided to new tenants no later than 14 days after such tenants move in and no less than 14 days before tenants move out, unless a tenant does not provide 14 or more days notice to the Property Owner before leaving.
- (d) Notwithstanding the foregoing, if a Property Owner enters into a written agreement with another party (such as a property manager, tenant, or other party that contracts for Solid Waste removal), to manage or obtain Solid Waste collection services, then that party as well as the Property Owner shall be responsible for compliance with this Ordinance.
- (e) Waivers of these restrictions may apply pursuant to Section 10 of this Ordinance.
- (f) These restrictions are implemented in phases pursuant to Section 13 of this Ordinance.

SECTION 6 (Restrictions on Self Haulers of Solid Waste originating in Alameda County)

- (a) No Self Hauler shall Deposit in Landfill(s) Covered Materials originating from within Alameda County or deliver such materials to Landfills or Transfer Stations such that such Covered Materials will eventually be Deposited in Landfill(s), unless the Covered Materials are deposited in Landfills or Transfer Stations that are in compliance with Section 7 of this Ordinance, or in the case of Landfills or Transfer stations outside Alameda County but within California, unless the Landfills or Transfer Stations voluntarily comply with Section 7 of this Ordinance.

SECTION 7 (Requirements for Landfills and Transfer Stations in Alameda County)

- (a) Owners and Operators at Landfills and Transfer Stations in Alameda County shall require any Self Hauler who brings a load of Solid Waste containing Covered Materials originating from within Alameda County to a Landfill or Transfer Station in Alameda County to: (1) separate Covered Materials from Refuse or (2) deposit that load such that it will be processed through a High Diversion Mixed Waste Processing Facility or (3) ensure the Self-Hauler pays a price at least 10% over the usual tipping fee that would normally apply to that Self-Hauler. Owners and Operators at Landfills and Transfer Stations in Alameda County shall provide quarterly reports to Authority that list the dates and volumes or weights of every load of Solid Waste containing Covered Materials charged the higher price described in item (3).
- (b) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit a Compliance Plan to the Authority that describes the actions to be

- taken to comply with this Ordinance and help prevent Deposit in Landfill(s) of Covered Materials from Self Haulers. Previously approved Compliance Plans under Authority Ordinance 2008-01 may be amended to address the requirements of this Section.
- (c) The Compliance Plan shall include the following:
- (1) Methods for discouraging Covered Materials from Self Haulers from being Deposited in Landfills.
 - (2) Methods for assisting the Authority in identifying Waste Generators that violate this Ordinance, including recording practices to be followed when noncompliance is observed.
 - (3) Procedures for complying with the requirements of Section 7(a) of this Ordinance, including posted pricelists.
 - (4) Load checking programs to prevent the acceptance of Covered Materials from Self Haulers. This program shall at a minimum provide for:
 - (1) the number of random load checks to be performed;
 - (2) recording of load checks; and
 - (3) training of personnel in the recognition, proper handling, and disposition of Covered Material.
 - (5) Description of efforts the facility will take to install informative signage regarding the Covered Material ban at facility entrances and at waste receiving areas. The signage shall consist of permanent visible signs, prominently displayed, clearly indicating that Covered Material is prohibited from being Deposited in Landfills or delivered such that it will be Deposited in Landfills. These signs shall be in place within 30 days of approval of the Compliance Plan.
 - (6) Description of employee training efforts to comply with this Ordinance.
 - (7) Additional information reasonably requested by the Authority as necessary to determine compliance with the Ordinance and how best to achieve compliance with the Ordinance.
 - (8) Identification of any impediments to and suggestions relating to the ongoing implementation of this Ordinance.
- (d) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit its proposed Compliance Plan to the Enforcement Official no later than 60 days after adoption of this Ordinance.

- (e) The Enforcement Official will review the Compliance Plan for adequacy and make a determination as to its adequacy within 30 days of receiving the Compliance Plan. Adequacy determinations shall be based on the inclusion of all elements required in Section 7(c) of this Ordinance and on the inclusion of all reasonable measures to effectively discourage Covered Materials from Self Haulers from being Deposited in Landfill(s). Proposed Compliance Plans shall be revised and resubmitted within 30 days after notice by the Enforcement Official that a proposed Plan is inadequate in one or more specific ways.
- (f) Each Landfill and Transfer Station in Alameda County shall have an approved Compliance Plan in place no later than 60 days after approval of its Compliance Plan by Authority, but in no event later than January 1, 2013.
- (g) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit an annual report detailing the steps taken during the course of the prior year to comply with its Compliance Plan. Each annual report shall be due by the end of July for the previous 12 month period between July 1 and June 30th.
- (h) Owners or Operators of Landfills and Transfer Stations in Alameda County shall update or revise the existing Compliance Plan if the Enforcement Official determines that revision is necessary to achieve compliance with this Ordinance.
- (i) Failure to comply with an approved Compliance Plan shall constitute a violation of this Ordinance.

SECTION 8 (Requirements for Regulated Haulers and Mixed Waste Processing Facilities)

- (a) Regulated Haulers collecting Solid Waste, Refuse, or Source Separated Recyclables from within Covered Jurisdictions shall comply with either Section 8(b) or 8(c) below. Section 8(b) shall apply to any Regulated Hauler that notifies Authority in writing that it has elected to comply with subsection (b) of Section 8 of this Ordinance. Section 8(c) shall apply in the absence of such written notification. All Regulated Haulers shall submit the information set forth in either Section 8(b) or 8(c), and the information set forth in Section 8(d) of this Ordinance to the Covered Jurisdiction and to the Authority no less frequently than once per year and more frequently if requested by the Covered Jurisdiction, unless otherwise specified in Sections 8(b) through 8(d) of this Ordinance.
- (b) This subsection applies to Regulated Haulers who elect to integrate customer outreach and education about this Ordinance, and identification of possible violators, into their customer service procedures. Such Regulated Haulers shall:
 - (1) Include in bill inserts or other regular customer service communications with customers written materials provided by Authority (after approval of such material by the Primary Enforcement Representative from the relevant Covered Jurisdiction or other designee of the chief executive of the Covered Jurisdiction) with respect to this Ordinance, and shall send

such information in a manner specified by Authority (e.g., certified mail, return receipt requested; regular mail; overnight mail, etc.). Authority shall reimburse Regulated Haulers for the reasonable incremental cost of handling and postage for such written communications.

- (2) Require that customer service staff of the Regulated Hauler participates in training provided by Authority with respect to compliance with Sections 4 and 5 of this Ordinance. Require customer service staff of the Regulated Hauler to attempt to assist customers with compliance with Sections 4 and 5 of this Ordinance. If after initial good faith efforts to assist customers, additional assistance is still required, the Regulated Hauler may refer customers to Authority or Covered Jurisdiction staff.
 - (3) Provide names, addresses, and customer contact information for accounts serviced that the Regulated Hauler has reason to believe may be in violation of Section 4 or 5 of this Ordinance on a quarterly basis commencing January 1, 2013.
- (c) This subsection applies to Regulated Haulers who elect not to integrate customer outreach and education about this Ordinance, and identification of possible violators, into their customer service procedures pursuant to Section 8(b) of this Ordinance. Such Regulated Haulers shall:
- (1) Provide a list of all Business and Multi-Family Building accounts in Covered Jurisdictions that will become subject to Phase 1 of this Ordinance by April 1, 2012, and a list of all Business and Multi-Family Buildings accounts in Covered Jurisdictions subject to Phase 2 by February 1, 2014.
 - (2) For each account on the lists, provide the name of the account, contact, phone number, service address, billing address, Solid Waste (including Recyclables) service information, including number, type and size of containers and days of service, and the name and location where Recyclables are delivered for processing. Specify which accounts, if any, are being served by High Diversion Mixed Waste Processing Facilities.
- (d) Regulated Haulers shall provide the name of, location of, and total quantities of Solid Waste (including Recyclables) delivered to each Mixed Waste Processing Facilities (if any) in California used by the Regulated Hauler to assist Waste Generators and Property Owners in complying with this Ordinance.
- (e) Regulated Haulers shall not transport Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service to Mixed Waste Processing Facilities that are not High Diversion Mixed Waste Processing Facilities unless the Authority has granted a waiver pursuant to Section 10 of this Ordinance or a Mixed Waste Processing Facility is making an effort satisfactory to the Enforcement Official to qualify as a High Diversion

- Mixed Waste Processing Facility per Section 8 (g). .
- (f) If the Regulated Hauler believes any information required in this Section is confidential, it may submit such information with a request that it be maintained as confidential under the Public Records Act (Government Code section 6250 et al.), specifically identifying the information that it considers confidential and the legal basis for such conclusion.
 - (g) Mixed Waste Processing Facilities that want to qualify as High Diversion Mixed Waste Processing Facilities under this Ordinance shall comply with the following:
 - (1) Submit to the Authority a proposal for the protocol it will use to determine whether it is satisfying the performance standards in Ordinance Section 3(l)'s definition of High Diversion Mixed Waste Processing Facilities for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service.
 - (2) The Enforcement Official, after consultation with the Primary Enforcement Representatives (or other designee of the chief executive of each of the Covered Jurisdictions) from the Covered Jurisdictions that have Solid Waste processed at the Mixed Waste Processing Facility, will review and respond to the proposed protocol within 30 days of receiving the proposal, and shall approve the protocol if found that the protocol will effectively determine whether the facility satisfies the performance standards set out in Section 3(l) of the Ordinance for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service. Proposed protocol shall be revised and resubmitted within 30 days after notice by the Enforcement Official that a proposed protocol will not effectively determine whether the facility satisfies the performance standards set out in Section 3(l) of the Ordinance.
 - (3) Once the Authority has approved the proposed protocol, the Mixed Waste Processing Facility shall submit initial documentation, as well as documentation annually, demonstrating that, in accordance with the approved protocol, it meets the performance standards in 3(l) of this Ordinance for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service.

SECTION 9 (Inspections by Authority Representatives within Covered Jurisdictions)

- (a) Authority Representatives are authorized to conduct inspections of loads of Solid Waste originating in Covered Jurisdictions and brought to Landfills, Transfer Stations, Mixed Waste Processing Facilities, or any other facility receiving Solid

- Waste or Refuse located in Alameda County, subject to the following: (i) inspections cannot reasonably interfere with operations of the facility, (ii) inspector must wear appropriate safety equipment acceptable to the operator of the facility, and (iii) inspector may not conduct inspections in areas deemed to be unsafe by safety regulations or regulators or in locations where the facility operator prohibits walking or standing by its employees.
- (b) Authority Representatives are authorized to conduct inspections, without notice, for compliance with this Ordinance by Waste Generators and Property Owners located in Covered Jurisdictions, subject to applicable laws.
 - (c) Authority Representatives are authorized to conduct inspections, at random or otherwise, of all Solid Waste at the point of collection or transfer or Deposit in Landfill(s), subject to the following: (i) inspections cannot reasonably interfere with operations of the facility, (ii) inspector must wear appropriate safety equipment acceptable to the operator of the facility, and (iii) inspector may not conduct inspections in areas deemed to be unsafe by safety regulations or regulators or in locations where the facility operator prohibits walking or standing by its employees.
 - (d) Authority Representatives are authorized to conduct any other inspections or investigations as reasonably necessary to further the goals of this Ordinance, subject to applicable laws.

SECTION 10 (Waivers)

- (a) The Enforcement Official shall consult with the Primary Enforcement Representative from the jurisdiction of the waiver applicant prior to making any decision regarding a request for a waiver under this Ordinance.
- (b) Emergency Waiver. If the Enforcement Official determines that any type of Covered Material cannot feasibly be Recycled for a limited time period due to emergency conditions, then the Enforcement Official may permit that component of Covered Materials to be Deposited in Landfill(s) for that limited time period.
- (c) De Minimus Waiver. The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, at a collection location if documentation satisfactory to the Enforcement Official is provided that Covered Materials comprise, on an on-going and typical basis, less than 10% by weight of Solid Waste taken to Landfill(s) from that collection location.
- (d) Physical Space Waiver. The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to the Enforcement Official is provided that physical space limitations prevent full compliance with these Sections. A Waste Generator or Property Owner seeking this waiver must provide documentation from service providers, licensed architects or engineers, or building officials from a Covered Jurisdiction that demonstrates that the Waste Generator or Property Owner does not have adequate

- space for containers for Covered Material and cannot obtain collection services that direct Solid Waste to High Diversion Mixed Waste Processing Facilities.
- (e) **Financial Hardship Waiver.** The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to the Enforcement Official is provided that compliance with the Ordinance would create a financial hardship for a Property Owner. Hardship exists when implementation of this Ordinance will increase Solid Waste collection service bills for a particular collection location by more than 30% per typical billing period as compared with the cost of Solid Waste collection services in the absence of this Ordinance and State laws requiring recycling services at Businesses and Multi-Family Buildings. Hardship also exists when the sum of the change in billing described in the previous sentence plus the amortized costs of Solid Waste enclosures or other physical modifications necessary to house additional containers collected by truck, if such construction is required by Federal, State, or Local laws or regulations, exceeds 30% of the cost of Solid Waste collection services in the absence of this Ordinance and State laws requiring recycling services at Businesses and Multi-Family Buildings. Eligible construction costs shall be amortized over an appropriate period for such costs based on Internal Revenue Service or alternative authoritative guidance or standards. The financial hardship calculation shall take into consideration the cost savings potential of decreasing Refuse or Solid Waste service levels, and opportunities to reduce Solid Waste bills through changes in service providers, when that is legal within the relevant Covered Jurisdiction(s). The Enforcement Official may require compliance with some, but not all, requirements of this Ordinance if necessary to limit the increase in eligible costs to less than 30%.
 - (f) **Unavailable Service Waiver.** The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to the Enforcement Official is provided that neither separate collection for Covered Materials nor the service of a High Diversion Mixed Waste Processing Facility is available.
 - (g) **Compliance Schedule Waiver.** Any Waste Generator or Property Owner (or Covered Jurisdiction on behalf of Waste Generators or Property Owners in its service area) may seek a waiver from the Enforcement Official by presenting evidence that more time is needed to fully implement a compliant program, and by providing a complete written proposal stating when full compliance will be achieved. If a compliance schedule waiver is granted, the Waste Generator or Property Owner or Covered Jurisdiction shall demonstrate on an on-going basis its good faith efforts to comply by the compliance date(s) stated in the approved waiver.
 - (h) **Covered Materials in public litter containers** (e.g., on streets or in parks), street sweepings, or in Solid Waste collected when illegal dumping is cleaned up, are not subject to this Ordinance.

SECTION 11 (Enforcement)

- (a) An enforcement action under Sections 4, 5, or 8 of this Ordinance shall not be taken in any Covered Jurisdiction without written approval from the Primary Enforcement Representative of that Covered Jurisdiction. The Primary Enforcement Representative shall provide approval or disapproval of a proposed enforcement action in a timely manner.
- (b) Violation of any provision of this Ordinance shall constitute grounds for assessment of a notice of violation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or reorganized. Where an enforcement action is necessary to enforce this Ordinance, the Enforcement Official will typically issue a notice of violation as authorized in this subsection prior to taking the actions authorized pursuant to section 11(c) or 11(d) of this Ordinance. A separate notice of violation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts detailed for misdemeanors in Section 11(d) of this Ordinance. The notice of violation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the notice of violation. The fine shall be paid within 30 days of the notice of violation and shall be deposited prior to any requested hearing. A hearing, held by a hearing officer, will be held only if it is requested within 30 days of the notice of violation. Evidence may be presented at the hearing. The Executive Director, or its designee, shall conduct the hearing and issue a final written order. If it is determined that no violation occurred, the amount of the fine shall be refunded within 30 days. The Authority shall serve the final order on the Person subject to the notice of violation by overnight, certified or first class mail.
- (c) Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.
- (d) Violation of any provision of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500 for the first violation, a fine not to exceed \$750 for the second violation within one year and a fine not to exceed \$1000 for each additional violation within one year. Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year and a fine not to exceed \$500 for each additional violation within one year. There shall be a separate offense for each day on which a violation occurs.
- (e) Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Enforcement Official, counsel, or any Authority Representative. In any enforcement action, the Authority shall be entitled to recover its attorneys' fees and costs from any Person who violates this Ordinance.

- (f) Enforcement of Phase 1 of this Ordinance (as set forth in Section 13 of this Ordinance) shall not occur before July 1, 2012. Enforcement of Phase 2 of this Ordinance shall not occur before July 1, 2014. Prior to those dates, the Authority will conduct outreach and educational efforts regarding the requirements of the Ordinance. From July 1, 2012 to December 31, 2012 for Phase 1, and from July 1, 2014 to December 31, 2014 for Phase 2, enforcement will consist of warnings rather than enforcement action. Enforcement action will be taken, as needed, after January 1, 2013 for Phase 1 and after January 1, 2015 for Phase 2.
- (g) Property Owners will not be held responsible for violations of this Ordinance by Waste Generators, and Waste Generators shall not be held responsible for violations of this Ordinance by Property Owners, unless they are the same person, and so long as they cooperate with the Enforcement Official and Authority Representatives as necessary to clarify responsibility for violations. Failure to cooperate in determining responsibility as described above is a violation of this Ordinance.
- (h) Regulated Haulers will not be held responsible for violations of this Ordinance by High Diversion Mixed Waste Processing Facilities, and High Diversion Mixed Waste Processing Facilities shall not be held responsible for violations of this Ordinance by Regulated Haulers, unless they are the same person, and so long as they cooperate with the Enforcement Official and Authority Representatives as necessary to clarify responsibility for violations.

SECTION 12 (Local Regulation and Opt-Out and Opt-In Provisions)

- (a) Local Regulation. Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the collection, transport, storage, processing, and Deposit in Landfill(s) of Solid Waste within its jurisdiction, including more stringent requirements than those in this Ordinance.
- (b) Opt-Out Provision. Any Member Agency by a resolution of its governing body may, prior to March 2, 2012, choose to exclude its service area from Sections 4, 5, and 8, Phase 1 of this Ordinance. Any Member Agency by a resolution of its governing board may, prior to January 1, 2014, choose to exclude its service area from Sections 4, 5, and 8, Phase 2 of this Ordinance.
- (c) Opt-In Provision. Any Member Agency that chooses to exclude its service area from either Phase 1 or Phase 2 may request of the Authority by a resolution of its governing board to be re-included in coverage of the Ordinance at any subsequent time. Such coverage under the Ordinance, however, shall not occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.
- (d) Dispute Resolution. In the event of a dispute between the Authority and a

Covered Jurisdiction regarding the implementation of this Ordinance, either party may request a meeting, in which case the Enforcement Official and the Primary Enforcement Representative for the Covered Jurisdiction (or other designee of the chief executive of the Covered Jurisdiction) shall meet to discuss implementation of the Ordinance's provisions. After such meeting, the parties may agree to enter into mediation to resolve any disputes between the parties related to implementation of the Ordinance. In addition, after meeting to seek to resolve any disputes between the parties and possible mediation, the Authority Board or the governing body of the Covered Jurisdiction, with at least 30 days public notice, may by resolution choose to exclude the service area of the Covered Jurisdiction from Sections 4, 5, and 8 of this Ordinance.

SECTION 13 (Implementation Schedule)

(a)

Phase Number: Effective Date	Entities Subject to Ordinance	Covered Materials
Phase 1: July 1, 2012	Business Property Owners and Business Waste Generators within Covered Jurisdictions with 4 cubic yards or more of Solid Waste (excluding Recyclables and Solid Waste generated under a permitted building project) collection service per week on an average basis as of November 1, 2011 or any later date. Multi-Family Building Property Owners within Covered Jurisdictions. Self-Haulers transporting Solid Waste originating in Alameda County. Regulated Haulers operating within Covered Jurisdictions.	Corrugated cardboard, newspaper, white paper, mixed recyclable paper, recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE and PET bottles
Phase 2: July 1, 2014	All Business and Multi-Family Building Property Owners and Business Waste Generators within Covered Jurisdictions. Self-Haulers transporting Solid Waste originating in Alameda County. Regulated Haulers operating within Covered Jurisdictions.	Covered Materials in Phase 1, plus discarded food and Compostable paper.

(b) A Covered Jurisdiction may add discarded food and Compostable paper, or other Recyclable materials, to the list of Covered Materials for all or a subset of the entities subject to the Ordinance at any time if requested by three or more Covered Jurisdictions. Such coverage under the Ordinance, however, shall not

occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.

SECTION 14 (Severability)

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 15 (Notice and Verification)

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

Passed and adopted this _____ day of _____ by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO.2012-1.

GARY WOLFF
EXECUTIVE DIRECTOR

272511.1

REFERENCE DOCUMENTS

October 5, 2011 CSC Report:

<http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2011/CSC-CCSC100511.pdf>

January 4, 2012 CSC Report: <http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2012/CSC-CCSC010412.pdf>

Draft Environmental Impact Report: Mandatory Recycling and Single-Use Bag Reduction Ordinances, August 2011: http://www.stopwaste.org/docs/deir_bags.pdf

Amendment to the Final Environmental Impact Report: Mandatory Recycling and Single-Use Bag Reduction Ordinances, December 2011:
http://www.stopwaste.org/docs/final_eir_bags_mandatory.pdf

Agenda of the Alameda County Waste Management Authority Meeting of the Programs and Administration Committee, November 10, 2011:
<http://www.stopwaste.org/docs/11-10-11-pa-packet.pdf>
Report includes a summary of the mandatory recycling and single-use bag ordinances and ACWMA's estimated costs to implement each, among other documents.

Agenda of the Alameda County Waste Management Authority Meeting of the Programs and Administration Committee, January 25, 2012:
<http://www.stopwaste.org/docs/01-25-12-packet.pdf>
Report includes a summary of the mandatory recycling and single-use bag ordinances.

DATE: February 28, 2012

TO: Mayor and City Council

FROM: Technology Services Director

SUBJECT: Bay Area Regional Interoperable Communications System (BayRICS) Update and Request for Authorization to Join the BayRICS Joint Powers Authority and Execute a Site Agreement with Motorola Solutions, Inc.

RECOMMENDATION

That the Council adopts the attached resolution (Attachment I) authorizing the City Manager to sign the BayRICS Joint Powers Authority (JPA) Agreement and to negotiate and execute a Site Access and Use Agreement with the Motorola Solutions, Inc.

SUMMARY

The Bay Area Regional Interoperable Communications System (BayRICS) is an initiative of the Bay Area Urban Area Security Initiative (UASI). This project will provide a 4th Generation Long Term Evolution (4G LTE) broadband system to the ten Bay Area Counties within the UASI group on a secure system separate from the commercial cellular system with dedicated Public Safety access.

Although the project has the ability to address genuine concerns by various Public Safety agencies for communication needs, there are both technical issues and questions about possible fiduciary liabilities in the future. Taking into account the outlined pros and cons, staff recommends the City join the BayRICS JPA (the “Authority”) to help facilitate the proposed system and further the interoperability initiative in the Bay Area. Should the project become unsustainable in the future, the City will have the right to withdraw from the Authority.

There is also an on-going responsibility for a member who commits sites to the project through a site access and use agreement: the member will be expected to keep those sites available and in use even if the member exits the JPA. If the member cannot keep the site available or find an alternate, the ex-member may be subject to a penalty. The proposed sites in Hayward are the Walpert Ridge Towers, Garin Water Tank Tower, Hesperian Tower, and Fire Station 2. Also proposed for the Hayward sites is Fire Station 8, which is located within Alameda County jurisdiction. With the exception of the two Fire Stations, these sites are currently in use, have multi-jurisdictional equipment in place, and will be maintained regardless of BayRICS. Staff recommends that the City enter into a site agreement with Motorola for these locations.

BACKGROUND

The Bay Area Urban Area Security Initiative (UASI) was established because of the terrorist attacks on 9/11. A significant criticism that came out after those tragic events was the inability of first responders to communicate effectively amongst one another. The nation has since focused on the importance of interoperable communications and how it enhances the abilities of first responders to combat terrorism, and to respond to and recover from disasters.

The BayRICS was established by the ten Bay Area counties and three core cities (San Francisco, Oakland, and San Jose) in 2006 through the creation of a strategic plan with the goal of providing voice and data interoperability throughout the Bay Area region. The region consists of ten Bay Area Counties (Alameda, Contra Costa, Marin, Napa, Santa Cruz, Sonoma, Solano, San Mateo, Santa Clara, and San Francisco) and the three core cities (San Francisco, Oakland and San Jose).

Bay Area Wireless Enhanced Broadband (BayWEB) is the broadband/internet component of BayRICS. As originally proposed, BayWEB would build out a 193-site public safety broadband network and a companion public access system for the Bay Area. The network would utilize existing infrastructure within the region to build-out a 4th Generation Long Term Evolution (4G LTE) broadband system on a segment of the 700 MHz spectrum, which was recently made available by the Federal Communications Commission (FCC).

The existing infrastructure to be utilized includes investments, such as communications towers, shelters, fiber optic cable, and microwave systems, owned by the participating cities and counties. This system will provide a faster, more efficient and affordable broadband data solution for public safety entities in the region. The system will be used to transmit and receive mission-critical data and would not replace the current systems used for voice communications.

The system will use 4G LTE technology that is the new standard for the commercial cell phone industry. The use of this technology for public safety is a new national standard and believed to afford significant economies of scale for government users. The system is being built to an international 3rd Generation Partnership Project (3GPP) standard that precludes vendors from the sale of proprietary devices and expands the opportunity for competition. This standard represents collaboration between groups of telecommunications associations to make a globally applicable third generation (3G) mobile phone system.

Public Safety agencies for the first time will have access to broadband capabilities solely dedicated to Public Safety use that will reduce the possibility of being disconnected and/or getting busy signals during a major disaster. While BayRICS is one of the first systems of its kind being installed in the country, there are currently 21 other systems under construction leading the way for the development of a nation-wide public safety broadband network. The BayRICS infrastructure is designed to be scalable, which means other regions have the ability to join and share in some of the operational costs, which may reduce the eventual overall cost to operate the system.

During the final quarter of 2009, Congress appropriated approximately \$5 billion to the Department of Commerce to administer, through the National Telecommunications and Information Administration (NTIA), a Broadband Stimulus grant program called the Broadband Technology

Opportunity Program (BTOP). The primary purpose of these stimulus funds was to create jobs and build broadband networks for the benefit of underserved communities, with an emphasis on public safety services.

In Round Two of the BTOP grant program, the General Manager of the UASI consulted with the Bay Area Public Safety agencies, through their appointed representatives, and a grant strategy was proposed that would require the applicant, a private partner, to assume the technical and fiscal risk (up to 30%) for the grant/project. At that time, participants concluded there was not capacity for a 30% match for the grant and there was not a government entity that was willing to take on the fiscal risk of the entire project (value envisioned at \$150M).

The Bay Area UASI interoperability team, consulting with appropriate legal counsel from the City of San Francisco, developed a competitive process to select a private partner for the BTOP grant. A multi-jurisdictional team was appointed by agencies desiring to partner on the BTOP grant to select the private partner. No public employees with a previous employment history with any potential responders to this competitive process were allowed to participate in the selection process for the private partner (including the UASI management team).

Motorola Solutions, Inc. (“Motorola”) was selected as the private partner and applicant for the BTOP grant. Alameda County Sheriff Gregory Ahern, representing the region as the Region 2 mutual aid coordinator, signed the grant as the executive sponsor. Motorola was ultimately awarded a \$52 million grant that requires a \$22 million match. As the system design has developed, the cost to complete the system has risen to close to \$100 million. Motorola has committed to provide at least \$26 million in additional funding needed to complete the project. The scope of the project originally included both a public safety component and a public access component. The public access component is being removed due to rejection of site build out for that part of the project by some entities. This project scale reduction may reduce the NTIA grant amount. It is conceivable that grant funds of this magnitude will not be available again in the near future, if ever, to develop a regional capability like BayRICS.

The NTIA grant has been awarded to Motorola but the application is currently being reviewed for possible reduction. The grant amount may be reduced because of the removal of the public access system within the project and depending upon the number of site participants once all site access agreements have been finalized.

DISCUSSION

A joint powers agreement has been developed for the Authority that outlines the governance and requirements for agency participation (Attachment II). The agreement has been vetted by several attorneys representing jurisdictions within the region, and the final agreement is now in the process of adoption by agencies within the region.

The agreed-upon Authority governing board has nineteen members representing the three core cities, the ten counties, the State, an at-large seat, and four seats established to represent the cities within the UASI planning hubs. Alameda and Contra Costa counties represent one of the planning hubs and are referred to as the “East Bay Cities” hub. The BayRICS JPA agreement stipulates that

the representative and alternate on the Authority board will be selected by the City Managers' associations within the planning hub region. The agreement also identifies a process to establish startup and ongoing contributions from the member agencies with each member agency required to pay \$24,500 per year to support administrative, legal, and other authorized costs incurred by the Authority. In the case of the planning hubs, each one is responsible for paying the \$24,500 initial membership fee and subsequent annual membership fee (of not less than \$24,500) per City/per year within the hub. The fees for Alameda County cities will be paid by the East Bay Regional Communications Systems Authority (EBRCSA) now and in the future.

The East Bay Cities group includes thirty-three of the thirty-four cities within the two counties, as Oakland has its own seat on the Board. Of those thirty-three cities, thirty-one are members of the East Bay Regional Communications Systems Authority (EBRCSA), including the City of Hayward. The EBRCSA Board approved the funding and has paid the BayRICS Authority on behalf of the East Bay Cities.

The grant guidelines require that the system ultimately be turned over by Motorola to BayRICS. Having direct control over system loading and operational parameters will allow the Public Safety users an opportunity to directly control the system operations, as opposed to the current system where Public Safety agencies have no control. Public Safety agencies today rely on older slower technology to provide secure data capabilities; the 4G LTE technology will provide state of the art speed and graphics capabilities for first responders that will be separate from the commercial/consumer network.

Concerns

The timeline required by the National Telecommunications and Information Administration (NTIA) for use of the ARRA funding awarded to Motorola has resulted in a decision on the part of the BayRICS JPA Board to proceed with a Build Own Operate Maintain (BOOM) agreement before all of the technical and financial information is available to be able to adequately judge the likely functionality and/or the costs/benefits of the proposed system. Similarly, system technical requirements have been included in the draft BOOM agreement in advance of Motorola providing the information required to evaluate the proposed design and technical specifications. This was done in an attempt to anticipate what the Authority will require in terms of system performance and reliability.

A number of possible participating entities within the ten Bay Area counties that comprise the BayRICS have voiced reservations about the proposed project. They have either chosen to not participate or have modified their participation.

Potential Technical Deficiencies of Proposed BayWEB System

The rationale justifying BayWEB, a separate public safety broadband system, was that historically existing commercial broadband systems are not designed to be mission critical, do not provide priority to public safety operations, and may be impaired during major emergencies/disasters when systems are over utilized by customers. Therefore, technical system design goals for BayWEB should include a system that would be resilient, have adequate capacity and would provide reliable

coverage and throughput. Unfortunately, some entities feel the current preliminary BayWEB system design falls far short of these core objectives. Concerns include:

- *Deficiencies in coverage and system "robustness"*
- *Insufficient capacity*
- *Minimal performance guarantees*
- *Redundancy in critical systems*

The BayRICS Authority Board has appointed a Technical Advisory Committee to evaluate and report to the Board concerning technical issues with the project and recommendations to address any project difficulties.

Financial Risks in Proposed System Funding Plan and BOOM Agreement.

The BOOM Agreement with Motorola specifies that the Authority and its members are not required to make minimum user commitments. If a member commits no users, it will incur no user or device charges, and will not require back office connectivity or other related costs. The Authority's Draft System Funding Plan assumes a "pass-through" model, in which all of the Authority's administrative costs that exceed the total amount of annual member fees collected would be passed on to user agencies as a surcharge added to the base user fee paid to Motorola. Moreover, costs of customer service, billing, invoicing and roaming allocated to the Authority would also be passed on to end users. Finally, and perhaps most significantly, the costs of any additional sites beyond those that were accepted by November 18, 2011, including related site remediation, would also be allocated to end users.

There are several significant cost components that are not incorporated into the Draft System Funding Plan. Authority staff has indicated that because these costs are unknown, it is not possible to put them in the Plan. These costs include:

- *Requirement for the Authority to provide backhaul:* The proposed BOOM agreement makes the Authority responsible for providing the central backhaul transport network (CBTN) infrastructure, which allows for the transportation or "backhaul" of data to the various sites.
- *Likely need to acquire and remediate additional sites:* As discussed above, the design of the current system does not allow for a sufficient number of sites to provide reliable, strong coverage over the system area.
- *Invoicing and billing:* The Authority will be required to assume all responsibility for invoicing and billing users; in addition, the BOOM agreement makes the JPA the primary point of contact for all customer service issues.
- *Roaming within and outside of the intended system coverage area:* Potentially, users would be required to pay the monthly system's user charge (Motorola's charge plus an Authority surcharge to cover the costs).

- *Refresh of the BayWEB and central backhaul transport network (CBTN) systems:* The current system funding plan excludes lifecycle replacement ("refresh") costs until year ten or later.

Staff recommends that the City continue to be involved with the BayRICS JPA, since the purpose of the Authority is greater than the BayWEB project, and is intended to foster regional public safety interoperability. The City is a member of the EBRCSA, which will continue fund the annual membership subscription fee of \$24,500, reflective of holding a seat on the Board of Directors. As mentioned above, the operational and cost concerns are being further explored by technical committees. The City can choose to withdraw from the Authority if these concerns cannot be addressed in a manner acceptable to staff and the Council. Staff will continue to monitor these discussions and provide regular updates to CTAC and the Council as necessary.

FISCAL IMPACT

The next step is to have seven cities within the East Bay Cities group adopt the BayRICS JPA agreement. Given that initial funding has been provided by the EBRCSA, there is no financial impact on Hayward to join at this time. There is a \$24,500 per year fee required by participating agencies in the future, which EBRCSA has committed to pay.

The draft Build, Own, Operate and Maintain (BOOM) Agreement between the Authority and Motorola for the BayWEB project has significant unknown current and future costs for users of the system, including the provision of backhaul, the creation of a billing and customer service function, roaming and the augmentation of the system coverage and capability. At Authority Board meetings, there has been discussion of the JPA investing additional capital to build out the system to an acceptable degree of functionality. While grant funding would be preferable, should it be secured, there is also the potential for a bond or for JPA members to be asked to contribute from their own resources.

In addition, the draft BOOM agreement contemplates that Motorola will enter into separate site access agreements directly with the host agencies, rather than with the Authority. The Authority's Draft System Funding Plan estimates a cost of \$400 per site per month for utilities. Taking into account the projected \$400 per site per month, the City may have costs of \$2,000 per month (\$24,000 per year) for the five proposed sites utilities. However, the full cost of each site's utilities is not known because it is yet unclear as to exactly what equipment each site will contain. Actual utility cost may be more or less than the projected \$400 per site per month. These utility costs will be the responsibility of the City.

Under the site access agreement proposed by Motorola, the cost of local permitting, NEPA, and CEQA review are also the responsibility of the City (Attachment III). Motorola will bear the actual cost of remediating the sites to "installation ready" condition, exclusive of fees. Staff recommends that the City waive any site fees, where possible, to accommodate the project and to work with the BayRICS JPA to mitigate any remaining fees. Cost mitigation may require the alteration of a site configuration, proposing a different site, or eliminating a site to control fiscal impacts to the City.

Although the City will bear some project costs, in exchange it will gain regional interconnectivity with an exclusive public safety data network that will not be shared with commercial traffic. The project is an opportunity to launch a regional public safety data network, and when digital voice capability comes to LTE, the system may well become the primary public safety network.

Systems Funding Plan

The Systems Funding Plan was considered pivotal to the establishment of the Authority. This long-range plan was required by the BayRICS JPA Agreement to include the costs of construction, on-going operation and maintenance, and technical and administrative support of the BayWEB system or any other systems that the JPA would own or control. The Systems Funding Plan is required in order to allow members to determine the systems' capability, data speeds, functionality, features, cost, financing, and the expected impacts on the individual members. Members were given 90 days after the draft plan was distributed to provide input to the Board, after which time the Board had to take action to adopt, revise or reject the plan. The draft plan was distributed to the Authority Board on October 18, 2011, to initiate the 90 day review period required under the Agreement. The Authority Board adopted the Systems Funding Plan on January 19, 2012.

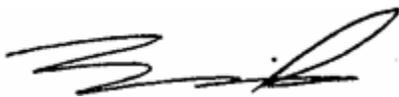
NEXT STEPS

With the concurrence of CTAC, staff requests the City Council approves the City joining the BayRICS JPA (Attachment I) as one of the seven cities in the East Bay cities.

Staff also recommends that the Council authorizes the City Manager to negotiate and execute the Site Access and Use Agreement between the City and Motorola, as modified by the County of Alameda. The Site Access Agreement is the document that will authorize Motorola to access the five designated City sites to make improvements for equipment. The agreement will prohibit the build-out of the Public Access part of the system to prevent an unfair advantage to Motorola in the competitive 4G LTE market.

Prepared and Recommended by: Clancy Priest, Technology Services Director

Approved by:



Fran David,
City Manager

Attachments: Attachment I: Resolution Authorizing the Execution of
BayRICS JPA Agreement and Site Access and Use Agreement
with Motorola
Attachment II: BayRICS JPA Agreement

Cc: Chief Diane Urban, Hayward Police Department
Chief Craig Bueno, Hayward Fire Department
Desi Calzada, Hayward Police Department

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A JOINT POWERS AGREEMENT WITH THE BAY AREA REGIONAL INTEROPERABLE COMMUNICATIONS SYSTEM JOINT POWERS AUTHORITY (BAYRICS JPA) AND A RELATED SITE ACCESS AGREEMENT WITH MOTOROLA SOLUTIONS, INC.

WHEREAS, as a result of the September 11 terrorist attacks, the Bay Area Urban Security Initiative (UASI) was established to promote interoperable communications among first responders, and the Bay Area Regional Communications System Joint Powers Authority (BayRICS JPA) was formed by the ten Bay Area counties and three core cities (San Francisco, Oakland and San Jose) in 2011 to further the Bay Area UASI goal of providing voice and data interoperability throughout the Bay Area; and

WHEREAS, the BayRICS JPA adopted a joint powers agreement in May, 2011, to enable its members to work cooperatively in developing and funding voice and data interoperable systems, including the Bay Area Wireless Enhanced Broadband (BayWEB), a system that contemplates both public safety and public access broadband networks; and

WHEREAS, the BayRICS JPA has collaborated with Motorola Solutions, Inc., to develop and secure federal funding for the BayWEB project and has requested that public entities within the envisioned BayWEB coverage area enter into Site Access Agreements with Motorola for siting the BayWEB system infrastructure; and

WHEREAS, the City is a member of the East Bay Regional Communications Systems Authority (EBRCSA), and EBRCSA has committed to paying the requisite annual membership fees to the BayRICS JPA on behalf of its East Bay city members; and

WHEREAS, it is in the best interest of the City to join the BayRICS JPA and execute the joint powers agreement to promote the safety and security of its residents and the residents of the greater Bay Area; and

WHEREAS, in addition to executing the BayRICS JPA joint powers agreement, it is in the best interest of the City to execute a Site Access Agreement with Motorola in order to benefit from the interoperable capabilities provided by the BayRICS JPA through its BayWEB project for its members' public safety communications systems.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hayward

that the City Manager is authorized to execute the Joint Powers Agreement with the Bay Area Regional Interoperable Communications System (BayRICS), in substantially the form presented in the accompanying staff report, as approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is authorized to negotiate and execute the Site Access Agreement with Motorola Solutions, Inc., in substantially the form presented in the accompanying staff report, and all documents needed to implement the Site Access Agreement, all in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I - GENERAL PROVISIONS

1.01 Purpose.

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

1.02 Creation of Authority.

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

1.03 Eligibility for Membership; Membership.

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

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

1.04 Initial Members Entitled to Appoint Directors.

- (a) Each Appointing Authority identified in subsections 1 through 14 of Section 2.01 is entitled to appoint a Director to the Board only if the public agency which that official or body represents becomes a Member of the Authority within the Initial Membership Period. Appointing Authorities of public agencies identified in subsections 1 through 14 of Section 2.01 which become Members after the Initial Membership Period may be permitted to appoint Directors to sit on the Board only if such appointment authority is expressly approved by the Board.
- (b) Each Appointing Authority identified in subsections 15 through 18 of Section 2.01 is entitled to appoint a Director to the Board only if the required number of cities for that Regional City Group, as set forth in the applicable Exhibit A through D, become Members of the Authority within the Initial Membership Period. If the required number of cities within a Regional City Group do not become Members during the Initial

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

1.05 Effective Date; Term.

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

ARTICLE II - BOARD OF DIRECTORS.

2.01 Composition of the Board.

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

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

2.02 Appointment of Directors.

- (a) Except as provided in Section 1.04, each of the officials or bodies listed in subsections 1 through 14 in Section 2.01 above shall appoint one Director and one Alternate Director to the Board when the public agency that official or body represents becomes a Member. Such officials or bodies shall make reasonable efforts to make the appointments within fifteen days of the date when the agency that official or body represents becomes a Member.
- (b) Except as provided in Section 1.04, each of the Regional Cities Groups listed in subsections 15 through 18 in Section 2.01 above may appoint one Director and one Alternate Director to the Board, when the required number of the cities in the applicable Regional City Group (that specific number set forth on the bottom of the applicable Exhibit A-D) have (i) each delivered to the Secretary a duly approved and executed copy of this Agreement, and (ii) paid one Initial Membership Fee per Section 5.01 on behalf of such Regional City Group. Each of the Directors and Alternate Directors appointed by a Regional City Group shall be from one of the incorporated cities within such Regional City Group that has become a Member, and shall represent the interests of all the cities in its Regional City Group. Each Regional City Group shall make reasonable efforts to appoint its Director and Alternate Director within fifteen days of the date it has satisfied the requirements of subsections (i) and (ii) of this subsection 2.02(b). The City Managers representing the Member cities within a Regional City Group will determine which city will represent the Regional City Group, determine how the Member cities will provide input to the chosen representative Director and Alternate Director, and how the Member cities will share and pay the Initial Membership Fee and the Annual Fee thereafter. Those cities identified in subsections 1 through 3 in Section 2.01 are excluded from participating in, or affecting the membership calculations of any Regional City Group.
- (c) The Board may select a Member or group of Members not otherwise represented on the Board as the Appointing Authority for the Seat at Large under subsection 19 in Section 2.01 (the "At Large Appointing Authority"). The At Large Appointing Authority shall appoint one Director and one Alternate Director to the Board. The Appointing Authority shall make reasonable efforts to appoint its Director and Alternate Director within fifteen days of the date it receives notice of its designation as the At Large Appointment Authority from the Board.
- (d) The Appointing Authority shall promptly provide written notice to the Secretary of the appointment or removal of a Director or Alternate Director. Within seven days of the Secretary's receipt of such notice, the Secretary shall notify all Members of the current number of duly appointed Directors and provide such notice at the beginning of any Board Meeting.
- (e) At the time of appointment and for the duration of service, Directors and Alternate Directors shall be officers or employees of Members.
- (f) The term of office of each Director and Alternate Director shall be until a successor has been appointed, except for the At Large Seat which shall be a two year term.
- (g) An Alternate Director may act in his or her Director's absence and shall exercise all rights and privileges of a Director.
- (h) Each Director and each Alternate Director shall serve at the pleasure of the Appointing Authority and the Appointing Authority may remove the Director or Alternate Director at any time without notice or cause.
- (i) All Directors and Alternate Directors shall serve without compensation. The Board may authorize, through the bylaws, reimbursement of reasonable and necessary expenses incurred by Directors or Alternate Directors upon review of supporting documentation.
- (j) Each Appointing Authority shall authorize its Director and Alternate Director to take all actions necessary to conduct the business required by the Authority in a timely manner.

2.03 General Purpose of Board.

The general purpose of the Board is to:

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

2.04 Specific Responsibilities of the Board.

The specific responsibilities of the Board shall be as follows:

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

2.05 Startup Responsibilities.

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

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

2.06 Meetings of the Board.

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

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

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

2.07 Minutes.

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

2.08 Voting; Weighted Voting.

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

- (a) Each Director shall have one vote; an Alternate Director may vote in place of, and only in the absence of, that Alternate Director's Director.
- (b) Each Director or Alternate Director (as applicable) must be physically present at a meeting to vote; no absentee ballot or proxy is permitted.
- (c) Except as otherwise expressly set forth in this Agreement (including without limitation Sections 2.09, 4.02, 6.04 and 7.02), the Board is authorized to adopt and apply weighted voting methods for approval of items brought before the Board under the following conditions:
 - i. The Board may utilize weighted voting only if it has previously adopted weighted voting criteria and methodologies in the Authority's bylaws;
 - ii. Weighted voting will be the exception, rather than the norm, for the Authority to conduct business;
 - iii. Board items that involve expenditure or commitment of the Authority's funds or other resources must exceed \$500,000 in value to be subject to weighted voting;
 - iv. A Director must expressly move and call for a weighted voting method on a particular item pending before the Board, which motion must be seconded by at least one other Director;
 - v. The call for such weighted vote must be made before or after any vote but prior to moving to the next agenda item or the end of the Board meeting, whichever is earlier; and
 - vi. Any Board item subject to a weighted voting method shall first be approved by a vote of the quorum of the Board (as provided in Section 2.09), followed by a weighted vote. Board items subject to weighted voting must be approved by both a regular quorum vote of the Board as well as a weighted vote of the Board to be approved.

2.09 Quorum; Votes

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

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

2.10 No Personal Liability of Directors.

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

ARTICLE III – OFFICERS, EMPLOYEES AND ADVISORY COMMITTEES

3.01 Chairperson; Vice-Chairperson.

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

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

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

3.02 Treasurer.

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

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

3.03 Auditor.

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

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

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

3.04 Legal Counsel.

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

3.05 Secretary to the Authority.

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

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

3.06 Bonding of Persons Having Access to Property.

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

3.07 Executive Director; Other Employees.

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

3.08 Privileges and Immunities from Liability.

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

3.09 Advisory Committees.

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

ARTICLE IV – POWERS

4.01 General Powers.

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

4.02 Power to Issue Bonds

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

4.03 Specific Powers.

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

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

4.04 Restriction on Exercise of Powers.

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

4.05 Limited Liability of the Authority.

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

ARTICLE V – CONTRIBUTIONS; ACCOUNTS AND REPORTS; FUNDS

5.01 Initial, Subsequent and Annual Membership Fees.

The Authority may use the funds generated by fees charged to its Members to support administrative, legal, and other authorized costs incurred by the Authority.

- (a) **Initial Membership Fee.** To become a Member of the Authority within the Initial Membership Period, each eligible public agency shall pay an Initial Membership Fee as specified below (each such fee, as applicable, the “Initial Membership Fee”).
 - i. Each public agency identified in subsections 1 through 14 in Section 2.01 shall pay an Initial Membership Fee to the Authority of Twenty Four Thousand Five Hundred Dollars (\$24,500) as a condition of appointing its Director and Alternate Director
 - ii. Each Regional Cities Group identified in subsections 15 through 18 in Section 2.01 shall pay a single Initial Membership Fee to the Authority of Twenty Four Thousand Five Hundred Dollars (\$24,500) for the group as a whole, which will enable each of the cities within the Regional City Group to obtain membership status upon satisfying the other requirements of this Agreement. If an eligible city has paid an Initial Membership Fee of Five Thousand Dollars (\$5,000.00) because the required number of cities within its Regional City Group did not become Members within the Initial Membership Period, its payment shall be credited toward the applicable Regional City Group’s Subsequent Membership Fee, as defined in Section 5.01(b).
 - iii. Except as otherwise set forth above, public agencies eligible to become Members, but not specifically identified in subsections 1 through 14 in Section 2.01 shall pay an Initial Membership Fee to the Authority of Five Thousand Dollars (\$5,000.00) as a condition of becoming Members.
- (b) **Subsequent Membership Fee.** Each eligible public agency applying to become a Member after the Initial Membership Period, whether or not identified in Section 2.01, shall pay a Subsequent Membership Fee as a condition to becoming a Member (each such fee, as applicable, hereinafter a “Subsequent Membership Fee”). The Board shall determine the amount of each Subsequent Membership Fee, but in no event shall it be less than the Initial Membership Fee the public agency would have been required to pay to become a Member within the Initial Membership Period.
- (c) **Annual Fee.** Each Member shall pay an Annual Fee, by not later than July 1st of each Fiscal Year to maintain membership in the Authority (each such fee, as applicable, hereinafter, the “Annual Fee”). The Board shall set each Annual Fee in an amount not to exceed the Initial Membership Fee or Subsequent Membership Fee, as the case may be, paid by the respective Member; however, the Board may adjust the Annual Fee each Fiscal Year to reflect changes in the Consumer Price Index. The Board shall round the adjusted Annual Fee to the nearest whole dollar. A Member is not required to pay its first Annual Fee if the Member paid its Initial or Subsequent Membership Fee, as applicable, within six months of its first Annual Fee due date.

5.02 Adoption of Systems Funding Plan.

- (a) A goal of the Authority is to develop the Systems Funding Plan as specified in Sections 2.04(d) and 2.05(d). The Board shall not approve any agreement for construction of or relating to any Systems until the Board has approved a Systems Funding Plan.
- (b) Before the Board may consider adopting the Systems Funding Plan, it shall distribute the proposed Systems Funding Plan to the Members under Section 7.01. The proposed Systems Funding Plan shall be accompanied by a description of the Systems, and information to allow Members to determine the Systems' capability, data speeds, functionality, features, cost, financing and the expected impacts on individual Members. The Board shall designate a period, which shall not be less than ninety days, during which Members may provide comments to the Board regarding the proposed Systems Funding Plan. After the comment period has expired, the Board may:
- (c) Adopt the Systems Funding Plan as proposed;
 - i. Revise the Systems Funding Plan to address some or all of the Member comments;
 - ii. Reconsider the Systems Funding Plan at a later date; or
 - iii. Reject the Systems Funding Plan.
- (d) The Board shall give notice to Members under Section 7.01 within five days of adoption of the Systems Funding Plan (the actual date such notice is provided to members, the "Systems Funding Plan Notice Date"). The notice shall include a copy of the adopted Systems Funding Plan and the date by which Members may withdraw pursuant to Section 6.01(a).
- (e) If the Board decides to exercise its option under Section 5.02(b)(ii) to revise the Systems Funding Plan to address Member comments and the Board adopts a revision that changes any Member's financial obligation from the previous version of the Systems Funding Plan, the thirty day time period specified in Section 6.01(a) for withdrawal from the Authority shall automatically be extended to ninety days from the Systems Funding Plan Notice Date.

5.03 Additional Contributions; Disproportionate Impact.

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

- (a) Require any Member to adopt any tax, assessment, fee or charge;
- (b) Require any Member to expend its resources, or utilize its property or equipment in a particular fashion, as part of a project or similar action taken by the Authority; and/or
- (c) Approve a project or similar action without taking into consideration whether that action would disproportionately and negatively impact any Member based on objective and quantifiable factors.

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

5.04 Accounts and Reports.

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

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

5.05 Funds.

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

5.06 Use of Spectrum.

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

5.07 Operational and Technical Policies.

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

5.08 System Components

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

5.09 Non-Member Use of Systems.

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

ARTICLE VI – WITHDRAWAL AND TERMINATION

6.01 Withdrawal by Members.

Members may withdraw from the Authority as follows:

- (a) Within thirty days of the Systems Funding Plan Notice Date, as such period may be extended pursuant to the provisions in Section 5.02(d) (“Initial Withdrawal Period”), a Member shall submit written notice to the Chairperson and Secretary of its withdrawal from the Authority, which withdrawal notice shall be effective immediately. Such withdrawing Member will not incur any additional financial obligations as a result of membership in the Authority during such Initial Withdrawal Period; provided, that the initial Annual Fee or any Annual Fee paid by such withdrawing Member prior to withdrawal will not be returned.
- (b) After the Initial Withdrawal Period, a Member that did not provide System Components (except end-user equipment) shall provide to the Chairperson and Secretary written notice of its withdrawal from the Authority which withdrawal notice shall be effective immediately; provided, that any Annual Fee already paid will not be returned to such withdrawing Member;
- (c) After the Initial Withdrawal Period, a Member that provided System Components (except end-user equipment) shall provide to the Chairperson and Secretary twelve months advance written notice of its withdrawal from the Authority, which withdrawal shall be effective at the end of the notice period or earlier as permitted by the Board; provided, that any Annual Fee already paid will not be returned to such withdrawing Member
- (d) If withdrawing under Section 6.01(c), a Member that provided System Components shall be required to pay a withdrawal payment. Such withdrawal payment shall be determined through a good faith negotiation between the withdrawing Member and the Authority, and shall be in an amount approved by the Board. The purpose of the withdrawal payment is to require the Member to cover the Authority’s actual and direct expenses reasonably related to the withdrawal including, but not limited to, equipment relocation fees, leasing, and permit fees relating to System Components that the Member had dedicated to supporting the Systems, as well as related administrative costs and professional services fees. The withdrawing Member may mitigate this withdrawal payment by entering into an agreement for the Authority’s continued use of the Member’s assets, as described in Section 6.03. If the parties are unable to reach an agreement on the amount of the withdrawal payment, the parties shall mutually choose a neutral third party who shall be authorized to make such a determination and resolve the matter.
- (e) If a withdrawing Member is an Appointing Authority to the Board, such Member shall lose its appointing authority and seat on the Board as of the date such Member gives notice of its withdrawal.
- (f) If the withdrawing Member is a City within a Regional City Group, and the withdrawal of that Member reduces the number of Members in that Regional City Group below the threshold required to appoint a Director, as specified in Section 2.01 and the applicable Exhibit A through D for that Regional City Group, then such Regional City Group shall lose its Appointing Authority and seat on the Board effective as of the date the Member gives notice. If one or more additional cities from within such Regional City Group become Members of the Authority, such that the required number of cities within that Regional City Group are Members for purposes of appointing a Director, as specified in the applicable Exhibit A through D, the Regional City Group shall regain its ability to appoint a Director to the Board.

6.02 Financial Liabilities of Withdrawing Members.

Except as otherwise provided in Section 5.02:

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

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

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

6.03 Retention of Assets by Withdrawing Members.

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

6.04 Termination of Authority; Disposition of Authority Assets.

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

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

ARTICLE VII – MISCELLANEOUS PROVISIONS

7.01 Notices.

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

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

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

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

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

7.02 Amendment.

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

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

7.03 Fiscal Year.

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

7.04 Consents and Approvals.

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

7.05 Incorporation of Act.

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

7.06 Enforcement of Authority.

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

7.07 Severability.

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

7.08 Successors.

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

7.09 Assignment.

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

7.10 Governing Law.

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

7.11 Headings.

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

7.12 Counterparts.

This Agreement may be executed in counterparts.

7.13 No Third Party Beneficiaries.

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

7.14 Filing of Notice of Agreement or Amendment.

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

7.15 Conflict of Interest Code.

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

7.16 Indemnification.

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

7.17 Dispute Resolution/Legal Proceedings.

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

7.18 Non-Waiver.

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

7.19 Complete Agreement.

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

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

City of Oakland

Signature

Name/Title

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

City of San Francisco

Signature

Name/Title

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

City of San Jose

Signature

Name/Title

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

County of Alameda

Signature

Name/Title

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

County of Contra Costa County

Signature

Name/Title

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

County of Marin

Signature

Name/Title

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

County of Napa

Signature

Name/Title

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

County of San Francisco

Signature

Name/Title

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

County of San Mateo

Signature

Name/Title

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

County of Santa Clara

Signature

Name/Title

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

County of Santa Cruz

Signature

Name/Title

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

County of Solano

Signature

Name/Title

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

County of Sonoma

Signature

Veronica Ferguson, County Administrator _____
Name/Title

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

State of California

Signature

Name/Title

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

Exhibit A

List of East Bay Cities

Alameda County Incorporated Cities

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

Contra Costa County Incorporated Cities

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

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

Exhibit B

List of West Bay Cities

San Mateo County Incorporated Cities

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

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

Exhibit C

List of South Bay Incorporated Cities

Santa Clara County Incorporated Cities

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

Santa Cruz County Incorporated Cities

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

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

Exhibit D

List of North Bay Incorporated Cities

Marin County Incorporated Cities

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

Napa County Incorporated Cities

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

Sonoma County Incorporated Cities

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

Solano County Incorporated Cities

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

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