

# Memorandum

**TO: HONORABLE MAYOR &  
CITY COUNCIL**

**FROM:** Michelle McGurk  
Deanna J. Santana

**SUBJECT: PUBLIC SAFETY  
BROADBAND PROJECTS**

**DATE:** December 10, 2010

Approved

*Chuck Reed*

Date

*12/10/10*

Approved

*Adam S. S. S.*

Date

*12/10/10*

## RECOMMENDATION

- (a) City Council consideration of a request from the Alameda County Sheriff's Office to participate in a public safety broadband project in partnership with Motorola, Inc.
- (b) Staff recommends the City Council approve Policy Alternatives 2 and 3, as noted in the report:
  - (1) Ask the National Telecommunications and Information Agency to reallocate the funds to the Bay Area cities and counties; and,
  - (2) Adopt a position of Support for the concept of regional interoperability for public safety communications, along with Guiding Principles for participation in a regional public safety interoperable broadband project.

## BACKGROUND

San José has a long history of support for improvements to the communications systems for police, fire, and other first responders. Whether it is the possibility of a major earthquake or other natural disaster, or the potential of an attack on Silicon Valley's vital high-technology, defense, and economic infrastructure, our region has long been at risk. Over the past two decades, we have learned how critical it is for public safety agencies to be able to communicate in times of emergency. San José knows well that disasters don't stop at the city limits or county line.

This memo provides some information on two recently developed grant programs that are intended to advance regional interoperability for public safety communications (e.g., Project Cornerstone and Broadband Technology Opportunity Program) and relays information, as available to staff, on these two efforts that have been generally led by the Urban Area Security Initiative staff.

### ***Urban Area Security Initiative***

The City of San José was one of three Bay Area cities, along with three Bay Area Counties, involved in the creation of the Urban Area Security Initiative (UASI). This organization was created in 2006 through a Memorandum of Understanding between the County and City of San Francisco, County of Alameda, County of Santa Clara, City of Oakland, and City of San José.

The Bay Area UASI receives funding through the federal Department of Homeland Security and redistributes it to the 10 Bay Area Counties and the three core cities. The agency is governed by an Approval Authority which includes voting board members from the three core cities of Oakland, San Francisco and San José, and the counties in which they are located, Alameda, San Francisco and Santa Clara. The Regional Administrator for the California Office of Emergency Services Coastal Region is also a member. The current Approval Authority members are:

**Table 1: UASI Approval Authority Members**

<b>Name</b>	<b>Title</b>	<b>Organization</b>
Renee Domingo	Director of Emergency Services	City of Oakland
Scott Frizzie	Director of Regional Operations	CalEMA
Vicki Hennessy (Chair)	Director	City of San Francisco DEM
Kirstin Hofmann	Director of Emergency Services	Santa Clara County OES
Rich Lucia	UnderSheriff	Alameda County Sheriff's Department
Monica Fields	Deputy Chief of Administration	City of San Francisco Fire Department
Teresa Reed	Assistant Fire Chief	San José Fire Department

The Approval Authority provides policy direction to the program and is responsible for final decisions regarding projects and funding. An Advisory Group composed of representative Command Staff for the 10 Bay Area Counties, the three core cities and Coastal OES makes policy and programmatic recommendations to the Approval Authority and provides input into the planning process.

### ***Regional Interoperable Grant Programs***

There are two key projects that are related to federal grant programs: (1) Broadband Communications Project (also known as Project Cornerstone) and (2) Broadband Technology Opportunity Program (BTOP). Below is additional information on each of the projects:

#### ***(1) Project Cornerstone***

Project Cornerstone is an Urban Area Security Initiative (UASI) FY2009 Broadband Communications Project. Draft minutes for the East Bay Regional Communications System Authority (dated July 9, 2010) reflect the following project description by the UASI General Manager, "*Project Cornerstone represents an opportunity to build out a 10 site Long Term*

*Evolution (LTE) broadband network with 4 sites in San Francisco, 3 sites in Contra Costa County, and 2 sites in the South Bay at a cost of \$5,588,794. Eventually, BayWEB will cover 193+ broadband sites. There is a short time frame for deployment of the Pilot Project."*

As background, in 2009, the UASI Approval Authority allocated \$2 million each to the cities of San José, Oakland, and San Francisco to support subregional pilot broadband data communication projects. In early 2010, the UASI General Manager reallocated those funds without seeking approval from the Approval Authority and consolidated them into one project benefiting San Francisco, Alameda County, and the cities of Sunnyvale and Santa Clara. To our knowledge, San José's \$2 million was redirected without any formal Approval Authority action.

As we have learned, UASI staff or the General Manager later named this "Project Cornerstone" and represented it as a pilot effort in order to support the application for BTOP funds, without seeking approval from the Approval Authority or formally advising the City of San José that its funds had been redirected. Further, to identify vendors for this pilot effort, the UASI issued an extensive Request for Information (RFI); however, it appears that the current Project Cornerstone and the project described below have changed significantly from the RFI's project description or assertions.

## ***(2) Broadband Technology Opportunity Program (BTOP)***

The second is the project funded by the Broadband Technology Opportunity Program (BTOP), which is a U.S. Department of Commerce grant program. Upon implementation, this project would result in a regional public safety broadband system. In September 2010, Motorola received a grant in the amount of \$50.6 million from the Department of Commerce to implement this project. As we currently understand, Project Cornerstone is a pilot project and part of the greater BTOP effort.

While the City of San José has tried to obtain information about the scope of this project and, specifically, information pertaining to how it would fiscally impact the City of San José, these efforts have not been completely successful. Below is some key information for the City Council that staff has learned through review of meeting minutes, discussion with other public agencies; Public Records Act requests, Freedom of Information Act requests, and through our Approval Authority representative:

- **Waiver for the 700 MHz Spectrum**—City staff advocated at the federal level for a public safety allocation of a portion of the 700MHz spectrum. San José is one of the three Bay Area cities (e.g., San Francisco and Oakland) that petitioned the FCC to grant a waiver for use of this spectrum. Obtaining this waiver would allow these cities to in turn work with the other Bay Area local governments to seek BTOP funding made available through the Recovery Act. City staff has learned that a lease document was approved by the Public Safety Spectrum Trust (PSST), who is the leasing agent for the FCC, with an entity called the San Francisco Bay Area Urban Region, signed by Alameda County Sheriff Gregory J. Ahern, with the staff contact listed as the UASI General Manager. The FCC also granted an experimental license on behalf of the San Francisco Bay Area Urban Region for the first phase of the project (Project Cornerstone). So far, despite numerous requests, no one has produced any record

demonstrating that the Sheriff had any authority to participate in the waiver process or accept the lease of the spectrum on behalf of the three cities that had petitioned for the waiver. These actions have essentially resulted in the loss of the City's rights to a waiver for the use of this spectrum. City staff is still trying to obtain information about: the governing authority of the San Francisco Bay Area Urban Region; who/what it represents; its governance model (e.g., bylaws, board, etc); and any other pertinent information that might have legally authorized the Sheriff to act and execute documents on behalf of the three Bay Area cities that successfully petitioned the FCC to grant a waiver for the use of this spectrum.

- **Request for Proposals**—On September 29, 2009, UASI staff issued an RFI seeking potential participants in a later public procurement for a build-out of a regional system. The RFI stated "The Bay Area will not award a long term contract based on this RFI" and that the RFI would not be used for procurement purposes.

Nevertheless, on February 1, 2010, UASI staff e-mailed the responders to the RFI with the following query: "With Round 2 of the Broadband Technology Grant Program announced, we are looking at possible proposals for partnerships to build out the Bay Area Public Safety 700 MHz Broadband System. Those vendors willing to engage in a public private partnership with the Bay Area for this grant opportunity should address the following issues within their proposals..." This e-mail was later labeled a Request for Proposals (RFP), with no approval from the Approval Authority and contrary to the RFI provision that stated that the RFI would not be later used for procurement.

This request was not opened to the broader telecommunications and wireless industry, nor was it posted online per City and County of San Francisco procurement guidelines. According to the UASI website: "The UASI Management Team, with input from the working groups, will develop RFPs for contracts when necessary to complete a project. The CFO [*Chief Financial Officer*] will be the POC [*Person of Contact*] for the RFP process and the recipient of all of the submissions. The Management Team will facilitate selections committees based on subject matter expertise from within the regional stakeholders. The Management Team will recommend the selection of contractors to the Approval Authority based on the rating of the selection committees. The Contract process will follow the rules of the CCSF, as the fiscal agent, and the Grants Managers will coordinate the contracting process with the Project Manager, the vendor and the City Attorney."

- **Executive Sponsor Selection**—As we understand, the UASI General Manager and staff asked the Alameda County Sheriff to serve as the "executive sponsor" and fiscal agent for the broadband grant. The UASI Approval Authority did not have an opportunity to vote on a change of fiscal agent, nor to participate in the selection of an Executive Sponsor.
- **RFP/Public-Private Partnership**—The UASI General Manager and staff conducted a review session in late February 2010, after which Motorola was selected to be the public-private partner for the broadband project. The Approval Authority was not informed, nor did it have an option to vote on the public-private partnership at its March 18 meeting.

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- **BTOP Application Submittal**—In March 2010, the Bay Area UASI Management Team participated with Motorola to submit a BTOP application to the FCC. In the application, the City of San José was listed as a participant. However, critical details were not provided to City staff, including: operational goals, system design, equipment site requirements, site access authority, system coverage, operating costs, expansion plans, governance structure, process for the transfer of this system to public agencies, and public access.
- **BTOP Letters of Support**—In March 2010, UASI staff asked San José to provide a letter of support for a grant application for a regional public safety broadband system that would be funded by the Department of Commerce's National Telecommunications and Information Agency's (NTIA) BTOP program. San José staff, along with the Silicon Valley Regional Interoperability Project (SVRIP) Executive Director, asked several questions about the nature of the grant proposal and was assured by UASI staff and/or General Manager that more information would be forthcoming. On the basis of these assurances, Mayor Chuck Reed signed a generic letter of support for a grant application by the Bay Area UASI. San José was not informed that Motorola was the grant applicant. Additionally, in June 2010, UASI staff asked the City of San José to submit a second letter to the NTIA stating that, if a grant award was successfully issued to Motorola, the City would negotiate in good faith to enter into the requisite lease agreements with the PSST. The City also was asked to include support for the Alameda County Sheriff as the fiscal agent for this grant, but was unwilling to make this statement. At the time, UASI staff had provided little information about the proposed project and had canceled the May and July meetings of the Approval Authority. The desire to be supportive of the concept of regional public safety broadband, resulted in the carefully worded letter from the Office of the City Manager (Deputy City Manager Deanna Santana) (Attachment A).

In September, the Department of Commerce awarded Motorola a \$50.6 million BTOP grant. Since then, Mayor Reed and Santa Clara County Executive Jeff Smith have led an effort to discern the facts about the \$50.6 million BTOP-funded Bay WEB project and the \$6 million partner effort, Project Cornerstone. Additionally, while City staff understands that the grant application represented that a governance structure was in place to advance these efforts and had given approval to the public-private partnership, e.g., BayRICS Policy Group, it is clear from staff's attendance at recent meetings that a governance structure is not in place. From our review, we determined that no public body has voted on this procurement or partnership.

**ANALYSIS**

Alameda County Sheriff Ahern has requested that Bay Area cities and counties express their intent to participate in the BTOP-funded broadband project by the close of business on Wednesday, December 15, 2010. The request included an exemplar "Letter of Intent to Affirm Participation in the Broadband Technology Opportunity Program Grant Project" (Attachment B). The document contains the following:

- (1) Express intention to participate in the San Francisco Bay Area Urban Area Broadband Technology Opportunity Program (BTOP) grant;
- (2) Does not financially bind any jurisdictions beyond the good faith representation;
- (3) Reaffirm the region's commitment to the BTOP project;
- (4) Requests, "Minimally, a response is requested from the ten counties and three core cities in the Bay Area Urban Area."

As background, on December 7, a meeting was held at the Alameda County Emergency Operations Center to discuss the current status of the next steps for the BTOP. Alameda County Sheriff staff represented that the NTIA has issued direction to immediately demonstrate a commitment to the project first verbally, no later than the close of business on December 8, 2010 (the request allowed for e-mail to demonstrate verbal intent). The City of San José responded by expressing its commitment in concept, but also stated that an action of this significance required the full City Council's formal action (Attachment C). The County of Santa Clara responded via e-mail as well (Attachment D).

### *Areas of Concern*

As noted, over the past few months, the cities of San José and Oakland and the County of Santa Clara have all raised concerns about the actions taken by UASI staff without Approval Authority action. Staff has attached additional key documents that support our efforts (Attachment E). Areas of concern rest in three primary areas:

- I. **Misrepresentation:** With the limited information that staff has obtained, it appears that there were numerous and significant inaccuracies and misrepresentations in the BTOP grant application and related documents and submittals prepared by Motorola, Bay Area UASI and Alameda County Sheriff's Office. For instance:
  - The BayRICS Policy Group, represented as the fully operational governing mechanism for implementation of the BTOP grant, in fact did not exist when the grant application was submitted and still has not developed any formal governance structure. There is no legal commitment from many of the BayRICS agencies to participate in the project. The request before the City Council today is action that should have happened prior to the grant application being submitted.
  - Key UASI Management Team members, including the General Manager who developed the deal with Motorola, are former Motorola employees who should have removed themselves from participation.
  - The negotiation of a spectrum lease to enable this project to use FCC-authorized frequencies was undertaken by an entity and signed by an individual who was not a party to the waiver and who apparently did not have authority to enter into a lease agreement.

2. ***Lack of Transparency:*** There was an inadequate and questionable “partner” selection and procurement process for the BTOP Grant and Project Cornerstone.
- The decision to partner with Motorola, enabling the company to receive \$50.6 million in BTOP funding, was a de facto sole source award contrary to typical local government procurement policies. Based on information that staff has reviewed, it appears that the \$6 million sole source award to Motorola of the related Project Cornerstone was coordinated, supported and highly influenced by the UASI General Manager. These actions should not have been taken without Approval Authority approval.
  - Accurate and sufficient information regarding project costs(s), system capabilities, contractual obligations and relationships has been denied to the local government participants, who need to make informed decisions regarding participation obligations, costs, and local impact.
  - Although the UASI General Manager states that the BTOP is not a UASI program, significant UASI staff resources have been and continue to be assigned to support the BTOP grant application and project implementation. The UASI General Manager made these assignments without the knowledge or approval of the Approval Authority. In fact, Project Cornerstone is supported by UASI funds and constitutes the first phase of BTOP; therefore, it should be considered a UASI project unless directed otherwise by the Approval Authority. The Approval Authority has been denied the opportunity to be involved, informed, or to take formal action on this matter while its grant funds are being used and redirected to support this effort.
  - Unless modified, these awards would lock our city and region into a sole source vendor relationship for a 10-year period of time or longer. Under this arrangement, cost control by local government is very limited and cost transparency – thus the ability to judge cost legitimacy – would be controlled by Motorola.
3. ***Project Scope and Cost.*** The City has made several records requests to gather information about the Motorola project design and costs and, to date, has not been able to receive complete information that allows for staff to properly guide the City Council’s decision-making process. This is troubling as staff continues to learn through teleconferences, meetings, and receipt of information that:
- It appears now that local agencies will be required to use their own General Fund dollars to make sites ready for installation of the project. This information was never shared with public agencies prior to the grant submission.
  - Ongoing obligations for maintenance of the project is significant - again a General Fund obligation that was never shared. The full costs are not known at this time.

## **POLICY ALTERNATIVES**

In order to continue to demonstrate conceptual commitment to a regional interoperable public safety broadband system, staff has developed the following alternatives for the City Council to consider:

### ***Policy Alternative #1. Execute a Letter of Interest.***

**RESULT:** City of San José demonstrates that it is interested in the BTOP, but does not have sufficient information to affirm the areas that are requested at this time. If this option is selected, the City of San José needs to clearly express that it intends to be a participant in all BTOP planning, governing, meetings, etc. and, if denied, the Alameda County Sheriff's Office should substantiate its authority to exclude the City.

### ***Policy Alternative #2. Ask the NTIA to reallocate the funds to the Bay Area cities and counties***

**RESULT:** The City Council could ask the NTIA to reallocate the funds to the Bay Area cities and counties to conduct a fair and unbiased procurement process, which is what other regions in the country are doing with their BTOP dollars. The City of San José and County of Santa Clara originally attempted to suspend the grant award, but the NTIA denied this request. It is doubtful that the NTIA would respond to such a request, but it does demonstrate our effort to ensure that an appropriate procurement process is undertaken to advance a regional interoperable public safety broadband system.

### ***Policy Alternative #3. Adopt a Support Position.***

**RESULT:** Decline to sign a Letter of Intent, adopt a position of support for the concept of regional interoperability for public safety communications, and adopt Guiding Principles for participation in a regional public safety interoperable broadband project. If this option is selected, the City of San José needs to clearly express that it intends to be a participant in all BTOP planning, governing, etc. meetings and, if denied, the Alameda County Sheriff's Office should substantiate its authority to exclude the City.

Staff recommends this Policy Alternatives 2 and 3. Below are proposed Guiding Principles for the City Council to consider:

**Guiding Principles:** The San José City Council supports the development of regional interoperable communications options for our public safety first responders. Ensuring the safety of the public we serve is our top priority and duty as a City. Any system that is developed must be done in a way that puts public safety first and takes into account the fiscal realities that California cities and counties face. Those developing the system, both from the public and private sector, must act with commitment to honesty, fiscal responsibility, and open government.



1. The decision to enter into public-private partnerships or procure a system will be done through accepted government procurement processes with decisions made through the appropriate governing body. Every aspect of financial benefit to the vendor as well as every cost to each municipality shall be fully disclosed and available.
2. Critical details including operational goals, system design, equipment site requirements, site access authority, system coverage, operating costs, expansion plans, governance structure, process for transfer of system to public agencies, and public access will be provided to cities, counties, and special districts prior to decisions being made.
3. Governing bodies and program staff will comply with state and local laws about procurement, sunshine, outside employment, conflicts of interest, and public meetings, including the Ralph M. Brown Opening Meetings Act.
4. The system will be developed using standards of open source equipment and true interoperability. The system will not require local agencies to purchase equipment with a specified vendor. System specifications will not be written in a way to exclude equipment providers.

#### **PUBLIC OUTREACH/INTEREST**

- **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

In staff's opinion, all of the above criterion could apply. This is the first public meeting by the City Council on this topic.

#### **COORDINATION**

This memorandum has been coordinated with the Office of the City Attorney.

#### **COST SUMMARY/IMPLICATIONS**

As noted in this report, this information is not known at this time. Staff continues to try to obtain information to formally advise the City Council of fiscal implications.

**CEQA**

Not a Project, PP10-066(a), Agreements. Additional environmental clearance would be needed if the implementation of this effort would result in a physical change to the environment.



MICHELLE McGURK  
Mayor's Senior Policy Advisor



DEANNA J. SANTANA  
Deputy City Manager

Attachments:

Tab	Attachment
A	Deputy City Manager Deanna Santana's letter to NTIA dated June 7, 2010
B	Alameda County Sheriff Gregory J. Ahern's request and "Letter of Intent"
C	Mayor Chuck Reed's Letter to Sheriff Gregory J. Ahern dated December 8, 2010
D	County Executive Director Jeff Smith's E-mail to Sheriff Gregory J. Ahern dated December 8, 2010
E	Correspondence demonstrating City of San José and County of Santa Clara's due diligence to obtain information about Project Cornerstone and BTOP.

June 7, 2010

Mr. Joseph Bissonnette  
Communications Policy Advisor  
Broadband Technology Opportunities Program  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

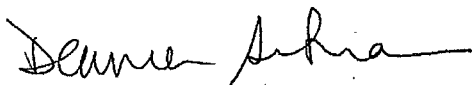
Re: *The San Francisco Bay Area Wireless Enhanced Broadband Project (BayWEB)*,  
Easygrants ID: 7309

Dear Mr. Bissonnette:

This letter is submitted in support of the above-referenced application by Motorola, Inc. ("Motorola") under the Broadband Technology Opportunities Program ("BTOP") and responds to your email of May 27, 2010 to Mr. Derek Phipps of Motorola.

If this application is successful and Motorola is awarded the BTOP grant funds, the City of San Jose (the "City") plans to participate in the BayWEB project. More specifically, the City will negotiate in good faith to enter into the requisite lease agreement with the Public Safety Spectrum Trust Corporation ("PSST") so that the 700 MHz spectrum may be used for the public safety system described in Motorola's BTOP application.

Sincerely,



Deanna J. Santana  
Deputy City Manager

CC: Rob Davis, Chief of Police  
Diane Urban, Deputy Chief, Bureau of Technical Services  
Teresa Reed, Assistant Fire Chief  
Chris Godley, OES Director

**Santana, Deanna**

**From:** The Office of Mayor Chuck Reed  
**Sent:** Tuesday, December 07, 2010 6:30 PM  
**To:** Furman, Pete; McGurk, Michelle  
**Subject:** FW: BTOP Intent to Participate  
**Importance:** High  
**Attachments:** LETTER OF INTENT TO PARTICIPATE IN BTOP.docx

Hello,  
 Please see the below message regarding a partnership with Motorola.  
 Thanks,  
 -Sara

**From:** Kozicki, David A., Sheriff [mailto:DKozicki@acgov.org]  
**Sent:** Tuesday, December 07, 2010 5:17 PM  
**To:** Honda, David; 'Gordon, Ken'; 'crolanos@co.sanmateo.ca.us'; ocop@oaklandnet.com; barry.fraser@sfgov.org; Bert Hildebrand (bert.hildebrand@scc.org); Bijam Karimi (bkarimi@co.marin.ca.us); wcogbill@sonoma-county.org; Chris Flatmoe (cflatmoe@co.sanmateo.ca.us); Chris.vein@sfgov.org; christopher.moore@sanjose.ca.gov; The Office of Mayor Chuck Reed; cityadministrator@oaklandnet.com; twa@cao.cccounty.us; djohnson@ci.sunnyvale.ca.us; Dennis Smiley (dsmiley@sonoma.county.org); dkoford@co.napa.ca.us; Jeff.smith@ceo.sccgov.org; ewoo@doit.cccounty.us; 'frank.damiano@sheriff.sccgov.org'; emily.harrison@ceo.sccgov.org; gstanton@solanocounty.com; gmunks@co.sanmateo.ca.us; Ahern, Gregory, Sheriff; hjordan@oaklandnet.com; Jean Donaldson (jean.donaldson@countyofnapa.org); John Hirokawa (john.hirokawa@sho.co.scl.ca.us); Strassel LJ-care80; So.website@sho.co.scl.ca.us; lindley.zink@Sheriff.sccgov.org; Jimenez, Melanie; eileen\_hirst@ci.sf.ca.us; michelle.geddes@sfgov.org; Mike Del Fair (ISD610@co.santa-cruz.ca.us); rdomingo@oaklandnet.com; rnavarro.co.marin.ca.us; snelson@co.marin.ca.us; slodge@santaclaraca.gov; Steve Dupre (sdupre@co.sanmateo.ca.us); Vicki.Hennessy@sfgov.org; mwqmo@so.cccounty.us; 'michael.connolly@sfgov.org'; 'frank.damiano@sheriff.sccgov.org'; Bijam Karimi (bkarimi@co.marin.ca.us); barry.fraser@sfgov.org; Baig, Ahsan; 'shf227@co.santa-cruz.ca.us'; Domingo, Renee  
**Cc:** 'atilles@shulmanrogers.com'; McCammon, Bill, ACFD; Lucia, Rich, Sheriff; Houghttelling, Dennis, Sheriff  
**Subject:** BTOP Intent to Participate  
**Importance:** High

To All,

The purpose of this email is to request your expressed intention to participate in the San Francisco Bay Area Urban Area Broadband Technology Opportunity Program (BTOP) grant. As you should recall, this grant-funded effort involves a public-private partnership between participating government entities and Motorola. You are receiving this email because you are believed to have authority to authorize an intention to participate in the program or you attended the recent meeting and agreed to seek authorization from the appropriate person. On Tuesday, December 7, 2010, a meeting was held at the Alameda County Emergency Operations Center to discuss the current status and next steps for the BTOP. It was explained to those attending the meeting that in order for the project to move forward, some preliminary formal commitment needs to be received from potential users of the technology

The National Telecommunications and Information Administration (NTIA) is funding this project. They have given us direction that we need to immediately demonstrate a commitment to the project first verbally, no later than the close of business on Wednesday, December 8, 2010, and in the form of written letters no later than Wednesday December 15, 2010. For purposes of process, an email sent in reply to this email will demonstrate your verbal intent to participate in the BTOP project. A proposed draft letter of intent has been attached to assist you in the written requirement. Unfortunately, a failure to respond to this request will indicate the intention NOT to participate in the BTOP at this time. Once your expressed intent to participate is received you will then have an opportunity to participate in meetings, in the formation of governance, and the negotiation/review of an overarching Build, Own, Operate, and Maintain (BOOM) agreement with Motorola. You will also be able to negotiate your individual participation agreement regarding use of the system, and, if applicable, for the system to use your identified communication sites.

12/9/2010

**ATTACHMENT B**

The next meeting for the BTOP governance group will be held at the Alameda County Office of Emergency Services on Friday, December 17, 2010 at 12:00 PM. The Office is located at 4985 Broder Blvd, Dublin, CA 94568. It is important that you or your representative come to the meeting with authority to delegate membership to the negotiating team that will complete the negotiations of the BOOM agreement with Motorola. We are looking for membership on the team to include legal, business, technical, and management personal from a representative cross section of the area.

Your prompt reply will be greatly appreciated.

David Kozicki  
Alameda County Sheriff's Office  
Office of Emergency Services and Homeland Security

**LETTER OF INTENT TO AFFIRM PARTICIPACION IN THE BROADBAND  
TECHNOLOGY OPPORTUNITY PROGRAM GRANT PROJECT**

Public Safety representatives from the Bay Area Urban Area have been working together with Motorola, Inc. to establish a regional interoperable public safety 4G Long Term Evolution (LTE) broadband system to serve the region. The Broadband Technology Opportunity Program (BTOP) was made possible through a Federal grant, awarded to Motorola, Inc., by the National Technology and Information Administration (NTIA).

Several meetings have been held with representatives from the region to discuss governance and the development of a Build Own Operate and Maintain (BOOM) agreement with Motorola, Inc. The NTIA has asked that the region reaffirm their commitment and intent to participate in this project by immediately signing "Letters of Intent." Minimally, a response is requested from the ten counties and three core cities in Bay Area Urban Area.

To ensure that the NTIA will continue to support this endeavor and make funding available for this project, it is necessary to affirm or disaffirm your agency's participation in this project immediately. This "Letter of Intent" does not financially bind any jurisdiction beyond the good faith representation; however, it is necessary to reaffirm the region's commitment to the BTOP project.

THEREFORE BE IT RESOLVED THAT:

The City/County or Special District of \_\_\_\_\_ supports the development of, and is interested in participating in the Broadband Technology Opportunity Program.

The City/County or Special District of \_\_\_\_\_ also understands that signing this Letter of Intent does not substantially obligate the City/County or Special District financially.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Agency: \_\_\_\_\_

Date: \_\_\_\_\_

December 8, 2010

Mr. Gregory J. Ahern, Alameda County Sheriff  
Lakeside Plaza, 1401 Lakeside Drive, 12<sup>th</sup> Floor  
Oakland, CA 94612-4305

Dear Sheriff Ahern,

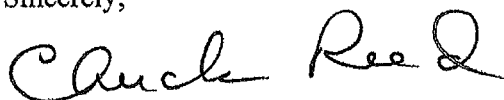
I am in receipt of the communication from your office (email from Commander David Kozicki dated December 7, 2010) to the various local government and public safety representatives providing a deadline to commit verbally to the BTOP-funded Bay WEB project "first verbally, no later than the close of business on Wednesday, December 8, 2010, and in the form of written letters no later than Wednesday December 15, 2010."

San Jose remains committed in concept to a regional, interoperable public safety broadband system. Public safety is my Number 1 priority. However, we also are committed to transparency, fiscal responsibility and open government. For those reasons, San Jose's Rules and Open Government Committee today placed your request on the City Council agenda for Tuesday, December 14.

Normally San Jose requires that staff reports be posted and available to the public for review with ten days of sunshine. The deadline you have set will require a waiver of sunshine under our city's open government policies, but the decision you have asked me to make is too critical to not have the input of our City Council. Indeed, I believe that no government official can sign your letter of intent without a vote of their elected board.

We would like you and your staff, as well as key staff from the private sector partner and the Bay Area Urban Area Security Initiative, to present the Bay WEB project to the City Council on Tuesday, December 14. Our meeting begins at 10 a.m., and we are prepared to set this item as time certain on our agenda to accommodate your schedules. Please let me know if 10 a.m. time certain does not work, and we will adjust the time.

Sincerely,



Chuck Reed  
Mayor

**Santana, Deanna**

**From:** Harrison, Emily [emily.harrison@ceo.sccgov.org]  
**Sent:** Wednesday, December 08, 2010 12:25 PM  
**To:** McGurk, Michelle; Kimberly Rapp; Santana, Deanna; Miguel Marquez; Susan Swain  
**Subject:** FW: BTOP Intent to Participate

FYI

**From:** Smith, Jeff  
**Sent:** Wednesday, December 08, 2010 11:57 AM  
**To:** 'Kozicki, David A., Sheriff'; '2862@sanjoseca.gov'; 'Gordon, Ken'; 'crolanos@co.sanmateo.ca.us'; ocop@oaklandnet.com; barry.fraser@sfgov.org; Bert Hildebrand (bert.hildebrand@scc.org); Bijam Karimi (bkarimi@co.marin.ca.us); wcogbill@sonoma-county.org; Chris Flatmoe (cflatmoe@co.sanmateo.ca.us); Chris.vein@sfgov.org; christopher.moore@sanjose.ca.gov; mayoremail@sanjoseca.gov; cityadministrator@oaklandnet.com; twa@cao.cccounty.us; djohnson@ci.sunnyvale.ca.us; Dennis Smiley (dsmiley@sonoma-county.org); dkofoford@co.napa.ca.us; ewoo@doit.cccounty.us; 'frank.damiano@sheriff.sccgov.org'; Harrison, Emily; gstanton@solanocounty.com; gmunks@co.sanmateo.ca.us; Ahern, Gregory, Sheriff; hjordan@oaklandnet.com; Jean Donaldson (jean.donaldson@countyofnapa.org); John Hirokawa (john.hirokawa@sho.co.scl.ca.us); Strassel LJ-care80; So.website@sho.co.scl.ca.us; lindley.zink@Sheriff.sccgov.org; melanie.jimenez@sanjoseca.gov; eileen\_hirst@ci.sf.ca.us; michelle.geddes@sfgov.org; Mike Del Fair (ISD610@co.santa-cruz.ca.us); rdomingo@oaklandnet.com; mnavarro.co.marin.ca.us; snelson@co.marin.ca.us; slodge@santaclaraca.gov; Steve Dupre (sdupre@co.sanmateo.ca.us); Vicki.Hennessy@sfgov.org; mwqmo@so.cccounty.us; 'michael.connolly@sfgov.org'; 'frank.damiano@sheriff.sccgov.org'; Bijam Karimi (bkarimi@co.marin.ca.us); barry.fraser@sfgov.org; Baig, Ahsan; 'shf227@co.santa-cruz.ca.us'; Domingo, Renee; 'lstrickling@ntia.doc.gov'; 'tzinser@oig.doc.gov'; 'Ian M. Marenna'; Harrison, Emily; Mills, John; Gibbs, John; Flores Shelton, Andrea; DeMellopine, Pattie; Chaudhry, Rabia; Graves, Gary  
**Cc:** 'atilles@shulmanrogers.com'; McCammon, Bill, ACFD; Lucia, Rich, Sheriff; Houghtelling, Dennis, Sheriff  
**Subject:** RE: BTOP Intent to Participate

Dear Mr. Kozicki,

Your email of 12/7/10 (attached) is quite a peculiar ultimatum. It raises a number of very troublesome issues that I have addressed to some extent within this e-mail. In order to be certain that our response to your ultimatum is not misunderstood, I have taken the liberty to direct a copy of this letter and your email directly to Assistant Secretary Strickling of the NTIA and to Mr. Zinser of the OIG.

You have asked if we intend to participate in the BTOP grant that was awarded to Motorola because the company and Sheriff Ahern asserted that many Bay Area governmental jurisdictions (including Santa Clara County) were partners in the application.

The answer to this question is quite simple. The County of Santa Clara supports the ultimate goal of this project and intends to participate in this program unless the following statements are true or other information is brought to our attention raising additional concerns about the integrity of this program and/grant:

1. The NTIA application fraudulently claimed that it was made by a public-private partnership, and the parties to the application knew at the time that Sheriff Ahern did not have the authority to represent all of the legitimate governmental entities that were mentioned in the application.
2. The technical details of the application were inappropriately shielded from the public partners (and the public in general) in the application in order to hide the true cost of the total project and prevent the governing bodies of the agencies from engaging in a full consideration of required resources and making an appropriate formal allocation of resources to effectuate the project.
3. The Bay Area UASI General Manager, without authority from the Approval Authority, utilized UASI staff and inappropriate processes in order to rig a local RFI process that favored her prior employer, Motorola.
4. The Motorola response to the RFI was not the most economical, qualified response.
5. In order to avoid the procurement requirements of the fiscal agent for UASI (the City and County of San Francisco) and the explicit requirements of the UASI MOU, staff members inappropriately transferred UASI funds designated for a pilot broadband program to the Alameda Sheriff.

12/9/2010

ATTACHMENT D



6. The rights to the 700 MHz wavelength are held by the Cities of Oakland, San Francisco, and San Jose, and cannot be used or unilaterally transferred without the consent of these Cities despite Sheriff Ahern's false representation that he could transfer those rights to Motorola as part of the application and project build out.
7. The true local cost of the BTOP project has not been honestly or truthfully communicated to the involved governmental jurisdictions—and it is far higher than has been represented.
8. Because of the use of improper processes by BAUASI staff, the governing bodies of all of the involved Bay Area jurisdictions have not approved the use of their public resources for this project in a manner consistent with state and local law.
9. Relevant Federal law and regulations suggest that the NTIA should declare the Motorola application null and void because it was misleading and inaccurate as to critical issues of substance.

If there is any evidence to believe that any of these statements are true, please let me know. I will expect that our staff is invited to and welcomed at ALL planning sessions for the project.

Now that I have answered your question, please answer mine below:

- I. By what authority do you threaten to exclude any Bay Area governmental jurisdiction from the BTOP program?
- II. Are you, or is anyone in the Alameda County Sheriff's office, an agent or representative for the NTIA applicant—Motorola?
- III. Do you speak for the NTIA, or represent the NTIA? If so, how were you chosen to represent the NTIA?
- IV. Don't you think it might have been a good idea to ask for this letter before the Motorola application was made, and before Sheriff Ahern made representations that he spoke for many of the Bay Area governmental agencies?
- V. Is it true that Motorola was a major financial contributor to the Urban Shield program run by the Alameda Sheriff's office? If so, don't you think that creates an appearance of a conflict of interest for the office?

Also, please forward to me, as you must pursuant to the California Public Records Request Act, records of any and all communications (within the last three years) regarding BTOP, BAUASI, Project Cornerstone, or BayRICS that have occurred between the Alameda Sheriff's office (including any representatives of the Sheriff and the OESHS) and any of these entities/individuals—Motorola, NTIA, Laura Phillips, Clement Ng, or any of their representatives.

Thanks so much, I look forward to working with you in the future.

Sincerely,

Jeffrey V. Smith, MD, JD  
County Executive  
Santa Clara County

PS: I believe that any effort to exclude a BAUASI member from BTOP process or project would be highly likely to trigger litigation. Thus, I recommend that you avoid such action. I will be updating the Santa Clara Board of Supervisors about this issue during closed session on Monday—under the heading of potential litigation. You will get more written information next week.

(hard copy to follow)

**From:** Kozicki, David A., Sheriff [mailto:DKozicki@acgov.org]

**Sent:** Tuesday, December 07, 2010 5:17 PM

**To:** '2862@sanjoseca.gov'; 'Gordon, Ken'; 'crolanos@co.sanmateo.ca.us'; ocop@oaklandnet.com; barry.fraser@sfgov.org; Bert Hildebrand (bert.hildebrand@scc.org); Bijam Karimi (bkarimi@co.marin.ca.us); wcogbill@sonoma-county.org; Chris Flatmoe (cflatmoe@co.sanmateo.ca.us); Chris.vein@sfgov.org; christopher.moore@sanjose.ca.gov; mayoremail@sanjoseca.gov; cityadministrator@oaklandnet.com; twa@cao.cccounty.us; djohnson@ci.sunnyvale.ca.us; Dennis Smiley (dsmiley@sonoma.county.org); dkoford@co.napa.ca.us; Smith, Jeff; ewoo@doit.cccounty.us; 'frank.damiano@sheriff.scgov.org'; Harrison, Emily; gstanton@solanocounty.com; gmunks@co.sanmateo.ca.us; Ahern, Gregory, Sheriff; hjordan@oaklandnet.com; Jean Donaldson (jean.donaldson@countyofnapa.org); John Hirokawa (john.hirokawa@sho.co.scl.ca.us); Strassel LJ-care80; So.website@sho.co.scl.ca.us; lindley.zink@Sheriff.sccgov.org; melanie.jimenez@sanjoseca.gov; eileen\_hirst@ci.sf.ca.us;

12/9/2010

michelle.geddes@sfgov.org; Mike Del Fair (ISD610@co.santa-cruz.ca.us); rdomingo@oaklandnet.com; rnavarro.co.marin.ca.us; snelson@co.marin.ca.us; slodge@santaclaraca.gov; Steve Dupre (sdupre@co.sanmateo.ca.us); Vicki.Hennessy@sfgov.org; mwqmo@so.cccounty.us; 'michael.connolly@sfgov.org'; 'frank.damiano@sheriff.scgov.org'; Bijam Karimi (bkarimi@co.marin.ca.us); barry.fraser@sfgov.org; Baig, Ahsan; 'shf227@co.santa-cruz.ca.us'; Domingo, Renee  
**Cc:** 'atilles@shulmanrogers.com'; McCammon, Bill, ACFD; Lucia, Rich, Sheriff; Houghtelling, Dennis, Sheriff  
**Subject:** BTOP Intent to Participate  
**Importance:** High

To All,

The purpose of this email is to request your expressed intention to participate in the San Francisco Bay Area Urban Area Broadband Technology Opportunity Program (BTOP) grant. As you should recall, this grant-funded effort involves a public-private partnership between participating government entities and Motorola. You are receiving this email because you are believed to have authority to authorize an intention to participate in the program or you attended the recent meeting and agreed to seek authorization from the appropriate person. On Tuesday, December 7, 2010, a meeting was held at the Alameda County Emergency Operations Center to discuss the current status and next steps for the BTOP. It was explained to those attending the meeting that in order for the project to move forward, some preliminary formal commitment needs to be received from potential users of the technology

The National Telecommunications and Information Administration (NTIA) is funding this project. They have given us direction that we need to immediately demonstrate a commitment to the project first verbally, no later than the close of business on Wednesday, December 8, 2010, and in the form of written letters no later than Wednesday December 15, 2010. For purposes of process, an email sent in reply to this email will demonstrate your verbal intent to participate in the BTOP project. A proposed draft letter of intent has been attached to assist you in the written requirement. Unfortunately, a failure to respond to this request will indicate the intention NOT to participate in the BTOP at this time. Once your expressed intent to participate is received you will then have an opportunity to participate in meetings, in the formation of governance, and the negotiation/review of an overarching Build, Own, Operate, and Maintain (BOOM) agreement with Motorola. You will also be able to negotiate your individual participation agreement regarding use of the system, and, if applicable, for the system to use your identified communication sites.

The next meeting for the BTOP governance group will be held at the Alameda County Office of Emergency Services on Friday, December 17, 2010 at 12:00 PM. The Office is located at 4985 Broder Blvd, Dublin, CA 94568. It is important that you or your representative come to the meeting with authority to delegate membership to the negotiating team that will complete the negotiations of the BOOM agreement with Motorola. We are looking for membership on the team to include legal, business, technical, and management personal from a representative cross section of the area.

Your prompt reply will be greatly appreciated.

David Kozicki  
 Alameda County Sheriff's Office  
 Office of Emergency Services and Homeland Security

12/9/2010

October 21, 2010

Mr. Gregory J. Ahern, Alameda County Sheriff  
Lakeside Plaza, 1401 Lakeside Drive, 12<sup>th</sup> Floor  
Oakland, CA 94612-4305

Dear Sheriff Ahern,

Thank you for your speedy response to my letter of October 12 and your willingness to answer additional questions.

Since I last wrote, my staff has obtained two agreements and one application all signed by you. I have several questions about the entities on whose behalf you have signed as well as your authorization to sign such documents, which purport to affect the rights of the City of San José. The documents to which I am referring are the following:

1. The Public Private Cooperative Agreement for Bay WEB, which is an agreement between the Alameda County Sheriff and Motorola, Inc.
2. The San Francisco Bay Area Urban Region Long-Term De Facto Transfer Spectrum Lease Agreement, which is an agreement between the Alameda County Sheriff and the Public Safety Spectrum Trust Corporation, which is licensed by the Federal Communications Commission to operate on the 700 MHz public safety broadband.
3. FCC Form 442 #0313-EX-PL-2010, "Application for a New or Modified Radio Station Under Part 5 of FCC Rules – Experimental Radio Service."

**CPRA/FOIA Request Number 1:** Pursuant to my rights under the California Public Records Act and the Federal Freedom of Information Act, I hereby request you to provide me with any and all records that pertain to the your authority to sign the documents as well as the legal status of the entities on whose behalf you signed. Please include any and all correspondence relating to the signing of the documents, including email, text messages or other electronic correspondence relating to all of the requests in this letter.

The Public Private Cooperative Agreement, which was entered into on March 15, 2010, states that it is "between the Alameda County Sheriff as the Region 2 coordinator of mutual aid and the executive sponsor of this initiative (the "Sheriff"), acting on behalf of the Bay RICS Policy Group which is the governing body of the shared San Francisco Bay Area Regional Interoperability Communications System ("Bay RICS")."

**CPRA/FOIA Request Number 2:** In addition to the records requested above, please provide all records relating to the following:

- Governance structure, bylaws, Board of Directors roster, joint powers authority arrangements, memorandums of understanding, or other governing documents and

transfers of authority related for the Region 2 mutual aid system, including legal authority on behalf of the region.

- Governance structure, bylaws, Board of Directors roster, joint powers authority arrangements, memorandums of understanding, or other governing documents and transfers of authority for the Bay RICS Policy Group, including date of incorporation and legal authority on behalf of the region.
- Minutes of any meeting of the governing bodies of the Region 2 mutual aid system, Bay RICS Policy Group, Alameda County Board of Supervisors, or any other governmental entity that authorized the signing of the agreement.
- Final copy of the Public Private Cooperative Agreement with Motorola, reviewed and approved as to form, by the Alameda County Counsel or the counsel of another jurisdiction.

The San Francisco Bay Area Urban Region Long-Term De Facto Transfer Spectrum Lease Agreement states that it is an agreement with "the Alameda County Sheriff's Office on behalf of the San Francisco Bay Area Urban Area Region."

**CPRA/FOIA Request Number 3:** Please provide the following information and all records relating to the information:

- Who or what is the entity described as "the San Francisco Bay Area Urban Area Region" and/or "San Francisco Bay Area Urban Area"?
- Governance structure, bylaws, Board of Directors roster, joint powers authority arrangements, memorandums of understanding, or other governing documents and transfers of authority related for the San Francisco Bay Area Urban Area Region and/or the San Francisco Bay Area Urban Area, including legal authority on behalf of the region.

Section 6 of the lease agreement states:

**6. Representations and Warranties.**

Each of the Lessor and the Lessee severally represents and warrants to the other:

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

**CPRA/FOIA Request Number 4:** Please provide all records relating to these representations and warranties.

On August 27, the FCC granted you an OET Experimental License (Call Sign WF2XMB, File Number 0313-EX-PL-2010). The application narrative states that this license is:

"for the purpose of developing and evaluating the functionality and acceptability of broadband Long-Term Evolution ("LTE") equipment during a pilot (hereinafter the "Bay WEB pilot") to be conducted at a limited number of sites, identified, below located in the San Francisco/Oakland metropolitan area."

It goes on to state:

*In an Order released on May 12, 2010, the FCC granted a conditional waiver to Bay Area for early deployment of a 700 MHz LTE Public Safety wireless broadband communication network. The Bay Area is moving forward expeditiously to address provisions in the Order relating to public safety interoperability. In addition, the Alameda County Sheriff, as the Regional Mutual Aid Coordinator, and on behalf of the San Francisco Bay Area Urban Area Region, is moving forward aggressively to execute a spectrum lease with the Public Safety Spectrum Trust ("PSST"), which holds the nationwide license for the 763-768/793-798 MHz spectrum.*

*The Bay Area is relatively unique among the waiver grantees in that funding to conduct the proposed pilot has been allocated through the Urban Area Security Initiative ("UASI"). This funding will be jeopardized, however, if not expended prior to the end of the 2009 UASI Grant performance period. In addition to helping take advantage of the UASI funding, the experimental license will enable the Bay Area to conduct tests that will provide valuable insight for the Commission and all waiver grantees about the functionality and acceptability of LTE technology. This insight may also help expedite full deployment of regional interoperable broadband systems in a manner that meets public safety requirements once Commission approvals to do so are finalized.*

On May 12, the FCC granted the 700MHz waiver to three entities: the City/County of San Francisco, the City of Oakland, and the City of San Jose.

**CPRA/FOIA Request Number 5:** Please provide all documentation that the Alameda County Sheriff has the authority to enter into leases for the San Jose spectrum or to apply for FCC licenses on behalf of the region.

In your letter of October 15, you state, "I should point out that there is no pilot period within Motorola's BTOP award and Contract with NTIA." In the October 12 meeting that you hosted, you and UASI staff made clear statements that Bay WEB and Project Cornerstone are separate projects, and that Bay WEB is not a UASI project.

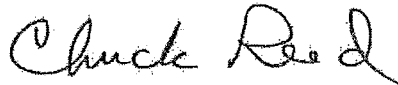
**CPRA/FOIA Request Number 6:** Please provide all documentation that explains why your FCC filing describes Project Cornerstone as "the Bay WEB pilot," and why the contacts on the request for the experimental license are a Motorola attorney and the General Manager of the Bay Area UASI?

The Narrative Statement to the FCC lists 10 sites at which Project Cornerstone will be deployed: four in San Francisco, one at the Alameda County jail in Oakland, three in Contra Costa County, one in Sunnyvale, and one in the City of Santa Clara. The UASI Approval Authority allocated UASI funds for Project Cornerstone in Oakland, San Francisco, and San Jose.

CPRA/FOIA Request Number 7: Please provide all documentation to authorize UASI dollars to be expended for a pilot in these other cities, without the approval of the UASI Approval Authority.

I appreciate your prompt response to my previous inquiry and look forward to an equally prompt response to this letter so that I can gather the facts necessary to understand what has happened and how San Jose's interests have been affected.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Reed". The signature is written in dark ink and is positioned below the word "Sincerely,".

Chuck Reed  
Mayor

# County of Santa Clara

Office of the County Executive

County Government Center, East Wing  
70 West Hedding Street  
San Jose, California 95110  
(408) 299-5105



November 1, 2010

Todd J. Zinser  
Inspector General  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

**Re: Broadband Technology Opportunity Program Grant Award to the San Francisco Bay Area**

Dear Inspector General Zinser:

I write to request an investigation into the award of approximately \$50,593,551.00 in taxpayer funds to the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB) project under the Broadband Technology Opportunity Program (BTOP) administered by the Department of Commerce (DOC) and the National Telecommunications and Information Administration (NTIA). As I explain in more detail below, this investigation is warranted and necessary in order to ensure that public funds are administered in a transparent and fair manner at all levels of government.

As a citizen and public servant, I am compelled to raise to your attention the serious concerns the County of Santa Clara has regarding the inexplicable opacity underlying the BayWEB BTOP award. The Obama Administration has laudably expressed its commitment to the transparency and prudent stewardship of funds available and distributed under the American Recovery and Reinvestment Act of 2009 (ARRA). Based on the limited information made available to me, I am persuaded that the BTOP award of ARRA funds to the BayWEB project was secured in a manner that lacked transparency and prudence. I also continue to be especially troubled that the governing bodies of jurisdictions like the County have not been and will not be afforded an opportunity to openly vet and legally approve the local government obligations, such as any General Fund commitments for project installation and maintenance, represented in the grant application.

The application<sup>1</sup> at issue was submitted by Motorola, Inc. based on a purported public-private partnership with Bay Area government agencies in order to improve interoperable communications throughout the ten counties, including the County, that comprise the Bay Area Urban Area Security Initiative (UASI). In communications from DOC/NTIA and the California

<sup>1</sup> BTOP Application Identification No. 7309.

To: Todd J. Zinser, Inspector General  
Re: BTOP Grant Award to San Francisco Bay Area  
November 1, 2010  
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Emergency Management Agency (CalEMA), it appears that misinformation abounds regarding an alleged open and competitive process consistent with local government practices that resulted in the selection of Motorola as the private partner for the BayWEB project.<sup>2</sup> The County does not believe there was any legitimate open competitive process to appropriately identify Motorola as a partner to Bay Area entities for the BTOP award. However, to the extent anyone claims there was an attempt toward a competitive process, a thorough review would reveal that rogue Bay Area UASI staff operated outside the scope of their authority and circumvented any true process.

Prior to the BTOP Round 2 announcement, local entities approved issuance of a Request for Information (RFI) on September 29, 2009, to conduct an industry review of potential approaches and costs associated with the deployment of a region-wide 700 MHz broadband network.<sup>3</sup> The RFI repeatedly stated that the "Bay Area will not award a long term contract based on this RFI."<sup>4</sup> Instead, the RFI explicitly indicated that the Bay Area would subsequently determine whether a "Request for Proposals (RFP) or other competitive solicitation" would issue at a later date. The RFI further expressly indicated that "[i]t is not a requirement to participate in this industry review process in order to be considered by any competitive solicitation arising out of this process."

Yet for some curious reason, on February 1, 2010, Bay Area UASI staff, unbeknownst to the Bay Area UASI Approval Authority,<sup>5</sup> unilaterally issued an email RFP solicitation solely to RFI respondents for "possible proposals for partnerships" to engage in a "public private partnership" for "Round 2 of the Broadband Technology Grant Program."<sup>6</sup> This maneuver foreclosed any opportunity for an open and transparent process. It resulted in an improper and closed solicitation process that was not only contrary to the express language of any RFI, but it was also contrary to the expectations of Bay Area UASI members and contrary to local government practices for this type of vendor selection. Furthermore, as the County was attempting to sort through the mire of quickly evolving machinations of Bay Area UASI staff, key members of the County area were excluded from critical discussions and decision processes despite clear expressions of interest in participation and gaining an understanding of the partnership and commitment terms for local agencies.

The questions surrounding an alleged solicitation process and assertion of Motorola as a private partner with Bay Area entities are further compounded by the subsequent revelation that at minimum of four Bay Area UASI staff members are former employees of the successful grantee. At the very least, there is an appearance of potential impropriety that required heightened

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<sup>2</sup> See Attachment 1, Letter from Anthony G. Wilhelm, NTIA (October 1, 2010) and related documents; and Attachment 2, Letter from Brendan Murphy, CalEMA (October 14, 2010) and related documents.

<sup>3</sup> Attachment 3, San Francisco Bay Area Request for Information 2009-DEM01 (RFI). This RFI was to support a local level project known as Project Cornerstone and response could also potentially inform other future projects.

<sup>4</sup> See e.g., Attachment 3, RFI, pgs. 1, 18 and 19.

<sup>5</sup> The County of Santa Clara is a member of the Bay Area UASI Approval Authority.

<sup>6</sup> Attachment 4, BTOP Email RFP Solicitation from Clement Ng, Bay Area UASI (February 1, 2010).



To: Todd J. Zinser, Inspector General  
Re: BTOP Grant Award to San Francisco Bay Area  
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attention to this particular solicitation process based upon basic conflict of interest and local government standards. The County continues to implore the DOC/NTIA to suspend, or postpone, the BayWEB project award until concerns regarding the vendor selection have been addressed.

I also believe the findings of an investigation would support postponing the award as the County and other local jurisdictions are still waiting for critical information for our governing bodies to legally approve the representations prematurely made in the grant application regarding local commitments for implementation and maintenance of this project. DOC/NTIA has indicated that it relied on the endorsements of the County and City of San Jose in making the BayWEB award. It is true that the County was solicited for letters of general support before the BTOP grant application for BayWEB was finalized. However, that solicitation was made with the promise that critical information would be forthcoming.<sup>7</sup> It is significant that the County did not then and still does not now have all of the information necessary in order to make an informed decision about the commitments required for this specific initiative. To be clear, the County provided its letter in order to assist the regional goal of implementing a public safety broadband initiative, and to demonstrate support for that concept. Indeed the County continues to support the concept and believes its more than two million citizens would benefit from expanded broadband service for emergency responders and wireless broadband service.

However, the County does not condone the process marshaled in an opaque and highly suspect fashion to date to accomplish this worthy goal. In light of your commitment to the independent and objective oversight of DOC programs and operations, the County reiterates its request for an investigation into the BTOP BayWEB award in order to ensure that the assertions upon which DOC/NTIA relied actually bear out. I believe your investigation would reveal that the public partnership with Motorola was an important reason for approval of the application. However, the identified BayRICS Policy Group that undergirds the BayWEB application had never met at the time the application was submitted and statements within the application that anyone was acting on behalf of the Bay Area or that legal commitments were made by many of those agencies to participate in the application or the BayWEB project were premature.

At the local level, General Fund dollars will be required for BayWEB project installation and maintenance. However, local jurisdictions such as the County have received little information regarding such obligations and have not received approval from our own governing bodies despite apparent representations to the contrary. We would like for Bay Area jurisdictions to have the opportunity to take all relevant and pertinent information to our governing bodies in order to fulfill the requirements of the BayWEB project. This is a responsible request in light of our collective accountability to the public for ARRA funds and General Fund dollars at the local level. In order to do so, we request that information and documents related to the alleged vendor

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<sup>7</sup> Attachment 5: Email from Laura Phillips, dated February 18, 2010, to Michael Milas, Executive Director of Silicon Valley Regional Interoperability Authority.

To: Todd J. Zinser, Inspector General  
Re: BTOP Grant Award to San Francisco Bay Area  
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solicitation process and the subsequent Motorola application and award be fully disclosed to the Bay Area agencies. We are puzzled and disappointed by the ongoing failure to provide this reasonable information, which in my view lends further support to the need for an investigation.

Thank you in advance for your attention to this matter.

Sincerely,

  
Jeffrey V. Smith  
County Executive

Enclosure(s):

- Attachment 1 Letter from Anthony G. Wilhelm, NTIA (October 1, 2010) and related documents
- Attachment 2 Letter from Brendan Murphy, CalEMA (October 14, 2010) and related documents
- Attachment 3 San Francisco Bay Area Request for Information 2009-DEM01 (September 29, 2009)
- Attachment 4 BTOP Email RFP Solicitation from Clement Ng, Bay Area UASI (February 1, 2010)
- Attachment 5 Email from Laura Phillips to Michael Milas, Executive Director of Silicon Valley Regional Interoperability Authority (February 18, 2010)

Cc: Gary Locke, Secretary of U.S. Department of Commerce  
Matthew R. Bettenhausen, Secretary, California Emergency Management Agency  
Chuck Reed, Mayor, City of San Jose  
Bay Area UASI Approval Authority Members  
Miguel Marquez, Santa Clara County Counsel

BRIAN DOYLE  
Sr. Deputy City Attorney  
Direct Line: (408) 535-1908

November 29, 2010

Ms. Laura Phillips  
Bay Area UASI  
10 Lombard St., Suite 410  
San Francisco, CA 94111

**Re: Preservation of records relating to Motorola BTOP Project**

Dear Ms. Phillips:

This letter is to notify you that the City of San Jose is contemplating potential litigation against Bay Area UASI and members of its staff (collectively "Bay Area UASI") concerning the application for and spending of federal grants related to regional electronic communication projects, including BTOP (the "Claim"). Bay Area UASI has in its possession, custody or control hard copy documents, information, and electronic data or digitally stored information relevant to the Claim. In addition, Bay Area UASI has knowledge of facts relevant to the Claim. Evidence relevant to the Claim includes, but may not be limited to, the following:

- Bay Area UASI's administrative and financial records;
- Records of and concerning contracts and communications with Motorola, Inc and/or its affiliates;
- Records concerning the BTOP project;
- Records concerning Project Cornerstone;
- Records concerning the Bay RICS project;
- Records concerning the document entitled "San Francisco Bay Area Urban Region LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT";
- Records of and concerning communications between Bay Area UASI and Alameda County; and
- Records concerning the destruction, purging or erasure of Bay Area UASI records including, but not limited to, communications with the San Francisco Department of Technology with regard thereto.

Bay Area UASI is under a legal duty to preserve, retain, and protect all potentially relevant evidence, including electronic evidence, once litigation is reasonably anticipated. The failure to retain and preserve such evidence constitutes spoliation of evidence and will subject Bay Area UASI to legal claims for damages and/or evidentiary and monetary sanctions.

For purposes of this notice, "electronic data" or "electronic evidence" shall include, but not be limited to, all text files (including word processing documents), presentation files, (such as PowerPoint), spread sheets, email files and information concerning email files (including logs of email history and usage, header information and deleted files), graphical files in any format, databases, calendar and scheduling information, task lists, telephone logs, contact managers, computer system activity logs, and all file fragments and backup files containing electronic data.

Specifically, Bay Area UASI is instructed not to destroy, disable, erase, encrypt, alter, or otherwise make unavailable any electronic evidence relevant to the Claim, and Bay Area UASI is further instructed to take reasonable efforts to preserve such data. Bay Area UASI is instructed to halt routine business practices geared towards the destruction of potential evidence, including by way of example and not limitation, to:

- Preserve all data storage backup files (*i.e.*, not overwrite any previously existing backups);
- Preserve and retain all electronic data generated or received by employees who may have personal knowledge of the facts involved in the Claim, including but not limited to those of Laura Phillips, Jeff Blau, Clement Ng, and Heather Tannenhill-Plamondon;
- Preserve and retain all data from servers and networking equipment, local workstations, laptops or external drives that are reasonably thought to have data related to the Claim;
- Preserve and retain all other sources of electronic data, including but not limited to floppy disks, Zip disks, CD-ROMs, DVDs, CD-RWs, tape, PDAs, cell phones, memory cards/sticks, or digital copiers;
- Preserve associated application and system metadata;
- Prevent employees from deleting or overwriting and electronic data related to the Claim; and
- Take such other security measures, including but not limited to, restricting physical and electronic access to all electronically stored data directly or indirectly related to the Claim.

The preservation obligations triggered by reasonable anticipation of litigation and as referred to herein must be communicated to every Bay area UASI custodian of potentially relevant evidence. See, *e.g.*, *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004).

If this correspondence is in any respect unclear, please do not hesitate to contact me.

Very truly yours,

RICHARD DOYLE, City Attorney

By: 

BRIAN DOYLE  
Sr. Deputy City Attorney

BLD/bld

cc: Dennis Herrera, San Francisco City Attorney  
Chris Vein, San Francisco CIO