

**BayRICS
JOINT POWERS AUTHORITY
BOARD OF DIRECTORS MEETING
STAFF REPORT**

MEETING DATE:

Thursday July 11, 2013

AGENDA ITEM:

Item 9 - Approve Spectrum Manager Lease Agreement between BayRICS and FirstNet

RECOMMENDATIONS:

- (1) Delegate authority to the BayRICS General Manager to execute the SMLA with FirstNet, in substantially similar form to the attached agreement;
- (2) Delegate authority to the BayRICS General Manager, after consultation with the BayRICS Chair, to execute amendments to the SMLA that do not substantially change the agreement terms.

SUMMARY/DISCUSSION

On February 22, 2012, Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012 (“Act”) which mandated creation of a nationwide public safety broadband network (“NPSBN”). The Act created FirstNet, an independent authority within the Department of Commerce’s National Telecommunications and Information Administration (“NTIA”), charged to take “all actions necessary” to build, deploy, and operate the network, in consultation with State, local, tribal, and territorial entities.

On May 11, 2012, NTIA partially suspended the Broadband Technologies Opportunity Program (“BTOP”) funded public-safety projects, due to the uncertainty as to whether grant recipients would be able to comply with the terms and conditions of the grant while ensuring that the project proceed in a manner that supports development of NPSBN.

On February 12, 2013 the FirstNet Board adopted a resolution directing Board Member Sue Swenson to negotiate spectrum leases with each of the seven BTOP grantees, including the BayRICS Authority. On May 13, 2013, the FirstNet Board extended the time period for negotiating these agreements by an additional 30 days, to June 12, 2013, and added Texas as a potential spectrum lessee. The FirstNet Board approved another time extension, to July 12, 2013, at its meeting on June 4, 2013.

BayRICS Staff and FirstNet Director Swenson have negotiated the attached Spectrum Manager Lease Agreement (“SMLA”). Please note that this is a tentative final draft agreement, which remains subject to final review and approval by the NTIA and the FirstNet Board of Directors.

Important sections of the tentative SMLA include:

- An initial term of five (5) years. Per the terms of the Agreement, if the State opts out of FirstNet, BayRICS may be required to obtain approval from the State to continue its spectrum usage rights without interruption of service. In addition, BayRICS will initiate discussions with FirstNet to address the possible need for a renewal or extension of this Agreement, or negotiate a new agreement to maintain access to the FirstNet spectrum to minimize the disruption of service at the end of the 5-year term or prior to the implementation of the State’s opt out decision, whichever comes first;
- "Key Learning Conditions," to assist FirstNet in planning for the nationwide network. Specific learning areas for the Bay Area include exploring the benefits of high power infrastructure and user equipment, developing and testing public safety applications, and exploring managed services arrangements with Motorola for system operations. These activities will assist FirstNet as it develops and implements the nationwide network;
- The relocation of LTE devices, hardware or software into the FirstNet nationwide network architecture. It may become necessary for BayWEB Equipment to be relocated and reinstalled in another location based on the FirstNet build out plan. Any relocation of BayWEB equipment will be done in a manner that will not result in any degradation of services to Public Safety Entities, including availability, coverage, performance or functionality of service provided to Public Safety Entities. BayRICS will not be responsible for any costs associated with such relocation;
- Future good faith negotiations with the BayRICS Authority or any underlying Member that is a site owner for an agreement for co-location services, on a non-exclusive basis, for FirstNet to locate certain equipment on the owner’s site;
- Eligible services defined as “wireless communications services provided to public safety entities,” including “any government or private entity with statutory responsibility to protect life, property, and/or the environment in the jurisdiction, and those entities assisting or cooperating in the mitigation of emergency incidents as defined in the Glossary of Terms by the Department of Homeland Security’s Federal Emergency Management Agency (“FEMA”) National Incident Management System (“NIMS”);

- No lease fee requirements;
- Provisions to designed to minimize any disruptions in the provision of services to Public Safety Entities;
- Although this is a non-exclusive lease, FirstNet will work closely and in good faith with BayRICS to ensure that any third party uses are technically feasible and will not impede or interfere with Lessee's wireless communications to Public Safety Entities. BayRICS will not be responsible for any costs associated with accommodating such third party uses;
- Project will operate on Public safety broadband and D Block spectrum (full 10x10 MHz);
- Project will be built and operated according to open, non-proprietary and commercially-available standards;
- Demonstration in writing from a significant representation of the public safety entities within the geographic scope of operations of their intent to receive wireless communications services from the project;
- If FirstNet adopts additional or different technical requirements or operational standards, the parties will negotiate in good faith towards an agreement concerning how the costs of such replacements or modifications will be covered. If the parties fail to negotiate such an agreement, BayRICS will not be responsible for any added costs of complying with additional or different technical requirements or operational standards, and that failure to negotiate such an agreement cannot serve as the basis for termination of the Lease by FirstNet;
- Lessee shall provide FirstNet with reasonable access to its operations, and shall facilitate the collection and sharing of information about its operations to FirstNet;
- Quarterly reporting requirements;
- Compliance with FCC Rules, Communications Act and minimum technical requirements of the Technical Advisory Board for First Responder Interoperability;
- Geographic scope of operations to be the geographic boundaries of the BayRICS members, with the ability to expand the geographic area upon mutual agreement;

Approving this SMLA would restore the Bay Area's spectrum rights that were initially granted to San Jose, Oakland and the City and County of San Francisco under the FCC's public safety spectrum waiver, and would keep BayRICS in compliance with its spectrum lease obligations under the BOOM. The lease is also the first step in the process of lifting the project's BTOP funding suspension. After FirstNet approves the

lease, Motorola must submit a request to the National Telecommunications and Information Administration (NTIA) to lift the suspension. FirstNet will then submit a letter in support of that action. NTIA has the final decision as to whether to allow the project to resume construction.

STAFF RECOMMENDATIONS

- (1) Delegate authority to the BayRICS General Manager to execute the SMLA with FirstNet, in substantially similar form to the attached agreement;
- (2) Delegate authority to the BayRICS General Manager, after consultation with the BayRICS Chair, to execute amendments to the SMLA that do not substantially change the agreement terms.

Recommendation (2) would allow the BayRICS General Manager to approve minor changes requested by FirstNet Board when it approves the lease, without going back to the Board to approve those changes, unless they substantially change the agreement terms. The General Manager would consult with the BayRICS Board Chair before executing any such amendments. FirstNet is expected to approve the lease at a special meeting soon after BayRICS takes action on the Lease.

SPECTRUM MANAGER LEASE AGREEMENT
BETWEEN
THE FIRST RESPONDER NETWORK AUTHORITY
AND
BAY AREA REGIONAL
INTEROPERABLE COMMUNICATIONS SYSTEMS AUTHORITY

I. PARTIES AND PURPOSE

This non-exclusive Spectrum Manager Lease Agreement (“SMLA” or “Agreement”) is entered into by the **First Responder Network Authority** (“FirstNet” or “Licensee”) and the **Bay Area Regional Interoperable Communications Systems Authority** (“BayRICS Authority” or “Lessee”), through which FirstNet will lease spectrum usage rights to operate on the 700 MHz public safety broadband spectrum (“FirstNet Spectrum”), the single, nationwide license which was granted to FirstNet by the Federal Communications Commission (“FCC”) under Call Sign WQQE234. Further, this SMLA is a spectrum manager lease arrangement pursuant to Section 1.9020 of the FCC’s rules (47 C.F.R. § 1.9020), subject to applicable provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96) (“Tax Relief Act”), the Communications Act of 1934 (47 U.S.C. § 151 *et seq.*), as amended (“Communications Act”), and FCC rules, regulations and policies.

The parties to this Agreement have entered into it with full awareness that while the fundamental goal of the Tax Relief Act is the deployment and operation of a nationwide interoperable public safety broadband network under the authority of FirstNet, the single, national network architecture for that network has not yet been established, and the technical standards for the network are continuing to evolve. Thus, the parties acknowledge that during the term of this Agreement, FirstNet may adopt additional or different technical requirements or operational standards to ensure the operability, interoperability, security, reliability, resiliency or similar capabilities of its single, national network architecture, and such additional requirements or standards may require the replacement or modification of any existing Lessee’s Infrastructure. The parties further acknowledge that should that event occur, they will negotiate in good faith towards an agreement concerning how the costs of such replacements or modifications will be covered.

Subject to the terms and conditions below, the SMLA authorizes the Lessee to provide wireless communications services to public safety entities as described in Section 6001 of the Tax Relief Act (“Public Safety Entities”), and as otherwise provided for herein in Section II.D. Subject to the terms and conditions below, FirstNet intends for this Agreement to continue until the time at which FirstNet has provided the governors of each of the states with the details of its proposed plan for the build-out of the nationwide, interoperable broadband network, and the Governor of State of California (“State”) has made the decision required under Section 6302(e) of the Tax Relief Act on whether the State will participate in the deployment of the nationwide interoperable broadband network as proposed by FirstNet, or will seek approval to conduct its own deployment of a radio access network within the State (“State’s Decision”). The parties acknowledge, thereafter, any operations of the Lessee on FirstNet Spectrum will be pursuant to terms and conditions established by the implementation of the State’s Decision.

One of the primary purposes of this Agreement is to minimize any disruptions in the availability of Lessee’s wireless communications services to Public Safety Entities. To that end, as set forth below, FirstNet and the Lessee intend to make good faith efforts to minimize any disruptions in the availability of Lessee’s wireless communications services to Public Safety Entities, and to ensure the interests of the State of California are included in any such good faith efforts that follow the date of the State’s Decision. Although this is a non-exclusive agreement, to the extent that FirstNet leases this spectrum to third party users, it will work closely and in good faith, with the Lessee to ensure that such third party uses are

technically feasible and will not impede or interfere with Lessee's wireless communications to Public Safety Entities and others, as provided for herein. To the extent there are costs associated with accommodating such third party uses, the Lessee shall not be responsible for those costs.

II. TERMS AND CONDITIONS

A. **Responsibilities of the Parties.** The parties agree to the following responsibilities:

1. FirstNet shall:

- (a) Ensure that the Lessee complies with the Communications Act and all applicable policies and rules directly related to the FirstNet Spectrum by providing oversight and enforcement of the Lessee's use of the FirstNet Spectrum;
- (b) Be responsible for the final resolution of all interference-related matters, including conflicts between the Lessee and third parties, after first permitting the Lessee to resolve these matters;
- (c) Maintain a reasonable degree of actual working knowledge of the Lessee's activities;
- (d) Be responsible for all FCC-required filings and reports, including the filing of necessary notifications and all other required documents (i.e., FCC Form 608);
- (e) Retain the right to terminate the SMLA as provided in Section IV of this Agreement; and
- (f) Retain a copy of the SMLA in its records.

2. Lessee shall:

- (a) Comply with the requirements of the Communications Act and all applicable policies and rules related to the FirstNet Spectrum, including service rules for Call Sign WQQE234;
- (b) Be independently accountable to the FCC for complying with the Communications Act and FCC policies and rules;
- (c) Provide FirstNet with a copy of any filing to be made by Lessee to the FCC related to the use of the FirstNet Spectrum at least two (2) business days in advance of its submission;
- (d) Permit FirstNet to inspect its facilities and equipment used to operate on the FirstNet Spectrum, upon reasonable notice in accordance with Section II. O., below;
- (e) Accept FCC oversight and enforcement for the lease of the spectrum usage rights associated with FCC license authorization for Call Sign WQQE234;
- (f) Promptly respond to any FirstNet request for information to comply with FirstNet's reporting or oversight requirements; and
- (g) Retain a copy of the SMLA in its records.

B. **Compliance with FCC Rules.** The parties agree to comply with all of the rules, regulations, policies, decisions of the FCC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act (collectively, "Communications Laws") for the spectrum usage rights associated with FCC license authorization for Call Sign WQQE234.

C. **Geographic Scope of Operations.** The Lessee shall operate on the FirstNet Spectrum only within its Broadband Technology Opportunity Program ("BTOP") project Service Area, as set forth in its BTOP Award Agreement ("Service Area"), **and described in Attachment One of this Agreement.**

D. **Eligible services.** The Lessee shall use the FirstNet Spectrum to provide wireless communications services to Public Safety Entities as defined under the Tax Relief Act. In addition, and for the purposes of this Agreement, the definition of Public Safety Entities is further expanded to include any government or private entity with statutory responsibility to protect life, property, and/or the environment in the jurisdiction, and those entities assisting or cooperating in the mitigation of emergency incidents as defined in the Glossary of Terms by the Department of Homeland Security's Federal Emergency Management Agency ("FEMA") National Incident Management System ("NIMS") (all such entities are collectively, "Public Safety Entities").

****Subject to review and approval by the FirstNet Board of Directors****

- E. **Subleasing.** The Lessee may not sublease the FirstNet Spectrum to any entity, nor offer any excess capacity on the FirstNet Spectrum to any entity for any purpose other than the provision of wireless communications services to Public Safety Entities.
- F. **Consideration.** In consideration of Lessee's agreement to the Key Learning Conditions as set forth in Section II. L, FirstNet agrees to authorize the Lessee to use the FirstNet Spectrum. This section does not relieve the Lessee of any obligation it may have following the date of the State's Decision to pay any fees associated with use of the nationwide public safety broadband network, pursuant to sections 6208 and 6302 of the Tax Relief Act. The Lessee agrees that this Agreement does not impair FirstNet's right to enter into a "Covered Leasing Agreement" as authorized by section 6208(a) of the Tax Relief Act.
- G. **Protection of Incumbents.** Lessee shall comply with the FCC's rules, both current and as may be adopted in the future, for protection of Incumbents.
- H. **Lessee's Infrastructure.** The Lessee shall ensure that all LTE-related devices, hardware, software, and any supporting infrastructure required for its operations on the FirstNet Spectrum (including LTE network services or applications platforms that may affect the operations and maintenance of the network under the single, national network architecture established by FirstNet) ("Lessee's Infrastructure"):
1. operate on 3GPP Band 14 in a 10 X 10 MHz configuration, to the extent compatible with international agreements concerning operations in border regions;
 2. comply with the recommended minimum technical requirements of the Technical Advisory Board for First Responder Interoperability, as provided to FirstNet by the FCC, and as those minimum technical requirements which evolve over time; and,
 3. are built and operated according to open, non-proprietary and commercially-available standards.

If, during the term of this Agreement, FirstNet adopts additional or different technical requirements or operational standards to insure the operability, interoperability, security, reliability, resiliency or similar capabilities of its single, national network architecture, and such additional requirements or standards would require the replacement or modification of any existing Lessee's Infrastructure, the Lessee shall not be obliged to implement such changes until the Lessee and FirstNet have first entered into an agreement concerning how the costs of such replacements or modifications shall be covered. Lessee will not be responsible for any added costs resulting from FirstNet's adoption of any additional or different technical requirements or operational standards, if the parties fail to successfully negotiate an agreement regarding how such costs will be covered. Further, failure of the parties to successfully negotiate such an agreement cannot serve as the basis for termination of this Agreement by FirstNet. Lessee is, however, still obligated to implement changes required as a result of FCC rules or regulations.

- I. **Environmental Compliance.** Lessee shall comply with all applicable Federal and State Environmental laws, regulations, and rules, including the completion of necessary environmental reviews. Prior to commencing operations on the leased portion of the FirstNet Spectrum, Lessee shall complete all environmental reviews required by Federal or State law.
- J. **Participation by Public Safety Agencies.** Prior to commencing operations on the FirstNet Spectrum, the Lessee shall provide FirstNet with a written certification that it has received written notifications from a significant representation of the BAYRICS Authority's member agencies that are within the geographic scope of Lessee's operations of their intent to receive wireless communications services from the Lessee's operations.
- K. **Consultation on Requests for Proposal and Agreements.** The Lessee shall consult with FirstNet prior to issuing any Requests for Proposal ("RFP"), executing any agreement with a supplier, or modifying any

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existing agreement with a supplier (“Project Supplier”), if such RFP or agreement concerns the Lessee’s operations on the FirstNet Spectrum.

To the extent that FirstNet and Lessee agree to integrate the Lessee’s LTE related devices, hardware and software (hereinafter “Equipment”) into the FirstNet nationwide network architecture and implementation program, it may become necessary for the Lessee’s Equipment to be relocated and reinstalled in another location. Such new location may be in another city, county or state within the United States of America where, in FirstNet’s judgment, the Equipment can be more effectively and/or economically integrated into the FirstNet nationwide network to provide wireless broadband services to first responders and public safety users.

Upon FirstNet providing written notification to the Lessee, the parties shall enter into good faith negotiations for an agreement for the transfer of control and relocation of the Equipment consistent with the Lessee’s obligations under 15 C.F.R. § 24.32 and the terms and conditions of its BTOP Award. Any relocation of Lessee’s Equipment will be done in a manner that will not result in any degradation of Lessee’s provision of wireless communications services to Public Safety Entities, including availability, coverage, performance or functionality of service provided to Public Safety Entities. Lessee will not be responsible for any costs associated with relocation of Lessee’s Equipment. FirstNet will also not seek to relocate Lessee Equipment that was acquired in part, with Lessee’s funds, unless the Parties enter into a subsequent agreement.

L. **Key Learning Condition(s).** Subject to the Key Learning Conditions Plan (“Plan”) required by this subsection below, the Lessee shall conduct the following activities as part of its operations on the FirstNet Spectrum, to assist FirstNet in the development, deployment, and management of the nationwide public safety broadband network:

1. Key Learning Condition 1: Explore incorporating high power Radio Access Network (RAN) infrastructure and user equipment (UE).
2. Key Learning Condition 2: Explore development and testing of public safety applications.
3. Key Learning Condition #3: Explore managed services arrangements for system operations.

Not later than 90 days following the execution of this Agreement, the Lessee and FirstNet shall develop and execute a Key Learning Conditions Plan which shall describe in more detail these activities and any related obligations of the parties.

M. **Compliance with Conditions of BTOP Award.** Within 15 days of execution of this Agreement, the Lessee shall seek the approval of the National Telecommunications and Information Administration (“NTIA”) to lift its partial suspension of funds awarded to the Lessee under the BTOP. Following the Lessee’s submission of such a request, and provided that the Lessee is in compliance with this Agreement, FirstNet will provide NTIA with a copy of this Agreement and a written recommendation that supports the Lessee’s request to lift the partial suspension of the funds awarded to Lessee under the BTOP. The Lessee shall comply with the terms and conditions specified in its BTOP award, as amended.

N. **Co-Location Services.** Following the date of the State’s Decision and after serving a written request to do so, FirstNet shall enter into good faith negotiations with Lessee and any underlying property owner and/or lessor from which Lessee is leasing LTE site space, for an agreement for co-location services, on a non-exclusive basis, for FirstNet to locate certain equipment on any of the Lessee’s Federally-funded LTE sites and infrastructure (e.g., towers), to the extent permitted by the underlying property owner and/or lessor.

O. **Access to Information and Information Sharing.** In order to help inform FirstNet on the planning, deployment and operation of the nationwide public safety broadband network, the Lessee shall provide reasonable access to its operations, and shall facilitate the collection and sharing of information about its

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operations. Such access shall be provided to FirstNet's technical teams or other personnel authorized by FirstNet, provided, however, that Lessee's confidential, security sensitive or proprietary information may be subject to appropriate non-disclosure agreements, as determined by Lessee in its sole discretion.

Prior to commencing operations on FirstNet Spectrum, the Lessee shall ensure that any agreement with its Project Suppliers expressly provides for:

1. the Project Supplier to disclose and share information to FirstNet or other authorized personnel, subject to appropriate non-disclosure agreements on the Project Supplier's confidential, security sensitive or proprietary information; provided, however, Project Supplier is not required to disclose proprietary financial information; and,
 2. the testing and certification of any of the Lessee's Infrastructure provided by the Project Supplier for deployment in Lessee's operations, at approved labs for FCC type certification in 3GPP Band 14 and PTCRB certification specific to 3GPP Band 14 devices.
- P. **Reporting.** The Lessee shall provide FirstNet with the following, where Lessee may clearly label any information provide as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY":
1. Quarterly written reports on the operations of Lessee's project that use the FirstNet Spectrum, Lessee's experiences with its Project Suppliers, its progress in achieving project milestones, and the experiences of users of its wireless communications services; and
 2. Copies of its reports to government entities that relate to Lessee's use of the FirstNet Spectrum, including its BTOP reports and any environmental reports.

III. DURATION OF THE AGREEMENT AND AMENDMENTS

This Agreement will become effective when signed by both parties. This Agreement shall have an initial term of five (5) years. FirstNet will notify Lessee at least three months prior to the date upon which FirstNet intends to present the Governor of the State of California with the details of its proposed plan for build-out within the State under Section 6302(e) of the Tax Relief Act. Six months prior to the expiration of the initial term of this Agreement, or upon receipt of FirstNet's notification of the date on which it intends to present its proposed build-out plan to the Governor as described above, whichever first occurs, the Lessee shall initiate discussions with FirstNet. Such discussions shall review the progress of this project and address the possible need for a renewal or extension of this Agreement, or the negotiation of a new agreement, to maintain Lessee's access to FirstNet Spectrum in order to minimize the disruption of the availability of wireless communications services to Public Safety Entities in the Service Area prior to the implementation of the State's Decision and to facilitate FirstNet's access to the FirstNet Spectrum for partnerships and other agreements in support of a nationwide public safety broadband network, as provided for and contemplated in the Tax Relief Act. The parties shall make good faith efforts to minimize the disruption of the availability of wireless communications services to Public Safety Entities in the Service Area.

This Lease may be amended by mutual written consent of the Parties. .

IV. TERMINATION AND CANCELLATION CLAUSE

- A. This Agreement shall terminate upon the occurrence of any of the following conditions:
1. The day following the termination date of the Agreement; or
 2. FirstNet's License Authorization for Call Sign WQQE234 is revoked, cancelled, terminated or otherwise ceases to be in effect

Subject to review and approval by the FirstNet Board of Directors

- B. FirstNet may terminate the Agreement in the event the Lessee:
1. fails to obtain approval of its request to NTIA to lift its suspension of BTOP funds;
 2. fails to comply with material terms of the Agreement and/or applicable FCC requirements, following written notice and reasonable opportunity to cure the non-compliance;
 3. commits a material breach of the Terms and Conditions of this Agreement or its BTOP Award, and thereafter fails to bring its operations into compliance within a reasonable period of time;
 4. fails to obtain written approval from the Governor of California, or his/her designee, to continue the Lessee's spectrum usage rights under this Agreement, without interruption of Lessee's service, within 60 days after the State's Decision, provided that such period shall be extended if the Governor has not given written approval through no fault of the Lessee; or
 5. fails to obtain written approval from the Governor of California, or his/her designee, to continue the Lessee's spectrum usage rights under this Agreement, without interruption of Lessee's service, within 60 days after the State of California fails to obtain Federal approval regarding the implementation of the State's Decision, provided that such period shall be extended if the Governor has not given written approval through no fault of the Lessee.

Upon termination of this Spectrum Manager Lease Agreement for any reason, FirstNet and the Lessee shall make good faith efforts to minimize any disruptions in the availability of Lessee's wireless communications services to Public Safety Entities in the Service Area.

V. RESOLUTION OF DISAGREEMENTS

Should any disputes arise under this Agreement, the parties agree that:

- A. prior to initiation of litigation, the parties shall meet to attempt to resolve the dispute. The results of the meeting shall be memorialized in writing signed (either manually or electronically) by the head of each party; and
- B. prior to initiation of discovery or the filing of a dispositive motion in litigation, the parties shall participate in mediation. The mediator may either be selected by the parties, or each party shall designate an unrelated party, who together shall select an unrelated third party, and the majority shall select the mediator, or one selected by a court of competent jurisdiction; and
- C. Any litigation shall be filed in a Federal court of competent jurisdiction.

VII. GENERAL PROVISIONS

- A. **Assignment.** This Spectrum Manager Lease Agreement is not an assignment, sale, or transfer of FirstNet's license for Call Sign WQQE234. This Spectrum Manager Lease Agreement shall not be assigned to any entity that is ineligible or unqualified to enter into a spectrum lease agreement. The Licensee shall not consent to an assignment of this Agreement unless such assignment complies with applicable FCC rules and regulations.
- B. **Notices.** The parties agree that if there is a change regarding the information in this Agreement, the party making the change shall provide written notice to the other party. Such notices may be provided by U.S. mail, facsimile, or in person to the contacts as set forth below.

Subject to review and approval by the FirstNet Board of Directors

The contacts of each party of this Agreement are:

For Licensee:

FirstNet
Bill D'Agostino
General Manager
National Telecommunications and
Information Administration (NTIA)
1401 Constitution Avenue
Washington, DC 20230

For Lessee:

BayRICS Authority
Barry Fraser
General Manager
BayRICS Authority
4985 Border Blvd.
Dublin CA 94568

- C. **Representations and Warranties.** Each Party to this Spectrum Lease represents and warrants to the other that each of them has the requisite authority and has taken all action necessary in order to execute and deliver this Spectrum Lease.
- D. **Governing Law.** This Spectrum Lease shall be governed by Federal law.
- E. **Subject to the Availability of Funds.** This agreement is subject to the availability of funds in accordance with Federal Appropriations law or if required by changes in State law, or because of court order, or because of insufficient appropriations made available the California State Legislature for the performance of this Agreement.
- F. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.
- G. **Integration.** This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by both parties.
- H. **Waiver.** The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.
- I. **Most Favored BTOP Lessee.** The spectrum usage rights granted to the Lessee to operate on the FirstNet Spectrum in this Agreement will be no less favorable than those granted to any other BTOP lessee by FirstNet. In the event FirstNet offers more favorable terms to another BTOP lessee, FirstNet will notify the Lessee promptly and provide Lessee the option of amending this Agreement such that it contains the more favorable term.

****Subject to review and approval by the FirstNet Board of Directors****

This Agreement may be executed originally or by facsimile signature in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

For the First Responder Network Authority:

Bill D'Agostino
General Manager
First Responder Network Authority

Date: _____

For BayRICS Authority:

Barry Fraser
General Manager
Bay Area Regional Interoperable
Communications Systems Authority

Date: _____

DRAFT

ATTACHMENT ONE

The BayRICS Project Service Area includes the geographic area of the seven county and three core city members of BayRICS:

- Alameda County
- Contra Costa County
- Marin County
- City of Oakland
- City and County of San Francisco
- City of San Jose
- San Mateo County
- Santa Clara County
- Sonoma County

This seven-county geographic area is depicted in the map on the following page.

