



East Bay Regional Communications System Authority



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

BOARD OF DIRECTORS MEETING

NOTICE OF REGULAR MEETING

DATE: March 1, 2024

TIME: 10:00 a.m.

PLACE: Alameda County Sheriff's Office of Emergency Services and Homeland Security
4985 Broder Blvd.
Dublin, CA 94568

AGENDA

1. **Call to Order/Roll Call:** (Regular Session) **Time:** 10:00 a.m.
2. **Closed Session:** Consider Appointment of New Independent Contractor to Function as an Officer Pursuant to Government Code § 54957(b)(4). Officer: Executive Director
3. **Reconvene in Open Session:** Report Out Any Action to Appoint a New Executive Director
4. **Public Comments (Meeting Open to the Public):**
At this time, the public is permitted to address the Board on items within the Board's subject matter jurisdiction that do not appear on the agenda. Please step to the podium and clearly state your name for the record. In accordance with State Law, no action or discussion may take place on any item not appearing on the posted agenda. If the item requires action, it will be referred to staff and/or placed on the next agenda. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of three (3) minutes. If you wish to comment on an item that is on the agenda, please wait until the item is read for consideration, and then make your way to the podium. Please limit comments to a maximum of three (3) minutes.
5. **Consent Calendar**
Consent Calendar items are typically non-controversial in nature and are considered for approval by the East Bay Regional Communications System Authority Board with one single action. Members of the public, staff or the Board of Directors who would like an item removed from the Consent Calendar for purposes of public input may request the Board Chair to remove the item.
 - 5.1 Approval of Minutes from the Board Meeting of December 1, 2023
 - 5.2 Approval of Amendment No. 2 to Master License Agreement with BART and West Walnut Creek Site License

- 5.3 Approval of Aviat Professional Services Agreement
6. **Written Communications:** None.
7. **Public Hearings:** None.
8. **Committee Updates:**
- 8.1 Receive Informational Report on Recent Finance Committee Activities
- 8.2 Receive Informational Report on Recent Operations Committee Activities
9. **Reports:**
- 9.1 Receive Informational Report on Encryption
- 9.2 Receive Informational Report on Microwave/Ethernet/MPLS/ Project Update
- 9.3 Receive Informational Report on City of Antioch Walton Lane
- 9.4 Receive Informational Report on Central Cell Outage February 5, 2024
10. **Agenda Items for Next Meeting**
- Maintenance Agreement with Motorola
 - Contra Costa County Department of IT MOU
 - MOU for interoperability with neighboring agencies
11. **Board Comments:**
12. **Adjournment**

This AGENDA is posted in accordance with Government Code Section 54954.2(a) *If requested, pursuant to Government Code Section 54953.2, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation, please contact the EBRCSA at (925) 803-7802 at least 72 hours in advance of the meeting.*

I hereby certify that the attached agenda was posted 72 hours before the noted meeting.



Tom McCarthy
Executive Director
Dated: 02/26/2024



**East Bay Regional
Communications
System Authority**



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AGENDA ITEM NO. 5.1

**AGENDA STATEMENT
BOARD OF DIRECTORS MEETING
MEETING DATE: March 1, 2024**

TO: Board of Directors
East Bay Regional Communications System Authority (EBRCSA)

FROM: Chief P. Meyer, Board Chair
East Bay Regional Communications System Authority

SUBJECT: Approval of Minutes of the December 21, 2023 Board of Directors Meeting

RECOMMENDATIONS:

Approve the minutes of the December 21, 2023 Board of Directors Meeting.

SUMMARY/DISCUSSION:

The Board of Directors will consider approval of the minutes of the December 21, 2023 Board of Directors Meeting.

RECOMMENDED ACTION:

It is recommended that the Board of Directors approve the minutes of the December 21, 2023 Board of Directors Meeting.

5639015.1



East Bay Regional Communications System Authority



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BOARD OF DIRECTORS MEETING

SPECIAL MEETING

DATE: December 21, 2023

TIME: 10:00 a.m.

**PLACE: Alameda County Sheriff's Office of Emergency Services and Homeland Security
4985 Broder Blvd.
Dublin, CA 94568**

DRAFT MINUTES

1. Closed Session: None.

2. Call to Order/Roll Call: 10:02 a.m.

Boardmembers Present: J. Calabrigo, E. Christy, T. Dupuis, J. King, A. Love, P. Meyer, M. Nichelini, M. Nino, M. Rodriguez, Y. Sanchez, L. Smith, K. Stepper, and J. Vorhauer

Staff Present: T. McCarthy, C. Soto, L. McKinney

On motion of Bm. King, seconded by Bm. Stepper and by unanimous vote, the Board agreed to allow Bm. Meyer to attend the meeting remotely due to illness.

3. Report on Closed Session: None.

4. Public Comments: None.

5. Presentations: None.

6. Approval of Minutes: None.

7. Written Communications: None.

8. Public Hearings: None.

9. Action Items:

9.1 Transitional Assistance Agreement with Director McCarthy

Executive Director McCarthy stated this item was an agreement between the Executive Director and the East Bay Regional Communications System Authority to continue in an advisory capacity. He will be leaving on February 29, 2024 and

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someone else will be hired as the Executive Director. This contract will be for the period of March 1, 2024 through April 30, 2024. This will allow for a smooth transition.

On motion of Bm. Calabrigo, seconded by Bm. King and by unanimous vote the Board adopted **Resolution No. 23-08 Authorizing the Chair to Execute and the Executive Director to Implement a Transitional Assistance Agreement.**

10. Board Comments:

Vice Chair Love stated the transition plan would include someone in the interim to focus on EBRCSA priorities. The full transition plan would finalize the outstanding CIP, review the organizational structure and make recommendations; review the financial health – short-and long-term; review and understand all the contract costs and efforts to explore savings and effectiveness. It will also allow time to establish what the Executive Director's recruitment will look like and how, if needed, to comply with AB5. This has not been established yet.

EBRCSA Attorney Ms. McKinney stated they could contract in a business-to-business sense with another individual that is offering their services to agencies outside of EBRCSA. There is going to be exploration of what is best for the agency.

Vice Chair Love stated there was no established timeline for the interim's length of service. He understood that it would take a long time to complete the Board's list of focused priorities as well as learning the history of the System.

Bm. Sanchez arrived at 10:15 a.m.

Chair Meyer stated it could be a one-year term, not a specific time frame necessarily. He took a step back and considered the timeline of the recruitment and reasoned it was too quick. They needed to take a look at the AB5 issue, whether it be benefits or compensation factors. There also needed to be a review of the organizational structure. There are difficult decisions to be made in the next six months to a year, both financial and organizational. He does not want the Board to move too rapidly.

Bm. Nino asked that when the AB5 analysis is complete that there be an oral presentation.

Ms. McKinney stated it could be a scheduled closed session.

Vice Chair Love stated the recommendation for Executive Chair selection would be made up of a small group of Board members. If you are interested, please let him know.

Chair Meyer stated that recommendation would be brought back to the full Board for approval.

- 10. Adjournment:** With no further business coming before the Board of Directors, the meeting as adjourned at 10:27 a.m.

Caroline P. Soto

DRAFT



East Bay Regional Communications System Authority



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AGENDA ITEM. 5.2.

AGENDA STATEMENT BOARD OF DIRECTORS MEETING MEETING DATE: March 1, 2024

TO: Board of Directors
East Bay Regional Communications System Authority (EBRCSA)

FROM: Thomas McCarthy, Executive Director

SUBJECT: BART Master License Agreement Amendment No. 2 and West Walnut Creek Site License.

RECOMMENDATION:

The Operations and Finance Committees recommend that the Board of Directors (“**Board**”) of the East Bay Regional Communications System Authority (“**Authority**”) adopt the proposed Resolution to approve Amendment No. 2 to the Master License Agreement (“**Amendment No. 2**”) between the Authority and San Francisco Bay Area Rapid Transit District (“**BART**”) and the West Walnut Creek Site License (“**Site License**”).

SUMMARY/DISCUSSION:

On April 15, 2010, the Authority and BART entered into a Master License Agreement which allowed the Authority to construct and install communications facilities on BART property and, in lieu of License Payments to BART, the Authority granted BART the right to connect to its System as part of BART’s radio system backhaul (“**Agreement**”). The parties also entered into Amendment No. 1 to the Master Agreement on April 15, 2010, which authorized Site Licenses for wireless communication sites at Warm Spring Station and East Dublin Station (“**Amendment No. 1**”).

On June 15, 2012, the parties entered into the Warm Spring Station and East Dublin Station Site Licenses. The term of the Agreement, the Warm Spring Station and East Dublin Station Site Licenses expire on December 31, 2030.

In October 2023, BART contacted Authority staff regarding its inability to locate a final executed version of a Site License for the West Walnut Creek Site. The inquiry resulted from an application made to BART by DISH Wireless to collocate antennas on the monopole at the West Walnut Creek Site. After a search, no final executed Site License was located by either party likely due to staff turnover in both agencies at the time the Site License was drafted. Consequently, the parties entered negotiations to finalize the draft Site License and develop Amendment No. 2.

Due both to the change in technology since the Agreement and Amendment No. 1 were executed as well as the potential for interference with the Authority's System by BART's authorized users, Amendment No. 2 requires any BART applicant to conduct both radio frequency analyses and an analysis of a particular monopole's load capacity as part of an application for use of the communication facilities constructed by the Authority at the three sites.

Those analyses are then required to be provided to the Authority for its review and approval before any applicant is authorized by BART to utilize communication facilities constructed by the Authority.

Moreover, Amendment No. 2 requires BART to take all steps necessary to bring its or its authorized user's operations into compliance with FCC regulations if the Authority notifies it that either a Harmful Interference, as that term is defined in FCC regulations, or degradation to its System is occurring.

The Site License reflects the original terms agreed to by the parties in 2013 including the termination date, but reflects the additional protections included in Amendment No. 2 as discussed herein.

FISCAL IMPACT:

None.

RECOMMENDED ACTION:

It is recommended that the Board of Directors adopt a resolution approving the proposed Amendment No. 2 and the Site License. It is requested that the Board authorize the Chair to execute Amendment No. 2 and the Site License and the Executive Director take such other and further action as necessary to implement Amendment No. 2 and Site License.

Attachment A – Amendment No. 2 to Master License Agreement
Attachment B – West Walnut Creek Site License.
Attachment C - Resolution

ATTACHMENT A

AMENDMENT No. 2
to
MASTER LICENSE
AGREEMENT FOR
WIRELESS COMMUNICATIONS SITES

THIS AMENDMENT No. 2, dated as of _____, 2024, (this "Amendment No. 2), by and between SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to California Public Utilities Code section 28500 *et seq.* ("BART"), and EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY, a joint powers authority established pursuant to California Government Code section 6500 *et seq.* ("EBRCSA"), amends that certain MASTER LICENSE AGREEMENT FOR WIRELESS COMMUNICATIONS SITES dated as of April 15, 2010, between BART and EBRCSA (individually, "Party" and collectively, "Parties") as amended by Amendment No. 1 (collectively, the "Master License Agreement").

RECITALS

WHEREAS, on April 15, 2010, the Parties entered into Amendment No. 1 to the Master Agreement which authorized Site Licenses for wireless communication sites at Warm Spring Station and East Dublin Station ("Amendment No. 1"); and

WHEREAS, on June 15, 2012, the Parties entered into Site Licenses for the Warm Spring Station Site and East Dublin Station Site; and

WHEREAS, the Parties acknowledge and agree that the EBRCSA's use of the Communications Facilities are vital to the life, health, and safety of public safety personnel and of members of the general public and agree to take all reasonable measures to protect the Communication Facilities against harmful interference;

WHEREAS, the Parties wish to further amend the Master License Agreement in order to enter into a Site License for the West Walnut Creek Site and impose measures designed to protect EBRCSA's use of the Communication Facilities at the Warm Spring Station Site, the East Dublin Station Site and the West Walnut Creek Site upon certain terms and conditions as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the Parties, EBRCSA and BART hereby agree as follows:

AMENDMENT TO MASTER LICENSE AGREEMENT

1. The foregoing recitals are true and correct and hereby incorporated herein.

2. Capitalized terms used in this Amendment No. 2 shall have the same meanings as such terms in the Master License Agreement, unless otherwise indicated.

3. BART shall require all licensees or other third parties proposing to use the Communication Facilities or proposing to increase transmitting power of existing equipment (collectively, "Applicant") to conduct and provide all of the following analyses at Applicant's sole cost and expense prior to BART's authorization of such use:

(a) a radio frequency analysis ("RF Analysis") which shall include all of the following:

- (i) existing radio frequencies;
- (ii) proposed radio frequencies;
- (iii) proposed transmitter power levels;
- (iv) proposed antenna placement;
- (v) proposed antenna type;
- (vi) all potential radio frequency interference including transmitter noise, receiver desensitization and intermodulation with all other BART-authorized users of the Communication Facilities which shall include uncontrolled exposure in the near-field and far-field regions;
- (vii) an evaluation of the proposed use's compliance with Federal Communications Commission ("FCC") guidelines for human exposure to radio frequency fields and a demonstration that the proposed use complies with FCC "General Population" standards;
- (viii) an evaluation of whether the proposed use may cause "Harmful Interference" with EBRCSA's use of the Communication Facilities that term is defined in 47 CFR 2.1(c).

(b) an analysis of any monopole's load capacity by a California-licensed engineer where such monopole is proposed to be utilized by the Applicant ("Engineer Analysis").

(c) BART shall require the Applicant to produce a report containing both the RF Analysis and Engineer Analysis (collectively, "Report(s)") which shall be submitted to EBRCSA for its review and written approval before BART the Applicant is authorized to use the Communication Facilities or increase its transmitting power of existing equipment.

(d) If the Report indicates that the Applicant's proposed use has the potential to cause "Harmful Interference" with EBRCSA's use of the Communication Facilities, then BART shall not authorize the proposed use.

4. BART and any authorized Applicant shall operate their equipment in full compliance with all applicable FCC Rules and Regulations. Upon receipt of written notice Harmful Interference or degradation to EBRCSA's public safety radio operations, BART shall take all steps necessary to bring BART's operational use, or direct its authorized Applicant to bring Applicant's operation into full compliance including, but not limited to, suspending the interfering signal pending resolution of the cause and cure of such interference or degradation and prohibiting resumption of such operation without prior written authorization by the FCC or EBRCSA.

5. Except as expressly modified by this Amendment No. 2, the Master License Agreement shall continue in full force and effect according to its terms, and the Parties hereby ratify and affirm all their respective rights and obligations under the Agreement. In the event of any conflict between this Amendment No. 2 or the Master License Agreement, the provisions of this Amendment No. 2 shall govern.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Amendment No. 2.

BART:

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT, a rapid transit district
established pursuant to California Public Utilities
Code section 28500 *et seq.*

By: _____

Name: Joseph Basuino

Its: Department of Real Estate and
Property Development

Date: _____

EBRCSA:

EAST BAY REGIONAL
COMMUNICATIONS SYSTEM
AUTHORITY, a joint powers
established pursuant to California Government Code
section 6500 *et seq.*

By: _____

Name: Paige Meyer

Its: Board Chair

Date: _____

ATTACHMENT B

BART SITE LICENSE
to
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

BART Site ID: West Walnut Creek
EBRCSA Site ID: Walnut Creek BART

This Site License, dated as of _____, 2024, by and between SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to California Public Utilities Code section 28500 *et seq.* (“BART”), and EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY, a joint powers authority established pursuant to California Government Code section 6500 *et seq.* (“EBRCSA”), is made in connection with that certain Master License Agreement for Wireless Communications Antenna Sites dated as of April 15, 2010, between BART and EBRCSA, as amended by that certain Amendment No. 1 to the Master License Agreement, also dated as of April 15, 2010, and as further amended by that certain Amendment No. 2 to the Master License Agreement, dated as of the same date as this Site License (collectively, the “Master License Agreement”). Capitalized terms used in this Site License have the same meanings as such terms in the Master License Agreement, unless otherwise indicated.

1. Site Identification:

A. BART Site ID: West Walnut Creek

B. EBRCSA Site ID: Walnut Creek BART

2. **Site Address:** 2576 Camino Diablo, Walnut Creek, CA 94597

3. **License Payment:** In lieu of a License Payment for this Site, EBRC SA grants BART the rights described in item 10, below.

4. **Term Commencement and Expiration:** The initial term of this Site License shall commence when this Site License is fully executed, and shall expire on December 31, 2030.

5. BART emergency contact:

BART Central Manager: (510) 834-1297

6. **EBRCSA emergency contact:**

Alameda County Sheriff's Dispatch: (510) 667-7721

7. **Description of Communications Facilities:** The Communications Facilities are as depicted in the construction drawings approved by BART pursuant to EBRCSA's Entry Permit.

8. **Standard access and security procedures:** See Exhibit A.

9. **Improvements to be Owned by BART:**

_____ **None.**

 X Pursuant to Section 7.3(a) of the Master License Agreement, title to the following Communications Facilities shall vest in BART upon completion and acceptance:

- All Site improvements, except the following which shall be owned by EBRCSA:
 - EBRCSA equipment shelter and shelter pad and all equipment contained therein;
 - "Waveguide Bridge" between EBRCSA shelter and new monopole;
 - 2.5" diameter underground electrical conduit connecting EBRCSA shelter to power meter;
 - Power cable in the aforementioned 2.5" diameter underground electrical conduit;
 - Intersubsystem interface ("ISSI") for above- and below-ground communications between EBRCSA and first responders;
 - Interoperability control stations connections for above- and below-ground communications between EBRCSA and first responders.
- Any Site improvements that remain owned by PG&E; e.g.:
 - Power service facilities up to and including the meters (although the meter panel will be owned by BART), including the underground conduit between the existing PG&E pole at the east end of the radio site and the 6-socket meter panel.

10. **Modifications of terms contained in Master License Agreement:**

_____ **None.**

A. **X** **As described below.** New Definition: "West Walnut Creek Site" means the BART wireless communications site located at 2576 Camino Diablo in Walnut Creek, California.

B. In lieu of License Payment for the West Walnut Creek Site, EBRCSA hereby grants BART the following rights to use EBRCSA Facilities during the term of this Site License:

- i. EBRCSA has funded, designed, and constructed the West Walnut Creek Site in accordance with drawings approved by BART.

- ii. BART shall have the right to connect to the EBRCSA Communications Facilities at the West Walnut Creek Site for the purpose of using the EBRCSA Microwave System as part of BART's radio system backhaul.
 - C. For the avoidance of doubt, BART shall have the right to use the improvements to which it receives title under item 9, above, for any lawful purpose, including allowing use by its licensees or other third-parties in accordance with the terms of Amendment No. 2.
 - D. Paragraph B does not modify BART's right to assess BART Support Charges or interest for late payments, as described respectively in Sections 5.2 and 5.4(e) of the Master License Agreement.
 - E. To permit a quick switch-over from BART's existing antennas to the new antennas, EBRCSA has provided, installed, terminated, and tested all material (e.g. brackets, cables, antennas, amplifiers, cable protection, ground devices, and connectors) necessary to support BART radio operations from the new monopole.
 - F. EBRCSA has performed, at its sole cost, all work required above, with the exception of work inside BART's radio equipment shelter, which shall be the responsibility of BART.
 - G. Notwithstanding BART's ownership rights, EBRCSA shall have the exclusive right to use the improvements it installs pursuant to this Site License; provided, however, that EBRCSA's rights to use the monopole shall be limited to a nonexclusive right to use the top platform of the monopole and one microwave dish mounted at 70 feet, as shown in the construction drawings approved by BART pursuant to EBRCSA's Entry Permit.
 - H. EBRCSA shall ensure that uninterrupted generator backup power is provided to the Site during the construction period.
11. **Construction:** Any additional construction to alter or maintain the Communication Facilities shall require issuance of a BART Wireless / Fiber Optic Entry Permit.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Site License as of the dates set out beneath their respective signatures, below.

BART:

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT, a rapid transit district
established pursuant to California Public Utilities
Code section 28500 *et seq.*

By: _____

Name: Joseph Basuino

Its: Department of Real Estate and
Property Development

Date: _____

EBRCSA:

EAST BAY REGIONAL
COMMUNICATIONS SYSTEM
AUTHORITY, a joint powers
established pursuant to California Government Code
section 6500 *et seq.*

By: _____

Name: Paige Meyer

Its: Board Chair

Date: _____

EXHIBIT A

Access Procedures

- 1) All EBRCSA employees and contractors will provide written notice for any planned access to BART premises (“BART Premises”) and will be able to access EBRCSA Facilities on an emergency basis and will, at all times, wear identifying photo badges issued by EBRCSA or authorized contractor while accessing BART Premises.
- 2) EBRCSA, prior to or at the time of providing notice about planned access to the BART Premises, will provide BART with a list of, and copies of, the photo badges for the employees and/or contractors who will access the BART Premises.
- 3) Badged EBRCSA employees or contractors may access BART Premises only when accompanied by authorized safety personnel or other authorized BART personnel.
- 4) EBRCSA will obtain the appropriate permit(s) and license(s) for any proposed construction or repairs on BART Premises. Any fenced areas will remain locked at all times.
- 5) Access to BART Premises is provided by license only; no utility easement is granted or created.

RESOLUTION NO. 24-__

**A RESOLUTION OF THE
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**

**AUTHORIZING THE CHAIR TO EXECUTE AND THE EXECUTIVE
DIRECTOR TO IMPLEMENT AN AMENDMENT NO. 2 TO THE
MASTER LICENSE AGREEMENT WITH THE SAN FRANCISCO
BAY AREA RAPID TRANSIT DISTRICT AND THE WEST WALNUT
CREEK SITE LICENSE**

WHEREAS, on April 15, 2010, the East Bay Regional Communications System Authority (“**Authority**”) and the San Francisco Bay Area Rapid Transit District (“**BART**”) entered into a Master License Agreement and the parties also entered into Amendment No. 1 to the Master Agreement on April 15, 2010 which authorized Site Licenses for wireless communication sites at Warm Spring Station and East Dublin Station (“**Amendment No. 1**”); and

WHEREAS, in October 2023, BART contacted Authority staff regarding its inability to locate a final executed version of a Site License for the West Walnut Creek Site and, after a search, no final executed West Walnut Creek Site License (“**Site License**”) was located by either party. Consequently, the parties entered into negotiations to finalize the draft Site License and develop Amendment No. 2.; and

WHEREAS, in order to reflect current conditions and to protect against the potential for interference with the Authority’s System by BART and its authorized users, the parties negotiated the terms of Amendment No. 2 and the Site License.

NOW, THEREFORE, BE IT RESOLVED THAT, good cause appearing therefor, the Board of Directors of the East Bay Regional Communications System Authority does hereby its Chair to execute the Amendment No. 2 to the Master Site License and the West Walnut Creek Site License and authorize its Executive Director to take further other action as may be necessary and appropriate to implement Amendment No. 2 and the West Walnut Creek Site License in form approved by Authority Counsel.

On motion of xx, seconded by xx, the foregoing Resolution was passed and adopted this 1st day of March, 2024, by the following votes:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST: _____
Caroline Soto, Secretary

5595325.1



East Bay Regional Communications System Authority



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AGENDA ITEM NO. 5.3.

AGENDA STATEMENT BOARD OF DIRECTORS MEETING MEETING DATE: March 1, 2024

TO: Board of Directors
East Bay Regional Communications System Authority (EBRCSA)

FROM: Chief P. Meyer, Board Chair
East Bay Regional Communications System Authority

SUBJECT: Aviat Agreement for Microwave Service and Support

RECOMMENDATIONS:

The Operations and Finance Committees recommend that the Board of Directors (“**Board**”) of the East Bay Regional Communications System Authority (“**Authority**”) adopt the proposed Resolution to approve an Agreement with Aviat U.S., Inc. (“**Aviat**”) for microwave service and support.

SUMMARY/DISCUSSION:

The Authority’s microwave system was built by Aviat. The Authority previously entered into a contract with Aviat which allows it to utilize Aviat Care for support and services that expired on , September 30, 2022.

Aviat proposed entering into a new contract for a six year term, for a total cost of \$949,148.00 to be paid in the following six annual payments: \$84,620, \$163,425, \$85,754, \$276,781, \$127,464 and \$211,104 for repair services, replacement during repair, and remote technical support (“**Agreement**”). The Agreement would allows an Authority-authorized Radio Technician to call Aviat and provide a PIN number to request assistance of a technician with Aviat Care. The technicians can discuss the problem, which might be unfamiliar to an Authority technician, and receive assistance over the telephone in resolving the problem. In some cases, the Aviat technician can remotely review the System status to assist solve the problem.

The Authority is in the process of upgrading its microwave system. The technicians from Alameda County and Contra Costa County work directly with Aviat in replacing/upgrading the microwave equipment so that they are better prepared to perform maintenance and repairs in the future.

Although the technicians learned a lot through the upgrade process, the Authority still requires the expertise afforded by Aviat in complicated situations and for advance part replacement. Advance part replacement allows Aviat to provide available spare parts to the Authority, make an immediate repair and resume transmitting. Advance part replacement also allows the Authority to send a part back for repair and Aviat returns it to the Authority for its future use.

Aviat also provides the monitoring system used to monitor the microwave system network known as "Provision".

The network monitoring service provides 24X7X365 monitoring via the Aviat Networks Secure NOC. The NOC will be alerted when the system experiences an error and the appropriate technicians within the Alameda and Contra Costa County Radio Shops will be notified of the error and what is happening. The technician from the County Radio Shop will respond and, if further assistance is necessary, they will place the call for an Aviat Support Technician. Microwave maintenance has been sole sourced in the past because of the propriety engineering and parts replacement which only Aviat can provide.

FINANCIAL IMPACT:

Approval of the proposed Agreement will not require a budget adjustment because the Authority's FY 2023/2024 budget includes a line item for \$226,000 for such services. The FY 23/24 payment to Aviat under the proposed Agreement is \$84,620 .

The Authority has adequate funding in the Operations budget to cover the cost listed in proposed Agreement for FY23/24. Adjustments to the Subscriber Fees will include ensuring adequate funding is available to cover the cost of the next five years of the agreement. The annual cost for the Agreement over the next six years is part of the contract and listed below.

Service Description	QTY	List Price	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Grand Total
IRU600 WarrantyPlus In Warranty	146	\$ 155	\$ 22,630	\$ 22,630	\$ 22,630				\$ 67,890
IRU600 WarrantyPlus Non-Warranty	146	\$ 389				\$ 56,794	\$ 56,794	\$ 56,794	\$ 170,382
ODU600 WarrantyPlus In Warranty	24	\$ 155	\$ 3,720	\$ 3,720	\$ 3,720				\$ 11,160
ODU600 WarrantyPlus Non-Warranty	24	\$ 400				\$ 9,600	\$ 9,600	\$ 9,600	\$ 28,800
WTM WarrantyPlus In Warranty	2	\$ 155	\$ 310	\$ 310	\$ 310				\$ 930
WTM WarrantyPlus Non-Warranty	2	\$ 386				\$ 772	\$ 772	\$ 772	\$ 2,316
Asentria Remote Alarms	33	\$ 159	\$ 5,237	\$ 5,237	\$ 5,237	\$ 5,237	\$ 5,237	\$ 5,237	\$ 31,423
Commscope Dehydrators	44	\$ 140	\$ 6,173	\$ 6,173	\$ 6,173	\$ 6,173	\$ 6,173	\$ 6,173	\$ 37,039
Emerson chargers	39	\$ 268	\$ 10,450	\$ 10,450	\$ 10,450	\$ 10,450	\$ 10,450	\$ 10,450	\$ 62,700
DS1 Jackfield	53	\$ 65	\$ 3,445	\$ 3,445	\$ 3,445	\$ 3,445	\$ 3,445	\$ 3,445	\$ 20,670
Sageon Charger	1	\$ 224	\$ 224	\$ 224	\$ 224	\$ 224	\$ 224	\$ 224	\$ 1,346
Warranty - Radios & OEMs Sub-Total			\$ 52,190	\$ 52,190	\$ 52,190	\$ 92,696	\$ 92,696	\$ 92,696	\$ 434,656
Provision Support up to 250 Nodes	1	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 82,800
Provision Support Sub-Total			\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 82,800
CORRECTIVE MAINTENANCE Ground (10 callouts)	10		\$ 18,630	\$ 19,189	\$ 19,765	\$ 20,358	\$ 20,968	\$ 21,597	\$ 120,506
PREVENTIVE MAINTENANCE Ground (42 Sites - Alameda County)	42			\$ 78,246		\$ 80,593		\$ 83,011	\$ 241,851
Managed Services (CM/PM) - Sub-Total			\$ 18,630	\$ 97,435	\$ 19,765	\$ 100,951	\$ 20,968	\$ 104,608	\$ 362,357
REMOTE SW UPGRADE, FOR DOWNLOAD AND ACTIVATION						\$ 69,335			\$ 69,335
Remote Software Upgrade - Sub-Total						\$ 69,335			\$ 69,335
			\$ 84,620	\$ 163,425	\$ 85,754	\$ 276,781	\$ 127,464	\$ 211,104	\$ 949,148

RECOMMENDED ACTION:

It is recommended that the Board of Directors adopt a resolution approving the Agreement with Aviat Networks for the East Bay Regional Communications System Authority. It is requested that the Board authorize the Chair to execute the Agreement and the Executive Director take such other and further action as necessary to implement the agreement.

Attachment “A” – Aviat Agreement for Microwave Service and Support

Attachment “B” - Resolution

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY AND
AVIAT U.S., INC.**

THIS AGREEMENT for consulting services is made by and between the East Bay Regional Communications System Authority (“**Authority**”) and Aviat U.S., Inc. (“**Consultant**”) (collectively “**Parties**” and individually “**Party**”) as of _____, 2024 (the “**Effective Date**”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement and AviatCare Support Services Exhibit A attached hereto, Consultant shall provide to Authority the services described in the scope of services attached as Exhibit A at the time and place and in the manner specified therein (“**Services**”). In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on the date of completion specified in Exhibit A, and Consultant shall complete the Services described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the Services required by this Agreement shall not affect the Authority’s right to terminate the Agreement, as referenced in Section 8. Notwithstanding the foregoing, this Agreement may be extended on an annual basis (1 year term) upon the written agreement of the Parties, provided that sufficient funds have been appropriated for such purchase by Authority. None of the foregoing shall affect the Authority’s right to terminate the Agreement as provided for in Section 8.

1.2 Standard of Performance. Consultant shall perform all Services required pursuant to this Agreement in the manner and according to industry standards observed by a competent practitioner of the profession in which Consultant is engaged.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that Authority, in its sole discretion is dissatisfied with the Services provided by Consultant’s personnel at any time during the term of this Agreement, Authority shall provide written notification to Consultant (setting forth the name of such personnel and the basis for such dissatisfaction). Consultant shall, immediately upon receiving written notice from Authority reassign such person.

1.4 Time. Consultant shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the

standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.

1.5 Public Works Requirements. Because the Services described in Exhibit A include "Maintenance work, including routine, recurring, and usual work for the preservation of a publicly owned or operated facility," the Services constitute a public work within the definition of Section 1771 of the California Labor Code. As a result, Consultant is required to comply with the provisions of the California Labor Code applicable to public works, to the extent set forth in Exhibit C.

1.6 Public Works Contractor Registration. Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 2. COMPENSATION. Authority hereby agrees to pay Consultant a sum not to exceed Nine-Hundred Forty-Nine Thousand One-Hundred and Eight Dollars (\$949,148.00), notwithstanding any contrary indications that may be contained in Consultant's proposal, for Services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. Authority shall pay Consultant for Services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Authority to Consultant for Services rendered pursuant to this Agreement. Consultant shall submit all invoices to Authority in the manner specified herein. Except as specifically authorized by Authority in writing, Consultant shall not bill Authority for duplicate Services performed by more than one person.

Consultant and Authority acknowledge and agree that compensation paid by Authority to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. Authority therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for Services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period and Services provided;
- A Task Summary containing the total due per period;
- The Consultant's signature.

2.2 Monthly Payment. Authority shall make monthly or annual payments as applicable, based on invoices received, for Services satisfactorily performed or to be provided, and for authorized reimbursable costs incurred. Authority shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Total Payment. Authority shall pay for the Services to be rendered by Consultant pursuant to this Agreement. Authority shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering Services pursuant to this Agreement. Authority shall make no payment for any extra, further, or additional service pursuant to this Agreement unless agreed to in writing by the Parties.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.4 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.5 Payment upon Termination.** In the event that the Authority or Consultant terminates this Agreement pursuant to Section 8, the Authority shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.6 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Executive Director.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services required by this Agreement. Authority shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Authority shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Authority employees and reviewing records and the information in possession of the Authority. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of Authority. In no event shall Authority be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to Authority of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence to Authority that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount of \$1,000,000 and automobile liability insurance for the term of this Agreement in an amount of \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including without limitation, blanket contractual liability and the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Authority, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.
- c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Consultant shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;

- c. Waiver of Subrogation Endorsement as required by the section;
and
- d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount of \$2,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 3 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 3 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the Authority for review prior to the commencement of any work under this Agreement.

4.3.3 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.4 All Policies Requirements.

4.4.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

- 4.4.2 Verification of Coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish Authority with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the Authority does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The Authority reserves the right to require complete copies of all required and applicable insurance certificates at any time.
- 4.4.3 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of Authority for the self-insured retentions and deductibles before beginning any of the Services or work called for by any term of this Agreement. At the option of the Authority, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Authority guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.4.4 Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that Authority shall be provided with 30 days' prior written notice of any coverage cancellations.
- 4.4.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- **4.5 Remedies.** In addition to any other remedies Authority may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Authority may terminate this Agreement with prior written notice to Consultant

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall, to the extent permitted by law, including without limitation California Civil Code 2782 and 2782.8, indemnify, hold harmless and assume the defense of, in any actions at

law or in equity, the District, its employees, agents, volunteers, and elective and appointive boards, from all claims, losses, and damages, including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.

With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the District (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages arising from the professionally negligent acts, errors or omissions of Consultant, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the sole negligence or willful misconduct of the District.

Consultant shall also indemnify, defend and hold harmless the District from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the District or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Authority. This Agreement shall not be construed as an agreement for employment. Authority shall have the right to control Consultant only insofar as the results of Consultant's Services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise Authority shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Consultant further acknowledges that Consultant performs Services outside the usual course of the Authority's business; and is customarily engaged in an independently established trade, occupation, or business of the same nature as the Consultant performs for the Authority and has the option to perform such work for other entities. Notwithstanding any other Authority, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Authority, including

but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Authority and entitlement to any contribution to be paid by Authority for employer contributions and/or employee contributions for PERS benefits.

- 6.2 Consultant Not an Agent.** Except as Authority may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Authority in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Authority to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which Authority is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to Authority that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Authority that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from Authority.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, sex, gender, religion (including religious dress and grooming practices), national origin, ancestry, physical or mental disability, medical condition (including cancer and genetic characteristics), marital status, age, sexual orientation, color, creed, pregnancy, genetic information, gender

identity or expression, political affiliation or belief, military/veteran status, or any other classification protected by applicable local, state, or federal laws (each a "Protected Characteristic"), against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any Services or programs provided by Consultant under this Agreement.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Authority may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon 30 days' written notice to Authority and shall include in such notice the reasons for cancellation. The right of termination provided herein is absolute and neither Party shall be liable to the other for damages or otherwise by reason of such termination except as provided herein.

In the event of termination with notice, Consultant shall be entitled to compensation for Services performed to the effective date of termination and Consultant shall retain any annual payments made by Authority under this Agreement which shall be conditioned upon Consultant's provision of such Services to Authority for the remainder of the year in which the annual payment was provided to it . Authority, however, may condition payment of such compensation upon Consultant delivering to Authority any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the Authority in connection with this Agreement.

- 8.2 Extension.** Upon mutual written agreement by the Parties, the Parties may extend the Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Similarly, unless authorized by the Authority, Authority shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.

- 8.4 Assignment and Subcontracting.** Authority and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to Authority for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Authority. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Authority.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Authority and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, Authority's remedies shall include, but are not limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain, applicable plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant specifically for Authority pursuant to this Agreement;
 - 8.6.3** Retain a different consultant to complete the Services described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares specifically for Authority or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Authority. Consultant hereby agrees to deliver those documents to the Authority upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Authority and are not necessarily suitable for any future or other use. Authority and Consultant agree that, until final approval by Authority, all data, plans, specifications, reports and other documents are

confidential and will not be released to third parties without prior written consent of both Parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Authority under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon written request of the Authority. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Authority or as part of any audit of the Authority, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Authority or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Authority official in the work performed pursuant to this Agreement. No officer or employee of Authority shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the Authority. If Consultant was an employee, agent, appointee, or official of the Authority in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Authority for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

At Authority’s sole discretion, Consultant may be required to file with the Authority a Form 700 to identify and document Consultant’s economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the Dublin Authority Clerk for the Form 700 and directions on how to prepare it.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by the District District Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Aviat U.S., Inc.
200 Parker Dr., Suite C100 A
Austin, Texas 78728
Attn: Legal Department

Any written notice to Authority shall be sent to:

East Bay Regional Communications System Authority
Att: Tom McCarthy, Executive Director
tmccarthy@acgov.org
4985 Broder Boulevard
Dublin, CA 94568

10.11 Integration. This Agreement, including Exhibits A, B, and C represents the entire and integrated agreement between Authority and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	California Labor Code Section 1720 Information

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.13 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

EAST BAY REGIONAL COMMUNICATIONS
SYSTEM AUTHORITY

AVIAT U.S., INC

Paige Meyer, Board Chair

David Gray, Sr. VP and CFO

Attest:

Consultant's DIR Registration Number

Caroline Soto, Authority Clerk

Approved as to Form:

Laura McKinney, Authority Attorney

5595256.1

EXHIBITS A and B

SCOPE OF SERVICES, COMPENSATION SCHEDULE AND REIMBURSABLE EXPENSES



EXHIBIT A OCTOBER 26, 2023

EBRCS (East Bay Regional Communications System Authority)

AVIATCARE SUPPORT AGREEMENT Contract 100985

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1. EXECUTIVE SUMMARY

The included Aviat proposal specifies the services and responsibilities applicable to contract support of microwave and associated products from Aviat U.S., Inc. ("Aviat Networks" or "Aviat") and its partners ("**Scope of Services**"). The Scope of Services shall be governed by the terms and conditions set forth in the East Bay Regional Communications System Authority ("**Authority**") Professional Services Agreement ("**Agreement**") and the Aviat Global Support Guidelines ("Agreement"). Neither Party is obligated to provide Services until the Agreement is executed by both Parties. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement. Should a conflict exist between this Scope of Services and this Agreement, the terms of the Agreement shall control.

The prices quoted as part of this proposal are valid for 60 days. Services are quoted and payable in US dollars and reflect the scope of work as specified within this proposal. Unless otherwise specified herein, the Services listed below shall only be eligible for support, which includes any Authority spares purchased under the included Aviat Networks Sales Order Numbers. Consumable items such as cables or batteries are excluded from the Scope of Services. Unless otherwise specified and additionally included, facility maintenance including but not limited to towers, shelters, air conditioners, generators and fuel storage are also excluded from the Scope of Services.

2. AVIATCARE SERVICES: MAINTENANCE COVERAGE ("SERVICES")

Aviat Networks will provide the following services:

- ☒ Repair 24x7
- ☒ Advance
- ☒ Repair Logistics ☒ Software
- Technical Support 24x7 ☐ Performance Management
- ☒ ProVision ☐ Performance
- ☐ Change
- Preventive Maintenance ☐ Spares Management
- 5557914.2 ☐ Site
- ☐ Hosted HAS
- FAS ☐ Managed HAS

DURATION OF SUPPORT

The support period of the Maintenance Level Agreement is provided in the table below:

SERVICES	START	END
REPAIR SERVICES	Upon Effective Date	6 Years Thereafter
ADVANCE REPLACEMENT	Upon Effective Date	6 Years Thereafter
REPAIR LOGISTICS PROGRAM	Upon Effective Date	6 Years Thereafter
REMOTE TECHNICAL SUPPORT 24 X 7	Upon Effective Date	6 Years Thereafter
PROVISION SOFTWARE SUPPORT	Upon Effective Date	6 Years Thereafter

GROUND CORRECTIVE MAINTENANCE	Upon Effective Date	6 Years Thereafter
GROUND PREVENTIVE MAINTENANCE	Upon Effective Date	6 Years Thereafter
REMOTE SOFTWARE UPGRADE	4 th Year	4 th Year

LIST OF SITES

Alameda County		Contra Costa County	Richmond County
42 Sites		16 Sites	7 Sites
ALAMEDA EOC	OAKLAND PD	ALAMEDA EOC	CUMMINGS PEAK
ROCKY RIDGE	PIEDMONT PD	ROCKY RIDGE	TURQUOISE
BALD PEAK	ALBANY PD	BALD PEAK	PEARL RESERVOIR
LAKESIDE	EMERYVILLE FD	CARQUINEZ	RICHMOND COMM CTR
LAWRENCE BERKELEY LAB	BERKELEY PD	40 GLACIER	NICHOL KNOB
OAKLAND APL	SAN LEANDRO PD	KREGOR PEAK	EL CERRITO PD
GLEN DYER JAIL	ALAMEDA PD	KREGOR PEAK	PINOLE PD
MSC	SAN LEANDRO COMM	HIGHLAND PEAK	
SAN LEANDRO HILLS	UNION CITY	SANTA RITA REPEATER	
SAN LEANDRO HILLS	FREMONT PD	ANTIOCH PD	
COYOTE HILLS	LIVERMORE PD	WALNUT CREEK BART	
COYOTE HILLS	WALPERT RIDGE	WALNUT CREEK PD	
NEWARK PD	PLEASANTON PD	CONCORD PD	
NEWARK PD	CAROL DRIVE	MARTINEZ	
SUNOL RIDGE	WARM SPRING	SHADYBROOK	
SUNOL RIDGE	CRANE RIDGE	MARSH CREEK	
DOOLAN WT	PATTERSON PS		
EAST DUBLIN BART	HAYWAD ANNEX		
SANTA RITA REPEATER	Oakland Housing Authority (OHA)		
TWIN PEAKS	HAYWARD PD		
SKYLINE	GARIN		

3. SUPPORT COSTS

Service Description	QTY	List Price	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Grand Total
IRU600 WarrantyPlus In Warranty	146	\$ 155	\$ 22,630	\$ 22,630	\$ 22,630				\$ 67,890
IRU600 WarrantyPlus Non-Warranty	146	\$ 389				\$ 56,794	\$ 56,794	\$ 56,794	\$ 170,382
ODU600 WarrantyPlus In Warranty	24	\$ 155	\$ 3,720	\$ 3,720	\$ 3,720				\$ 11,160
ODU600 WarrantyPlus Non-Warranty	24	\$ 400				\$ 9,600	\$ 9,600	\$ 9,600	\$ 28,800
WTM WarrantyPlus In Warranty	2	\$ 155	\$ 310	\$ 310	\$ 310				\$ 930
WTM WarrantyPlus Non-Warranty	2	\$ 386				\$ 772	\$ 772	\$ 772	\$ 2,316
Asentria Remote Alarms	33	\$ 159	\$ 5,237	\$ 5,237	\$ 5,237	\$ 5,237	\$ 5,237	\$ 5,237	\$ 31,423
Commscope Dehydrators	44	\$ 140	\$ 6,173	\$ 6,173	\$ 6,173	\$ 6,173	\$ 6,173	\$ 6,173	\$ 37,039
Emerson chargers	39	\$ 268	\$ 10,450	\$ 10,450	\$ 10,450	\$ 10,450	\$ 10,450	\$ 10,450	\$ 62,700
DS1 Jackfield	53	\$ 65	\$ 3,445	\$ 3,445	\$ 3,445	\$ 3,445	\$ 3,445	\$ 3,445	\$ 20,670
Sageon Charger	1	\$ 224	\$ 224	\$ 224	\$ 224	\$ 224	\$ 224	\$ 224	\$ 1,346
Warranty - Radios & OEMs Sub-Total			\$ 52,190	\$ 52,190	\$ 52,190	\$ 92,696	\$ 92,696	\$ 92,696	\$ 434,656
Provision Support up to 250 Nodes	1	\$13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 82,800
Provision Support Sub-Total			\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 13,800	\$ 82,800
CORRECTIVE MAINTENANCE Ground (10 callouts)	10		\$ 18,630	\$ 19,189	\$ 19,765	\$ 20,358	\$ 20,968	\$ 21,597	\$ 120,506
PREVENTIVE MAINTENANCE Ground (42 Sites - Alameda County)	42			\$ 78,246		\$ 80,593		\$ 83,011	\$ 241,851
Managed Services (CM/PM) - Sub-Total			\$ 18,630	\$ 97,435	\$ 19,765	\$ 100,951	\$ 20,968	\$ 104,608	\$ 362,357
REMOTE SW UPGRADE, FOR DOWNLOAD AND ACTIVATION						\$ 69,335			\$ 69,335
Remote Software Upgrade - Sub-Total						\$ 69,335			\$ 69,335
			\$ 84,620	\$ 163,425	\$ 85,754	\$ 276,781	\$ 127,464	\$ 211,104	\$ 949,148

AviatCare Support Services Project: NA160807-85179	
WarrantyPlus Support ✓ Priority Technical Support: Available 24 X 7 ✓ AviatCloud Support Portal: Available 24 X 7 ✓ Repair Services: ✓ 20 Calendar Day turnaround time on Aviat Networks manufactured equipment ✓ Advance Replacement 3-5 Business Day turnaround time Based on availability of inventory (Aviat Manufactured equipment) ✓ Repair Logistics Program on Aviat Manufactured equipment – shipping provided by Aviat to and from Authority site, excludes expedited shipping	IRU600/ODU600/WTM (Full Install Base)
✓ All OEM is an Extension of Warranty offered by that Vendor; Repair turnaround time is set by vendor (no advanced replacement available) ✓ Excludes Replacement of products, repair only if available ✓ Typically 30-45 day turnaround time	OEM: Asentria Remote Alarms, Commscope Dehydrators, Emerson & Sageon Chargers, DS1 Jackfield
ProVision Software Support	
Provision Support ✓ Priority Technical Support: Available 24 X 7 ✓ AviatCloud Support Portal: Available 24 X 7 Provide general available software releases and product updates during the coverage period	250 Nodes
Preventive and Corrective Maintenance	
Corrective Maintenance - Ground (Annually) ➤ Emergency Onsite Ground Crew - 4 Hour SLA (Critical Alarms) ➤ 10 callouts ➤ Additional callouts \$2,080 ➤ Excludes Tower Climbing	10 Call Outs
Ground Preventive Maintenance – Year 2, 4 & 6 ➤ Excludes Tower Climbing	42 Sites/1 Visit Per Year To be performed in Year 2, 4 & 6 PM for Alameda Sites Only (see list of sites above)
Software Upgrade Service	
Remote Software Upgrade Download and Activation To be performed in Year 4	Remote Software Upgrade Download and Activation; To be performed in Year 4

Optional Services – AviatCare Education

3.1. OPTIONAL AND TRUE-UP SUPPORT FEES

Aviat Networks quotes onsite support services based on the following factors: network configuration, number of dispatches for the duration of a contract, number of hours onsite per dispatch, tower crew mobilization/demobilization, spares availability, and any specialized site access requirements.

Aviat Networks offers customers the option, where available, to purchase one-time support services which are invoiced at the time-of-service request. In addition, Aviat can supply onsite support services in excess of the negotiated contract terms where the number of dispatch requests exceed the number of quoted dispatches during a given contract period, Aviat Networks will invoice the customer for the additional services (True-up) at the time of dispatch request. Fees for one-time and True-up callouts are listed below.

Optional, One-Time & True-Up Managed Services Fees		
Managed Network Service: Miscellaneous, Additional Ground Dispatch (Onsite Corrective and Preventive Maintenance)	SWW-MSGENXX10199	Per Occurrence \$2,080
Managed Network Service: Miscellaneous, Additional Tower Dispatch (SLA restrictions apply) - Emergency - Non-Emergency	SWW-MSGENXX20199	Per Occurrence \$11,000 \$ 8,333
Managed Network Service: Miscellaneous, Material	SWW-MSGENXX30199	Per Occurrence Time and Materials
Managed Network Service: Miscellaneous, Travel	SWW-MSGENXX40199	Per Occurrence Time and Materials
Managed Network Service: Miscellaneous, Special Site Access Equipment	SWW-MSGENXX50199	Per Occurrence Time and Materials
Managed Network Service: Miscellaneous, Site Power Support	SWW-MSGENXX60199	Per Occurrence Time and Materials
Miscellaneous, Misc Extra Onsite Work	SWW-MSGENXX70199	Per Occurrence Time and Materials

During the Agreement Term, any number of newly purchased Aviat Networks devices can be added to your AviatCare plan. During annual renewals, the contract price will be “trued-up” (adjusted) to include the addition of new units added during the previous Agreement Term. In case of non-renewal, an invoice reflecting the true-up fees for the expired Term shall be sent to Customer within 30 (thirty) Calendar days following the non-renewal notice or expiry of the previous Term, whichever comes first.

4. PRE-REQUISITES FOR ACTIVATION OF SUPPORT SERVICES

Prior to the activation of the Services in accordance with this Agreement, Aviat Networks will confirm the supportability status of the products to be covered under the Agreement. If the standard or extended warranty or existing AviatCare Services have expired, Aviat Networks will request validation that the products are operating satisfactorily, in order to activate or put in effect a new AviatCare Agreement.

Activation of the Support Services assumes that sites under maintenance have undergone full commissioning and proven to be in good working condition prior to the start date of this Agreement. Aviat Networks may request the Authority to provide the site commissioning and acceptance data prior to the start of this Agreement.

Activation of the Support Services assumes no failed units are in the Authority’s possession prior to the start date of this Agreement. If there are failed units in the Authority’s possession prior to the start date of this Agreement, the Authority agrees that this Agreement will not apply retrospectively to those units, and will not apply to any units for which RMA numbers have already been obtained from Aviat Networks prior to the start date of this Agreement.

All equipment maintenance must be continuous with no gaps in coverage period. Renewal requests received by Aviat Networks more than ninety (90) days following expiration of the initial warranty period or a previous AviatCare Agreement may be subject to a reinstatement fee. Aviat Networks reserves the right to confirm the health condition of the equipment prior to accepting service reinstatement. Equipment not meeting the minimum health requirement must be repaired at the Authority’s expense prior to service reinstatement. Reinstatement will be retroactive to the day following the last covered date.

SUPPORTED

The Supported Products are the functional equipment containing the hardware and software, which together make up the systems. Notwithstanding the foregoing:

- a) Unless otherwise expressly listed, all third-party computing hardware and OEM are excluded from the definition of Supported Product (and therefore shall not be eligible to receive

Support); the Support Services do not cover antennas, Power over Ethernet ("PoE") and ancillaries, any cabling, or any wiring external to the Supported Products, telecommunications devices (including modems), and / or peripheral equipment.

- b) Repairs of antenna systems, tower crews, and the associated dispatch/labor support for repairing antenna systems are excluded from the scope of this Agreement, unless specifically identified as a purchased service option. Field support for antenna repair will be contracted by the Authority on a per incident basis.
- c) Only Aviat Networks systems in the Authority's network shall be deemed Supported Products

5. SUPPORT SERVICES - DETAILED DESCRIPTION

ACCESS TO AUTHORITY CARE WEB 5595238.2

For Aviat Networks Transport Products, Authority will have access to the AviatCare Online Web Portal 24/7 (URL: <http://www.support.aviatnetworks.com/>) for a variety of tools and support services. These tools/services include:

- 1. RMA Request & Status Updates
- 2. RMA Reporting such as repair turnaround time performance
- 3. Technical Support such as Service Request opening, reporting and status
- 4. Information databases such as technical notes, frequently asked questions, solutions for commonly asked technical or operational issues
- 5. Software Downloads
- 6. License Management for software

For Aviat Networks Access Products, Authority will have access to the AviatCare Online Web Portal 24/7 (URL: <https://Authoritys.rdlcom.com>) for a variety of tools and support services. These tools/services include:

- 7. RMA Request & Status Updates
- 8. RMA Reporting such as repair turnaround time performance
- 9. Technical Support such as Service Request opening, reporting and status
- 10. Software Downloads
- 11. Access to the full suite of technical documentation, installation guides, technical notes, user manuals, specification sheets for all related software releases and hardware products

REPAIR 5595238.2

Supported Products for which Repairs Services have been purchased under this Agreement will be covered with our standard Repair / Replace policy. There is no limit to the number of units returned for repair, but the Authority is subject to limitations for No Fault Found (NFF) and damaged beyond repair units where additional charges may apply (see details below). Expedited services such as emergency repairs may be requested and will be executed based on inventory availability only. Expedited Services will be quoted separately and above the standard Repair Services charges at time of expedited service request.

- a) **Repair Center Support.** Authority shall place all RMA requests at the following link: for Aviat Networks Transport Products at <http://support.aviatnetworks.com/frf/main.asp>. and for Aviat Networks Access Products at <https://Authoritys.rdlcom.com>. These links are available for use 24 hours a day, 7 days a week, except where routine maintenance of a Authority care portal is performed.

For Aviat Networks Transport Products, Authority can also email or fax RMA requests to the appropriate Aviat Networks Repair Center. Aviat Networks will typically fax or email a confirmation with an RMA reference number within one (1) business day. Requests can also be made via telephone during such Aviat Networks Repair Center's Business Hours.

For Aviat Networks to process an RMA request, the Authority must provide the following information:

- Company name
- Shipping and billing address
- Part Number
- Serial Number of the defective unit(s)
- Unit software load
- Description of the suspected failure, of the troubleshooting steps previously performed or steps necessary to recreate the fault, if known
- Whether any special requirements exist
- Service Level Agreement contract number; and
- Provide a purchase order at the applicable price for per-incident billable requests. Contact your local Aviat Networks Repair Center for price information.

Note: The Authority must include associated Aviat Care Support Service Agreement contract number in all correspondence(s) in order to avoid being invoiced for services falling within the scope of such Agreement.

Instructions for the shipment of the defective unit to the relevant Repair Center shall be provided to the Authority at the time of the RMA issuance.

b) **Turnaround Time.** Aviat Networks' Turnaround Time on repairs is as follows:

- 20 Calendar Day turnaround time on Aviat Networks manufactured equipment if the Authority has an Aviat Care Agreement in place,
- 30 Calendar Day turnaround time on Aviat Networks manufactured equipment under standard warranty coverage
- 45 Calendar Day turnaround on Aviat Networks Manufactured Discontinued equipment.
- For OEM equipment, repair turnaround times are set by the OEM supplier.
- 90 Calendar Days Turnaround Time for repairs of Aviat Networks Access and LTE Products.

c) **Turnaround Time Calculation.** Turnaround time is measured from the time a defective unit arrives at the designated Aviat Networks Repair Center until the time that it is shipped out of the Aviat Networks Repair Center. All shipping related time is excluded from the calculation. Thus, the measurement of turnaround time does NOT begin when the returned unit is shipped from Authority's premises and does NOT include the shipping time accrued after the returned unit is shipped from the Aviat Networks Repair Center to Authority's premises. Additionally, turnaround times will not be guaranteed in the following situations:

- Missing information such as failure details, return shipping address, shipping instructions and/or any other information that may affect the start of the repair process or the shipment of the returned unit as the repair is completed.
- Any returned unit is deemed No Fault Found.
- Any returned unit received due to any of the reasons listed in the Exclusions from Repair & Return Clause of this Section.
- Any returned unit received improperly packaged and therefore sustained physical or electrostatic damage in shipment.
- Returned units placed in isolation (i.e., Damages Beyond Repairs).
- Event of Excusable Delay as described under the Excusable Delay Clause of the Additional Terms & Conditions Section of this Agreement.
- More than five (5) units of the same type are received at the same time, or more than ten (10) units of any type are received at the same time.

d) **OEM.** For OEM equipment, repair turnaround times are set by the OEM supplier. Aviat Networks close working relationship with OEM suppliers assures the best possible turnaround time. These times will be communicated to Authority at time of RMA issuance.

- e) **Shipping Costs.** Except if Authority has purchased Repair Logistic Services, Authority is responsible for all charges associated with shipping the defective units to the designated Aviat Networks Repair Center. If the Repair Center is located in a country different than the Authority's country of location, shipments to the relevant Repair Center shall be made pursuant to the delivery term of DAP (Delivery at Place) to Aviat Networks Repair Center (Incoterms 2020). Aviat Networks is responsible for the charges associated with shipping the repaired unit back to Authority, which shipment shall be made pursuant to the delivery term DAP (Delivery at Place), Authority's premises (Incoterms 2020)
- f) **Packaging and Shipping Procedures.** Both Aviat Networks and Authority are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling, and transport to the delivery address. Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all units delivered. For each consignment of units shipped to Aviat Networks, the Authority must provide a detailed Packing List and Commercial (Proforma) Invoice to support the delivery. Each Commercial Invoice must clearly state the full description, the value of each unit and the RMA Number. Once a unit has been repaired and shipped to the Authority at the address provided by the Authority upon RMA request, Aviat Networks will send a pre-alert notification to the Authority comprising a faxed copy of the Commercial Invoice and Airway Bill Number pertaining to the shipment.
- g) **Exclusions from Repair & Return.** The services to be rendered by Aviat Networks under this Agreement shall not comprise any damage, defects, malfunctions, or failures caused by one or more of the following:
- Damage caused by mishandling, Authority or third-party negligence, abuse, or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.
 - Improper or unauthorized testing, operation, maintenance, service, repair, installation, alteration, modification or adjustment of the product or the firmware made other than by Aviat Networks.
 - Damages by persons other than Aviat Networks or its authorized service providers.
 - Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
 - Damage that occurs during shipment from the Authority premises to Aviat Networks' premises outside the Repairs Logistics Program (if applicable).
 - Installed, stored, used, handled, or maintained contrary to Aviat Networks' written instructions.
 - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.
 - Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of God such as fire, lightning strikes, or flood, acts of war, vandalism.
 - Normal and customary wear and tear.

Repairs necessitated during the Agreement period by any of the above causes may be made by Aviat Networks, and the Authority shall pay Aviat Networks' per-incident repair charges, together with all shipping and handling charges arising from such repairs.

- h) **Stockpiling of Failed Units.** The Authority agrees to obtain an RMA Number for all failed units from an Aviat Networks Repair Center immediately following a failure and return the units for repair immediately after receipt of the RMA Number from Aviat Networks. The Authority agrees that this Agreement will not apply retrospectively to cover any units failed and in the Authority's possession prior to the execution date of this Agreement and will not apply to any units for which RMA Numbers had already been obtained from Aviat Networks prior to the date of execution of this Agreement. Following execution of this Agreement the Authority agrees not to stockpile failed units and accepts that Aviat Networks will not be required to meet the Turnaround Times outlined in this Agreement if the units are not returned to Aviat Networks on receipt of an RMA Number or if they are stockpiled.
- i) **No Fault Found Fee.** If Authority returns units of Supported Products which, after testing by Aviat Networks are found to meet the applicable Product specifications, then Aviat Networks will charge Authority a No Fault Found (NFF) inspection fee of USD \$750 for each such non-defective returned unit. The NFF fee may be waived by Aviat Networks if the return of said unit was

advised/recommended by an Aviat Networks TAC personnel.

- j) **Damaged Beyond Repair.** Returned units that Aviat Networks (in its sole discretion) determined are damaged Beyond Repair or have been repaired (or otherwise modified) by a party other than Aviat Networks will be placed in isolation. The Authority shall be advised by fax or e-mail, within ten (10) days working days, of the nature and extent of the damage. The Authority shall be responsible for informing Aviat Networks of the next course of action. If the Authority decides to replace the unit(s), they must follow the usual purchasing process. Note: If the returned unit is no longer in current manufacture and/or is OEM, Aviat Networks will not guarantee availability of a unit for sale.

ADVANCE 5595238.2

Advance Replacement services are available for Aviat Networks Transport Products. This Service provides the Authority with shipments of a limited number of units intended as an advanced replacement of returned units, upon the Authority's request. The Service encompasses the following:

- a) **Repair Center Support.** Advance Replacement unit requests are managed through the standard RMA process. First recommended point of contact is via the **AviatCare** Online Web Portal <http://support.aviatnetworks.com/frf/main.asp> where an RMA can be requested 24x7, except where routine maintenance of the AviatCare portal is performed. Given the critical nature of these requests, Authority may also email the request or call one of the regional RMA centers. To ensure a timely response the Authority should utilize the AviatCare Online Web Portal to open an Advance Replacement RMA.
- b) **Packaging and Shipping Procedures.** Both Aviat Networks and the Authority are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling, and transport to the delivery address. Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all units delivered. For each consignment of units shipped to Aviat Networks, the Authority must provide a detailed Packing List and Commercial (Proforma) Invoice to support the delivery. Each Commercial Invoice must clearly state the full description, the value of each unit and the RMA Number. Once a unit has been repaired and shipped to the Authority at the address provided by the Authority upon RMA request, Aviat Networks will send a pre-alert notification to the Authority comprising a faxed copy of the Commercial Invoice and Airway Bill Number pertaining to the shipment.
- c) **Returned unit.** If this Agreement entitles the Authority to the Repairs Logistics Program and the Authority elects to use it for the returned unit, the Authority will be invoiced for the list price of the Advance Replacement unit(s) if Aviat Networks does not receive notification to pick-up the pertinent returned unit, at most, ten (10) days after Authority's receipt of the Advance Replacement unit. In the event that the Authority is not entitled to the Repairs Logistics Program or the Authority elects to return the returned unit to Aviat Networks via a freight forwarder outside of the Repairs Logistics Program, the Authority will be invoiced for the list price of the Advance Replacement unit if Aviat Networks does not receive the pertinent returned unit at the Aviat Networks Repair Center within, at most, thirty (30) days after receipt of the Advance Replacement unit. The returned unit will become the property of Aviat Networks. The Authority agrees that the returned unit must be repairable and does not fall into any of the categories listed in the Exclusion from Advance Replacement clause.
- d) **Exclusion from Advance Replacement.** The services to be rendered by Aviat Networks under this Agreement shall not comprise any damage, defects, malfunctions, or failures caused by one or more of the following:
 - Damage caused by mishandling, Authority or third-party negligence, abuse, or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.
 - Modifications, alterations, or repairs made other than by Aviat Networks.
 - Damages by persons other than Aviat Networks, or its authorized service providers.
 - Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
 - Damage that occurs during shipment from the Authority premises to Aviat Networks' premises outside the Repairs Logistics Program (if applicable).

- Installed, stored, used, handled, or maintained contrary to Aviat Networks' written instructions.
 - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.
 - Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of God such as fire, lightning strikes, or flood.
- k) **No Fault Found Fee.** If Authority returns units of Supported Products which, after testing by Aviat Networks are found to meet the applicable Product specifications, then Aviat Networks will charge Authority a No Fault Found (NFF) inspection fee of USD750 for each such non-defective returned unit. The NFF fee may be waived by Aviat Networks if the return of said unit was advised/recommended by an Aviat Networks TAC personnel.
- e) **Limits.** The Authority is entitled to receive a limited number of Advance Replacement units per year. This number is not to exceed ten percent (10%) of the total Repair & Return requests during that year. Accrued Advance replacement units that have not been requested by the Authority may not be carried over to the next year. Additional Advance replacement units will be provided at Aviat Networks' then current prices, terms, and conditions.
- f) **Unavailability.** Aviat Networks cannot guarantee availability of Advance Replacement service for all unit(s). If an Advance Replacement unit is not available, then Aviat Networks will alert the Authority and default to standard Repair and Return Turnaround for repair. Authority agrees that repair of the returned unit shall be Aviat Networks' sole obligation, and the Authority's sole remedy, if an Advance Replacement unit requested by the Authority is not available.
- g) **Turnaround Time Commitments.** Standard Advanced Replacement service ensures Authority will receive a comparable unit to the one being returned within 3 to 5 business days from date of RMA. If Authority requires a replacement unit in a shorter period of time, there is an added charge for this and based on replacement unit availability will be delivered on a next business day basis. Authority will be informed at time of RMA request whether this service can be provided or not depending on component availability. Aviat Networks is not responsible for any delays in delivery related to freight or courier delays, export or Authority regulations or processes.

5.1. REPAIR LOGISTICS PROGRAM (RLP)

Aviat Networks shall provide free freight to the Authority for all units returned via the Aviat Networks Repair Logistics Program (RLP). In the event that the Authority returns units to Aviat Networks via a freight forwarder outside of this Program, all freight expenses and damage liability will be the responsibility of the Authority. Aviat Networks is responsible for all tariffs, duties, or taxes associated with importing units for repair. After the repair, the units shall be returned to the Authority DAP (Delivered at Place) Authority's premises (Incoterms 2020). To implement the return of a unit via this Program the Authority shall request an RMA for the unit using the link in the Repair Services or Advance Replacement Sections or the contact information as listed in the Aviat Networks Contacts Section.

Aviat Networks will assume responsibility for insuring the units against loss or damage that is moving via the RLP. The Authority shall examine the condition of all shipments returned from Aviat Networks via the RLP at the time of delivery. Visible signs of damage shall be brought to the attention of the carrier and the contents shall be examined for damage immediately. Aviat Networks will not be liable for any direct reports by the Authority for units that are found to be damaged upon receipt by the Authority that are made over seven (7) days after the units have been delivered. Units damaged through transit shall be returned for repair at Aviat Networks through the normal return process. Damage or loss incurred to units shipped to Aviat Networks by the Authority outside the RLP shall be the responsibility of the Authority.

5.2. REMOTE TECHNICAL SUPPORT 24 X 7

24 X 7 Remote Support provides around-the-clock (24 X7) telephone access to Aviat Networks' Technical Assistance Center in order to resolve Critical Service Requests, Major Service Requests, Minor Service Requests and Inquiry Service Requests.

- a) **Telephone Number.** Authority may contact Aviat Networks' Technical Assistance Center (TAC) regarding such Service Requests via telephone at any time during the day or night. For night

support services (after business hours in the local time zone), Aviat Networks will handle all such requests that are Critical or Major that the Authority reasonably categorizes as being High Priority. In addition with this service, Authority can pre-schedule after hours support when doing a new software installation or a network upgrade related to covered equipment.

- b) **Rapid Response Time.** For Aviat Networks Transport Products, Aviat Networks will route Critical Service Requests to the appropriate TAC subject matter expert within fifteen (15) minutes of call receipt. For Aviat Networks Access Products, all Critical Service requests received by phone will be acknowledged by the Aviat Networks TAC within one (1) hour.
- c) **Service Request Number.** Aviat Networks will assign, to each Service Request, a number that will be logged, tracked, and stored in our Case Management database.
- d) **Service Request Management.** Aviat Networks will dedicate continuous attention to Critical and Major Service Requests until service is restored or request is closed. Aviat Networks will work to resolve the Service Request until Authority accepts the proposed solution, at which point the TAC will close the Service Request.
- e) **Documented Escalation Procedures.** Aviat Networks will implement internal escalation and notification procedures in order to facilitate the timely resolution of Service requests by a TAC Engineer with an adequate level of expertise. The technical support process includes rigid managerial escalations that are intended to facilitate the appropriate handling of recovery efforts and Authoritys being regularly updated on the status of the Service Request. Additional information on this escalation process is available in our Global Network Service Authority Support guidelines document available on our website at www.aviatnetworks.com.
- f) **Service Request submission.** Under this Agreement, there is no limit to the number of Service Requests that Authority may submit for resolution. Authority may also define and authorize specific users within its organization to have access to this Service Request submission service. To ensure appropriate management of this support Aviat Networks has implemented a Support Assurance Program where an Express PIN will be assigned to each Authority which clearly identifies the level of service a Authority is entitled to receive. All Service Request submissions will require Express PIN information prior to being submitted.

Service Request Severity Classifications

There are four (4) Service Request severity classifications: (a) Critical; (b) Major; (c) Minor; and (d) Inquiry.

Critical, Major and Minor Service Requests pertain to problems in the Product. Inquiry Service Requests pertain to questions about the Product or Services. The four (4) Service Request severity classifications are defined as follows:

- a) **Critical Service Requests** are those that severely affect service, traffic, billing and/or maintenance capabilities, and require immediate corrective action (regardless of the time of day or day of the week).
- b) **Major Service Requests** are those that cause conditions that seriously affect Product operation, maintenance and/or administration, and require immediate attention. The urgency is less than in Critical Service Requests because of a lesser immediate or impending effect on Product performance, Authority and/or network operation and revenue.
- c) **Minor Service Requests** are problems that are tolerable during Product use, do not significantly impair the functioning of the Product and do not significantly affect service to Authoritys.
- d) **Inquiry Service Requests** are questions about technical details concerning the usage or behavior of the Product.

SOFTWARE (FIRMWARE) SUPPORT 5595238.2

Aviat Networks' Software Support Services provide a new level of support and maintenance capability for software components of Aviat Networks' product lines.

Under the Software Support services, Authority is entitled to the following:

Support Component	Coverage
Access to AviatCare Online Web Portal	24x7
Access to TAC for Software related questions	24x7
Software Maintenance Updates (maintenance releases for bug fixes, includes enhancements (performance improvement) to existing features within same release– ex. 2.1 to 2.x)	Yes
Software Release Upgrades (new major releases ex. 2.x to 3.x)	Yes
Services to test and apply new licenses or releases	No

Exclusions: New software feature and the incremental maintenance of those new features are not covered by this Agreement and may be purchased by Authority separately.

Software Support Services remotely provides for the routine maintenance, updates and upgrades of the firmware and software associated with an Aviat Networks product as it becomes required from time-to-time as recommended by the manufacturer. This support service will ensure that the latest mandatory releases are available for the Authority to implement within the network (class 1 maintenance releases, normally addressing software bugs or performance improvement issues). It is important to note that Aviat Networks does not support products where the operating software is more than two (2) major revisions behind the current production release.

Limitations: Unless a Remote Software Upgrade Support Service is separately purchased by Authority, Aviat Networks will not perform (test and apply) the updates or upgrades remotely during a pre-planned maintenance window. In case such Remote Software Upgrade Service is purchased, Aviat Networks will work with the Authority to discuss appropriate software updates / upgrades based on release content and applicability to the implementation and can schedule implementation of such software application updates / upgrades via agreed-to maintenance window(s).

PROVISION AND/OR PROVISION+ 5595238.2

Aviat Networks shall provide remote technical support to the Authority on ProVision and/or Provision+, depending on the EMS for which Authority has bought support. The remote technical support shall be available anytime required (24 x 7).

Aviat Networks shall provide support on the current and previous ProVision and/or ProVision+ production release and will investigate all reproducible product anomalies for the supported version. Aviat Networks shall also provide general availability releases and product updates to the Authority free of charge during the coverage period.

- a) **Authority Responsibility.** To enable the Aviat Networks TAC to fully investigate ProVision and/or ProVision+ issues, the Authority shall provide the TAC the appropriated logs and remote access where possible. The Authority will provide the capability to allow Aviat Networks to remotely access the Authority's network by means of a secure internet connection to the Authority's site. This connection process will need to be defined at time of agreement such that any issues arising after Agreement closure can be addressed expeditiously.
- b) **Exclusion from ProVision support.** The services to be rendered on ProVision and/or ProVision+ by Aviat Networks under this Agreement shall not comprise any services, which are required as a result of one or the more of the following:
 - Authority's use of old versions of ProVision and/or ProVision+. Authority's are required to have the current GA release, or the previous GA release installed and commissioned before they can obtain Aviat Networks technical support.
 - Authority's lack of basic user training. It is expected that all users will have received basic user training when the ProVision and/or ProVision+ system is installed.
 - Network Planning; NMS Integration; Training courses; Installation and Commissioning; on-site Support. These are separate Aviat Networks service offerings, which are not delivered under this Agreement.
 - Due to the complex nature of ProVision and/or ProVision+ issues, which may be network related rather than ProVision and/or ProVision+ related, not all Authority-defined level three product anomalies can be rectified within the commercial bounds in which Aviat

Networks operates. Aviat Networks will require that all product anomalies are reproducible, prior to the commencement of any detailed fault analysis or potential product re-engineering. Aviat Networks undertakes to provide a response on all logged product issues and will provide workarounds where possible.

- Server hardware, O/S systems or networking systems are not included in these Support Services. These services are available as Professional Services (at an incremental cost).
- Database backups, preventative maintenance, or other professional services are not included. These services are available as Professional Services (at an incremental cost).

GROUND CORRECTIVE 5595238.2

Ground corrective maintenance provides for the dispatch of the necessary support personnel and test equipment for the purposes of diagnosing a problem, restoring service, or correcting a service request, including by replacing defective equipment on-site, that Aviat Networks has unsuccessfully attempted to resolve remotely from one of our Technical Assistance Centers.

All sites under maintenance must have undergone full commissioning and proven to be in good working condition. The Authority shall make available site commissioning and acceptance data if requested by Aviat Networks.

The onsite ground corrective maintenance service will be provided on equipment supplied by Aviat Networks only and excludes maintenance of towers or antenna systems.

The service is provided according to the following Service Level Agreement (SLA):

Severity Classification	Response Time
Critical faults	4 Hours

Aviat Networks shall use its best effort to be onsite within four (4) hours of the Aviat Networks first level support personnel receiving emergency onsite support requests. Notwithstanding anything contained herein to the contrary, all services provided may be performed by Aviat Networks directly or through one or more qualified Subcontractors. Aviat Networks shall coordinate, supervise, manage and be responsible for the services of all the Subcontractors.

During the on-site time, Aviat Networks' resource may recommend routine maintenance to the Authority – which will be the responsibility of Authority to perform - and may, with Authority agreement, perform routine upgrades to operating firmware or software that do not require network downtime. After the problem has been identified and addressed, a detailed Corrective Maintenance Report (CMR) will be provided to Authority at the close-out of this service. Prior to closing problem and leaving the specific site, the Technical Support Engineer will perform a visual inspection of the structure and equipment and will then record in the CMR any foreseeable problems they believe may arise which would warrant Authority resolution.

Limitations: In order to meet the on-site SLA response requirements, the Authority is responsible for providing access to difficult to reach sites (i.e., site not accessible by public road using 2 wheel-drive vehicles or those requiring specialized transport vehicles) or to sites that require Authority presence. The Authority is responsible for provisioning and making available spare parts.

Exclusion: Climbing Towers/Antennas is excluded from the scope and pricing of the Ground Corrective Maintenance services.

TOWER CORRECTIVE MAINTENANCE - 5595238.2

Aviat Networks shall use its best effort to have a Tower Crew onsite with a mean time of 12 hours' time, but not-to-exceed 24 hours, of the Aviat Networks NOC requesting an emergency onsite. Notwithstanding anything contained herein to the contrary, all services provided may be performed by

Aviat Networks directly or through one or more qualified subcontractors. Aviat Networks shall coordinate, supervise, manage and be responsible for the services of all the subcontractors. Tower Crew pricing is based on a 2-person crew. If above 250 feet, 3 tower crew resources are required. If above 400 feet, then 4-5 resources are required.

Scope of work includes addressing the issue that is affecting system performance. The closest capable crew will be dispatched to assess the issue and develop a plan requesting material that may be required. All responding members will be trained in the OSHA requirements for safe work.

Note: Issues or concerns that are not essential to the restoration of the network are to be addressed in a separate mobilization.

Limitations:

- Onsite response time is based on weather permitting a tower climb. In order to meet the on-site SLA response requirements, the Authority is responsible for providing approval of additional expense for enabling access to difficult to reach sites (i.e. site not accessible by public road using 4 wheel-drive vehicles or those requiring specialized transport vehicles) or to sites that require Authority presence.
- Authority is responsible for ensuring availability of adequate stock of spares to allow for onsite replacements of equipment.

Generators: When there is an imminent threat of an approaching disaster (e.g., hurricane) Aviat Networks will work with Authority to plan in advance and stage generators that will be needed (after receipt of Authority acceptance to stage and rent generators).

Notes:

- Competency and readiness of Tower Crew and Ground Crew:
 - Tower Crew and Ground Crew are trained for the operation and troubleshooting of all Aviat Network provided equipment.
 - Upon arrival to sites, Tower Crew will be equipped with tools and materials (including but not limited to in-line connector, jumper cable, compression N-type connectors, 400-ft spare LMR400 cable, line sweeper, ground kits), to resolve the issues described by the dispatcher and to perform common tower/site corrective tasks including but not limited to:
 - Performing path alignment of dishes with size up to and including 10-ft
 - Performing structural restoration of the dishes
 - Performing loop-back tests on the Aviat equipment
 - Performing line sweeps and identifying cable faults
 - Performing cable/connector replacement
 - Performing equipment replacement/removal
 - Performing bypassing of surge arrestors with jumper cables and in-line connectors

PREVENTIVE 5595238.2

Preventive Maintenance provides a resource to work with the Authoritys in reviewing operational aspects related to the performance of Aviat Networks equipment and associated software within the Authority's network. A resource will come on-site to all Authority locations covered under the associated agreement for this service. Once analysis is complete, Aviat Networks will provide a written summary of findings and recommendations related to the work that has taken place.

Limitations: The Authority is responsible for providing access to difficult to reach sites (i.e., site not accessible by public road using 2 wheel-drive vehicles or those requiring specialized transport vehicles) or to sites that require Authority presence. The Authority is responsible for provisioning and making available spare parts.

Exclusion: Materials are excluded from scope of work and pricing. Materials or special transport equipment will be invoiced as time and materials.

NOTES: If additional hours are required to complete out-of-compliance repairs (above the 2 hours), Aviat will true-up with the client at completion of all sites. Any materials will be invoiced at time and materials.

GROUND PREVENTIVE 5595238.2

An engineer is deployed to site as per the Authority and Aviat agreed upon schedule commitment, subject to flights and immigration rules, where applicable. A system health check on Aviat Networks' equipment will be completed which includes performance testing and an analysis of historical data. A visual site audit is included under this service offering, which includes the following:

- Spot check Internal and external grounding
- Visual inspection of indoor and outdoor equipment
- Visual inspection of all cables, connectors, weather proofing
- Visual inspection of antenna installations
- Verify DC power levels.

During the on-site time, the Aviat Networks' resource may recommend routine maintenance to the Authority – which will be the responsibility of the Authority to perform - and the Aviat Networks resource may, with the Authority's agreement, perform routine upgrades to operating firmware or software that do not require network downtime. The ground preventive maintenance covers all Aviat Networks Microwave radio equipment, associated OEM equipment, DC systems and excludes antenna systems.

TOWER PREVENTIVE MAINTENANCE - 5595238.2

An engineer is deployed to site as per the Authority and Aviat agreed upon schedule commitment, subject to flights and immigration rules, where applicable. A system health check on Aviat Networks' equipment will be completed which includes performance testing and an analysis of historical data. A visual site audit is included under this service offering, which includes the following:

- Provide inspection of Condition of Tower
- Provide inspection of Grounding
- Provide visual inspection of Safety Lighting Systems
- Provide inspection of all cables, connectors, weather proofing
- Provide inspection of Waveguide and Pressure Window assemblies if used
- Provide inspection of walkways, platforms, and sensors
- Provide inspection of antenna installation, condition, and alignment

A final report will be presented to the Authority stating findings, conclusions, and any further recommendations. This preventative service work includes one day of time to visit with Authority and review in detail the findings from preventative analysis effort.

REMOTE MONITORING SERVICES - 5595238.2

Aviat Networks' Managed Network Services solution provides Authority with a bundled offering that combines traditional network monitoring and event management services with fault resolution to offer end-to-end operations management solutions. When bundled together, services in this portfolio offer a broad, all-in-one-solution set managed through a single point of contact – the Aviat Network Management Center (NMC). Aviat Networks is providing Authority with the following bundled services:

Surveillance and Network Monitoring	<input type="checkbox"/> Continuously monitor network elements. <input type="checkbox"/> Detect / Identify Faults and Alarms
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Event Management	Triage	<input type="checkbox"/> Correlate Alarms where appropriate <input type="checkbox"/> Review Maintenance Schedules / Weather Patterns / Known Issues <input type="checkbox"/> Assess Severity and Service Impact
	Trouble shooting	<input type="checkbox"/> Diagnose and isolate the fault / alarm <input type="checkbox"/> Coordinate restoration and repair – remotely or onsite <input type="checkbox"/> Actively manage the event from "cradle to grave." NOTE: Aviat Networks strives to troubleshoot and resolve issue remotely prior to or in place of dispatching field resources to site. This is facilitated through our close linkage between the NOC and our Technical Support staff who are co-located with our primary NOC facility. Allows us to bring 50+ years of Microwave and Wireless Networking experience to bear on an issue.
Notification		<input type="checkbox"/> Report events to Authority in real-time via Phone / Email / Portal
Trouble Ticketing		<input type="checkbox"/> Document the fault <input type="checkbox"/> Manage ticket until fault is resolved <input type="checkbox"/> Generate trouble ticket reports <input type="checkbox"/> Capture lessons learned from each incident into our Knowledgebase for future reference
Call out and Dispatch		<input type="checkbox"/> Dispatch field operations and vendors for physical analysis and repair <input type="checkbox"/> Coordinate all aspects of the dispatch to ensure right resource is at the right location with the right tools / equipment to resolve the problem within the SLA commitment.
Failure Analysis		<input type="checkbox"/> Generate a postmortem report to document issue / lessons learned as appropriate <input type="checkbox"/> Drive continuous improvement of process and tools
Reporting		<input type="checkbox"/> Monthly reports – Performance to SLA / Network Performance

Aviat Networks strives to troubleshoot and resolve issues remotely prior to or in place of dispatching field resources to site. When an alarm is received in the Aviat NOC, the team will apply their years of microwave expertise in determining the root cause. We will review and correlate all alarms, look at weather, RSL's, SNR, etc. After troubleshooting and it is determined an emergency onsite dispatch is required, the following process will be followed.

- NOC generates Case to track all aspects of identified issue
- NOC reviews site issues to ensure there are no pre-required approvals needed
- NOC requests dispatch and identifies all pre-requisites including required hardware if hardware failure is identified as the root cause from remote troubleshooting
- NOC confirms dispatch in process to all parties with estimated ETA
- Once Tech onsite, SLA time is logged into case and Conference Bridge is initiated with NOC
- Issue is resolved / workaround completed and Ticket is closed by NOC
- Email notification is sent to all identified parties to alert them to closure
- Tech takes failed unit (assuming hardware failure) and processes through the Aviat RMA process
- Tech also updates Spares inventory identifying hardware removed and what hardware is being processed via the RMA process.

5.2.2. SUPPORT PROCESS – NOC & TAC

Tier 1: NOC Personnel	Tier 2: TAC	Tier 3: TAC
NOC Engineer receives alarm notification from our monitoring tools, opens a Support Case and based on Authority and Product data, reviews potential impact. Looks at all aspects of the site impacted to understand potential impact from Scheduled Maintenance, Weather, and finally the equipment itself. If after initial review of all aspects that NOC can access, NOC will initiate a field dispatch. At the same time, if not successful in identifying the specific issue impacting performance of the network, will escalate to the next tier of support within Aviat (Tier 2). Within the TAC team, NOC escalations take priority over all other Authority issues – other than an outage that may be occurring in a Authority's network.	If the problem is not resolved within the target resolution time – associated with each of the severity levels, then there is an automatic process by which the issue will escalate to the next level of support to pursue resolution, at this time notification also takes place to Management identifying fact issue has gone beyond our accepted timeframe for resolution.	If the problem is not resolved within the target resolution time, after Aviat Networks initiates the troubleshooting process, then Aviat Networks will escalate to management and next level of support to pursue resolution.
The NOC Engineer will identify the severity (Critical, Major, Minor) at the time of escalation to the TAC team. This is driven based on parameters set in our agreed SLA with the Authority and can also be overridden directly by Authority requesting a higher level of severity.	Tier 2 generally is required when the issue is beyond simple hardware failures. Usually involves some level of configuration, hardware not operating exactly as specified, or when problem is intermittent in nature.	Tier 3 TSE typically gets involved when there are complex interoperability issues identified between the microwave and other components in the network, when problem appears to be software related (i.e., a bug), or when new products or software have been introduced into the network and cause issues not previously seen before.
~90%+ of trouble tickets are resolved within the NOC without any interaction with TAC.	~8% of trouble tickets are resolved within Tier 2 after escalation from the NOC.	~2% of trouble tickets are resolved within Tier 3 after escalation from Tier 2.

5.2.3. SERVICE LEVEL AGREEMENT (SLA)

SR Priority Level	Alarm Severity	Event / Alarm Ack	Authority Event Alarm Notification	Aviat Reaction Time	Usage	Response
1	CRITICAL (Service Affecting)	< 5 min	< 10 min	< 15 min	Used for events that is currently impacting service or ability to view network elements (LOV).	Outages are referred to Emergency Recovery immediately. Immediate and continuous effort and escalation until resolved or restored to pre-incident condition or work around is implemented. Resolved or referred to Tier II/III support group.
2	MAJOR (Non-Service Affecting)	< 30 min	< 60 min	< 75 min	Used for in-service trouble conditions that does not affect service nor qualify as a loss of redundancy. Typically, these conditions if unresolved will not result in a Priority 1 event.	Resolved or referred to Tier II/III support group. Continuous effort until either a) service level is restored to pre-incident, b) acceptable workaround is implemented, or c) an action plan is instated that will meet MTTR requirements.

3	MINOR	< 30 min	Monthly Summary	< 12 hrs	Used for non-service affecting conditions that if not resolved will not result in a Priority 1 or 2 events or issue.	Resolved or referred to Tier II/III support group
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Notes:

1. Phone call wait time: Answer calls by live person within 30 seconds (average) with a maximum wait time of 5 minutes. A direct line will be provided.
2. Email response time: Acknowledge email requests by live person within 15 minutes unless there is routine maintenance or down time.
3. The maximum amount of time between the occurrence of condition that requires crew dispatch, and the crew dispatch phone call is made: < 60 minutes

SOFTWARE 5595238.2

Remote Software Upgrade service allows Aviat to evaluate, plan, manage, and execute network wide software revisions for our Authority's microwave radios at pre-determined agreed to timelines. Remote software upgrade service may be purchased as a single year option and is recommended every 3-4 years for multi-year maintenance agreements. For multi-year agreements, a fixed number of upgrades are quoted based on; Authority RFP requirements, technology refresh projections, or Aviat's recommended best practices, and upgrades are scheduled to occur over the duration of the agreement. Provisions are made available to shift installation timelines should conditions warrant a critical update to the network. To ensure NOC resources are available, Remote Software Upgrades must be scheduled 60 days in advance. While software updates are performed remotely, an onsite tech dispatch is required to verify the site is fully returned to service after the radios are power cycled as part of the final upgrade step. Should an issue arise during this process, the dispatch team is on hand to assist the NOC in system restoration. Aviat supplied onsite support is available* (see Note 1).

Remote Software Upgrade service requires remote access to the Authority's ProVision server, routers, and other network devices involved in the upgrade process. For Authority's without Network Monitoring service, a pre-configured, secure, remote VPN connection to the Authority network is required in advance of the upgrade.

During the upgrade, the Aviat NOC will upgrade all nodes / network controller cards to the latest generally available release. This is a three-step process. The first step involves transferring the latest software to each node and confirming the transfer occurred without interruption. The second step performs the software activation during a Authority designated maintenance window* (see Note 1). The final step involves power-cycling the radio(s) and verifying proper operation. After operation has been verified by the NOC, the onsite tech will be released.

Notes:

1. Remote Software Upgrade requires a NOC connection. If the Authority already has Remote Monitoring, this configuration has been established. For Authority's without Remote Monitoring, the one-time NOC turn up fee applies. As with Remote Monitoring, NOC turn up fees are waived for multi-year contracts 3 years or longer.
2. Onsite standby support is a requirement for Remote Software Upgrade. This requirement is in place because Aviat is unable to guarantee how a radio will respond during a restart if the radio has not been reset for multiple years. If an error occurs during restart, the onsite personnel will work with the NOC to return the radio to normal operation. The Authority may elect to provide their own on-site support in lieu of Aviat personnel.
3. For systems with outdoor radio configurations (e.g., WTM4000), tower crew support is required as part of the onsite dispatch requirement. In order to reduce Authority cost for tower crew scheduling,

mobilization and rigging, it is highly recommended an annual Tower Preventive Maintenance service be included in conjunction with Remote Software Upgrade service as upgrades for outdoor systems are scheduled during routine maintenance windows to accommodate tower crews.

4. Tower Corrective Maintenance is not included as part of Remote Software Upgrade service and must be contracted separately.

6. AVIAT NETWORKS CONTACTS

Outlined below is the process to contact Aviat Networks once the Agreement is in effect.

For AVIAT NETWORKS Transport Products, please contact:			
Region	Repairs, Returns & Advance Replacements	Technical Assistance	
NORTH AMERICA /LATAM	Phone: 1-800-227-8332 (Selecting Option 2, then 1) Direct number: 1-210-526-6345 Fax: 1-210-526-6315 E-mail: CustomerCare.Americas@aviatnet.com Online RMA Request: https://aviatcloud.com/rma_tracking.asp	Phone: 1-800-227-8332 (Option1, enter PIN, press 1 to confirm PIN, then Option 1 for TAC) Direct number: 1-210-526-6345 Fax: 1-210-526-6315 E-mail: TACAM@aviatnet.com Online Technical Assistance Request: www.aviatcloud.com	
		Network Operations Center (NOC) Phone: 877-662-7871 opt 1, 24x7 Email: noc.notifications@aviatnet.com	NOC Escalation Contacts NOC Manager Matthew Voleskymahlke Phone: 210-776-4740 Email: matthew.voleskymahlke@aviatnet.com

7. SUPPORT SERVICES TERMS AND CONDITIONS

7.1. GOVERNING TERMS

Authority's Scope of Services, regardless of any contrary wording, will constitute an offer to purchase only on the terms of this proposal (which shall be deemed incorporated into the Agreement).

The Agreement shall be deemed accepted by Aviat Networks only when Aviat Networks executes the Agreement.

7.2. AUTHORITY OBLIGATIONS

7.2.1 The Authority must ensure that the Products to be included in this Agreement be in good operating condition prior to the commencement of this Agreement. Aviat Networks reserves the right to inspect any and all of the Products to be included in the Agreement prior to the commencement of the Agreement, and if the Product is found to be defective, the Authority shall be responsible for the cost of repair of the defective units.

7.2.2 An authorization to return units to Aviat Networks under this Agreement must be obtained from an Aviat Networks representative prior to making shipment to the Aviat Networks' Repair Center and such authorization shall not be unreasonably withheld.

7.2.3 The Authority shall:

a. Ensure that:

- i. The Supported Products, any associated software and equipment are installed and operated according to their manufacturer specifications and recommendations;
 - ii. All upgrades or engineering changes to Supported Products, associated software and equipment specified or recommended by Aviat Networks have been procured by Authority and properly installed;
 - iii. A continuous, uninterrupted and suitable power supply and temperature, humidity and other environmental conditions recommended by Aviat Networks have been implemented and maintained;
 - iv. Suitable surge protection devices have been implemented to protect the Supported Products from electrical power surges;
 - v. No other equipment or software having an adverse impact on the Supported Products have been introduced;
 - vi. No repair attempts or other changes have been made to the Supported Products, other than by or with the express approval of Aviat Networks;
 - vii. The Supported Products have not been mishandled, neglected, abused, vandalized, dropped, jolted, transported to another location, damaged by fire, lightning or water (especially including damage caused by spilled beverages), or otherwise subjected to unusual electrical or physical stress beyond their manufacturer's specified operating capabilities;
 - viii. Authority removes or takes other precautions to protect all software, data and removable storage media prior to commencement of the Support Services, and
 - ix. Authority periodically makes and stores in a safe place archival copies of all valuable data and software residing on or affected by the operation or malfunction of Supported Products.
- b. At all reasonable times permit full and free access within the reasonable control of Authority, either physically when on-site or electronically when remote, to the Supported Products and provide Aviat Networks with adequate and safe working space, and any other facilities that are reasonably required to enable Aviat Networks to perform the Support Services, including obtaining all necessary permits, authorizations, licenses, and consents for Aviat Networks to deliver the Support Services;
- c. Cooperate with Aviat Networks and provide Aviat Networks with any information that is reasonably requested in the delivery of Support Services and ensure that such information is accurate in all material respects. At a minimum, Authority will provide Aviat Networks with sufficient information to establish entitlement, severity and priority for identified problems;
- d. Use commercially reasonable efforts to isolate problems and reproduce any identified errors or malfunctions;
- e. Take any steps reasonably necessary to ensure the safety of Aviat Networks' personnel when working on-site, encompassing reasonable access, working space and facilities that include heat, air conditioning, ventilation, electric current, electric outlets, and access to a working telephone;
- f. Identify to Aviat Networks on or before Agreement Effective Date, any requirement for the use of personal protective equipment ("PPE") or other measures including, but not limited to, specific site safety training. Authority also agrees to provide such equipment and / or training as needed at no charge prior to the start of on-site Support Services.

7.2.4 The Authority agrees to act in a timely manner and to provide properly competent and qualified personnel with respect to its obligations under this Agreement and to any tasks to be undertaken by it, whether expressly set out in this Agreement or otherwise reasonably requested of it by Aviat Networks. Performance of the Support Services is provided on the assumption that the Authority and its personnel

will fulfil their obligations and tasks on time and as stated.

7.2.5 If, as a result of any act or omission by the Authority or its personnel (howsoever caused) which is not directly caused by Aviat Networks' acts or omissions (including the provision of any incorrect or inadequate information or data by the Authority), Aviat Networks is prevented or delayed from performing any of its obligations under this Agreement or the cost of such performance increases then, after Aviat Networks provides written notice to Authority of such act or omission:

- a. the time for performance of Aviat Networks' obligations will be extended for a reasonable period which shall be commensurate to the period of delay caused by the Authority;
- b. the Authority will be responsible at its own cost for storing the Supported Products until the Supported Products are ready for performance of the Support Services for the period of time commensurate to the delay caused by the Authority; and
- c. the Authority shall pay Aviat Networks within 30 days' from receipt of an invoice therefor standard time and materials rates for any additional time spent and materials used by Aviat Networks resulting from any delays or extra work caused by such act or omission

7.2.6. The Authority shall neither on its own account nor in partnership or association with any person, firm, company or organization, or otherwise and whether directly during, or for a period of six (6) months after expiry or termination of this Agreement, solicit or entice away or attempt to entice away or authorize the taking of such action by any other person, any of Aviat Networks' personnel who have worked on performance of the Support Services provided under this Agreement at any time during the term of this Agreement.

7.3. CONFIDENTIALITY

7.3.1 In this Agreement, "Confidential Information" shall mean any business, marketing, sales, financial (including pricing) or technical information, including, without limitation, any information relating to present or future business affairs, operations, methods, techniques, operations, financial condition, reports, research, product plans, products, developments, processes, models, designs, drawings, formulae, markets, software (including source and object code), algorithms, business plans or agreements with third parties and all other information of any kind which may reasonably be deemed confidential or proprietary, disclosed by one party (the "Disclosing Party") to the other (the "Receiving Party"), whether such information is in written, oral, graphic or machine-readable form and which is designated or identified as "confidential", "proprietary" or in some other manner prior to the disclosure, to indicate its confidential nature. Oral disclosures will be confirmed in written format 30 days following the disclosure.

7.3.2 Non-disclosure.

7.3.2.1 The Confidential Information shall:

- a. be kept confidential by the Receiving Party and not disclosed to any third parties,
- b. not be used by the Receiving Party in any way detrimental to the Disclosing Party, and
- c. not be used other than in connection with the Support Services. The Receiving Party may disclose the Confidential Information to its affiliates and its affiliates' directors, officers, employees, consultants, and agents (collectively, "Representatives") only if such Representatives need to know the Confidential Information in connection with the Support Services and are bound by confidentiality obligations similar to those contained herein.

7.3.2.2 The Receiving Party shall:

- a. inform each of its Representatives receiving Confidential Information of the confidential nature of the Confidential Information and of this Agreement,
- b. direct its Representatives to treat the Confidential Information confidentially and not to use it other than in connection with the Support Services, and
- c. be responsible for any improper use of the Confidential Information by the Receiving Party or its Representatives.

7.3.2.3 Without the prior written consent of the Disclosing Party, the Receiving Party will not, and will direct its Representatives not to disclose to any person that the Confidential Information has been made

available to it or that the Support Services are taking place.

7.3.3 Care and Return of Confidential Information.

The Receiving Party shall provide at least the same care to avoid disclosure or unauthorized use of the Confidential Information as it generally provides to protect its own proprietary information, which shall, in all events, equal or exceed a standard and level of care generally recognized as being reasonable for the protection of highly confidential information. All Confidential Information shall be retained by the Receiving Party in a place with access limited only to the Receiving Party's Representatives who reasonably need to know the Confidential Information in connection with the Discussions. Upon the request of the Disclosing Party, the Receiving Party shall destroy or return to the Disclosing Party, or in the case of electronic, magnetic or digital media, at the election of the Disclosing Party, erase or render unreadable, all materials furnished which contain Confidential Information of the Disclosing Party, including, without limitation, documents, drawings, models, prototypes, sketches, designs, lists, papers, magnetic media and other tangible media.

7.3.4 No Licenses.

Neither the execution of this Agreement nor the furnishing of any information under this Agreement shall be construed as granting any party or any of its Representatives, either expressly or by implication, any license or right to use any Confidential Information for its own benefit or the benefit of any other person, firm or entity, and each party expressly agrees not to so use any such information. Nothing contained in this Agreement shall be construed as conferring any rights, by license or otherwise, to any invention, discovery, or improvement made, conceived, or acquired prior to, during or after the date of this Agreement.

7.3.5 Remedies.

Each party acknowledges that the Disclosing Party would be irreparably harmed by a breach hereof by the Receiving Party or its Representatives and that it is difficult to estimate damages resulting from such a breach and, consequently, the non-breaching party shall be entitled to seek injunctive or other equitable relief to prevent a breach or continued breach of this Agreement, and to secure the enforcement of this Agreement, without foregoing any legal relief to which the non-breaching party may be entitled to recover.

7.3.6 Term.

The restrictions and obligations of this Agreement relative to the use or disclosure of Confidential Information shall survive the termination of this Agreement for a period of five (5) years.

7.3.7 Disclosure Under Court Order or Subpoena.

Should applicable law or any rule or regulation of any governmental entity of competent jurisdiction require disclosure of Confidential Information of the Disclosing Party in the Receiving Party's possession, custody or control, the Receiving Party shall use commercially reasonable efforts to:

- a. give at least ten (10) days prior written notice of such disclosure to the Disclosing Party;
- b. limit such disclosure to the extent practicable; and
- c. make such disclosure only to the extent so required.

7.3.8 Public Records Act. Aviat acknowledges that Authority is a public entity and may be governed by applicable laws, rules, or regulations relating to public records (each a "**Public Records Act**"). Nothing in this Section 7.3 shall prevent Authority from disclosing Confidential Information when it is for purposes of complying with an applicable Public Records Act to the extent legally required.

7.4. NOTIFICATION OF UNAUTHORIZED USE

Authority shall promptly notify Aviat Networks in writing upon its discovery of any unauthorized use or infringement of the Aviat Networks Transport or Access Products, Software, Documentation or Confidential Information, or Intellectual Property Rights with respect thereto. Aviat Networks shall have the sole and exclusive right to bring an infringement action or proceeding against any infringing third party, and, in the event that Aviat Networks brings such an action or proceeding, Authority shall cooperate and provide full information and assistance to Aviat Networks and its counsel in connection with any such action or proceedings.

7.5. WARRANTY ON THE REPAIRS

Aviat Networks warrants that each unit that is repaired or replaced under this Agreement, shall, at the time of return to Authority, for the Repairs Warranty Period stated below, be free from defects in materials and workmanship.

The Repairs Warranty Period shall be as follows:

- For Aviat Networks Transport Supported Products, a period of 180 days from the return shipment date or until the expiration or termination of this Agreement, whichever is longer
- For the Aviat Networks Access Supported Products, a period of 90 days from the return shipment date, limited to the most-current version of the Access Products.

Such warranty shall not include any consumable components to which a specific manufacturer's guarantee applies.

If any unit covered by this Agreement shall prove, during the Repairs Warranty Period, to be defective in materials or workmanship under normal intended usage, operation and maintenance during the term of this Agreement, as determined by Aviat Networks after examination of the unit claimed to be defective, then Aviat Networks shall repair or replace, at Aviat Networks' sole option, such defective unit, in accordance with procedures specified herein, at no additional cost, exclusive, however, of the cost of labor by the Authority's own employees, agents or contractors in identifying, removing or replacing the defective part(s) of the units.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER ORAL, WRITTEN, EXPRESSED, IMPLIED, OR STATUTORY. IN PARTICULAR, THE IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY DISCLAIMED AND SHALL NOT BE APPLICABLE EITHER FROM AVIAT NETWORKS OR ANY OTHER EQUIPMENT MANUFACTURER. AVIAT NETWORKS' WARRANTY OBLIGATIONS AND AUTHORITY'S REMEDIES THEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN.

LIABILITY OF AVIAT NETWORKS FOR BREACH OF ANY AND ALL WARRANTIES HEREUNDER IS EXPRESSLY LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE UNITS AS SET FORTH IN THIS AGREEMENT, AND IN NO EVENT SHALL AVIAT NETWORKS BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS OF CAPITAL, REVENUE OR PROFITS BY REASON OF ANY BREACH OF WARRANTY OR DEFECT IN MATERIALS OR WORKMANSHIP.

EXCLUDED FROM THE SCOPE OF THIS AGREEMENT AND/OR FROM AVIAT NETWORKS' WARRANTY OBLIGATIONS ARE (A) PRODUCTS WHICH HAVE BEEN SUBJECTED TO NEGLIGENCE OR DAMAGED AS A RESULT OF AUTHORITY'S FAULT OR NEGLIGENCE OR IMPROPER USE OR FAILURE TO MAINTAIN PRODUCTS IN GOOD WORKING ORDER, (B) PRODUCTS DAMAGED BY ACCIDENT (INCLUDING FIRE, FLOOD, STORM, LIGHTNING STRIKE, OR OTHER ACT OF GOD), (C) PRODUCTS WHICH HAVE BEEN FURNISHED, MODIFIED, ALTERED OR REPAIRED BY ANYONE OTHER THAN AVIAT NETWORKS OR AN AGENT AUTHORIZED BY AVIAT NETWORKS, OR (D) PRODUCTS THAT ARE NOT REPAIRABLE DUE TO COMPONENT AVAILABILITY.

7.6. PAYMENT TERMS

Except for pay-per-incident billings, all payments shall be made via bank transfer to the accounts specified on the invoice, in full in Advance of the commencement of each year of service/coverage.

The total amount stated on Aviat Networks' invoices is due and payable to Aviat Networks within thirty (30) days of the invoice date, subject to credit approval.

In the event any payment due by Authority hereunder is past due, Aviat Networks reserves the right to withhold Services until such payment is received.

Late payments shall result in the assessment of a late charge equal to one and one-half percent (1,5 %) per month on any outstanding balance, or the maximum amount of interest chargeable by law, whichever is less.

7.7. TAXES

All prices are exclusive of all sales, use, excise, and other taxes, duties, or charges. Unless evidence of tax-exempt status is provided by Customer, Customer shall pay, or upon receipt of invoice from Aviat Networks, shall reimburse Aviat Networks for all such taxes or charges levied or imposed on Customer, or required to be collected by Aviat Networks, resulting from this transaction or any part thereof.

7.8. SHIPMENT, IMPORT/EXPORT DOCUMENTS, EXPORT AND RE-EXPORT RESTRICTIONS

All shipments made by Aviat Networks under this Agreement are made via the methods (as applicable) outlined in the Repair Services and/or Advance Replacement Sections or the Repair Logistics Program Section (if purchased) of this Agreement. Unless instructed otherwise, Aviat Networks will arrange for standard commercial shipping. In the event Authority requires other than standard commercial shipping, Authority will be responsible for any additional costs incurred.

Authority shall be responsible for insurance and for clearing incoming Products through customs in their country.

Authority shall be responsible for obtaining any necessary import licenses into the country of delivery. Aviat Networks shall provide certificates of delivery, affidavits of origin, and other information under its control which is necessary for Authority to import Products.

Authority shall provide all information, certificates, and Letters of Assurance necessary for Aviat Networks to obtain any export licenses required for Aviat Networks to export Products out of the country for repair, as applicable. Aviat Networks shall be responsible for selection and/or approval of freight forwarder(s). In the event that Authority wishes to utilize a freight forwarder that is not acceptable to Aviat Networks, Authority shall be the shipper of record and shall be responsible for obtaining required export licenses which shall be in the name of the Authority.

Authority acknowledges that the Equipment, Software and Services sold or licensed by Aviat Networks under this Agreement may be subject to export controls under the laws of the United States or Canada, including without limitation, the requirement to obtain necessary approvals and licenses prior to the acceptance of any orders, or the export of Equipment, Software licenses or documentation pertaining thereto or the provision of Services. Such shall also apply, by way of example only, to spare parts, warranty items delivered by Aviat Networks in connection with the Equipment and/or Software, and the transfer or re-export of any such Equipment, Software licenses, spares, warranty items or documentation pertaining thereto by Authority to its end-users thereafter. Authority shall not export, re-export, sell, lease, release, assign, transfer, convey or in any manner dispose of, either directly or indirectly the Equipment, Software, spares, warranty items or documentation pertaining thereto, or other technology or products manufactured from the items sold or licensed by Aviat Networks under this Agreement in violation of the export control laws of the United States or Canada. Authority agrees to provide Aviat Networks with timely and accurate End-User Statements when Aviat Networks so requires. Aviat Networks shall be excused from performance and liability for failure to deliver Equipment, Software, Services, spares, warranty items or documentation pertaining thereto resulting from the U.S. Government's or Canada Government's denial or withdrawal of approval to export Equipment, Software licenses, Services, spares, warranty items or documentation pertaining thereto to Authority or its end-users. If Aviat Networks has reasons to believe that Authority has misrepresented, or failed to properly disclose, any fact with regard to end use, end users or country of ultimate destination or any other information supplied or requested pursuant to the End-User Statement, Aviat Networks may without liability to Authority terminate the Order for default immediately and discontinue all performance under any other pending or future Order from Authority. Authority shall defend, indemnify, and hold Aviat Networks harmless from and against any loss, damage, or liability arising out of Authority's negligent or willful failure to comply with this Section.

7.9. FORCE MAJEURE AND EXCUSABLE DELAY

Aviat Networks shall be excused from performance under this Agreement and not be liable to Authority for delay in performance attributable in whole or in part to any cause beyond its reasonable control (a "Force Majeure event"), including but not limited to, fire, explosion, power blackout, earthquake, flood, lightning strikes, severe weather conditions, strike, embargo, labor disputes, acts of civil or military authority, war, civil disturbance, insurrection, sabotage, terrorism, acts of God, acts of the public enemy,

acts of regulatory or governmental agencies, failure or delay in delivery by Aviat Networks' suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, Authority's fault or negligence or other causes beyond its reasonable control, whether or not similarly to the foregoing.

In the event of a Force Majeure event, Aviat Networks shall make reasonable efforts to notify Authority of the nature and extent of such a delay and Aviat Networks may be entitled to a schedule extension commensurate with the nature of the Force Majeure event .

7.10. COMPLIANCE WITH LAW

Authority agrees to reasonably assist Aviat Networks to comply with any applicable conventions, laws, rules, regulations, and bylaws incident to its activities under this Agreement, including, without limitation, United States export control regulations, the United States Foreign Corrupt Practices Act, and the United States anti-boycott regulations. Authority will promptly deliver to Aviat Networks a copy of any notice or instrument alleging a violation of any of these laws.

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the Services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the Authority \$25 for each worker employed in the performance of the Services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the Authority has determined the general prevailing wages in the locality in which the Services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Authority Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the Services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the Services described in Exhibit A.
- B. In accordance with California Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the Services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty for each worker engaged in the performance of the Services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The

amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the Services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the Services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the Services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Services described in Exhibit A. Each payroll record

shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.
2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be submitted directly to the Labor Commission, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the Services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the Services described in Exhibit A to employ for the Services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

5595256.1

RESOLUTION NO. 24-__

**A RESOLUTION OF THE
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**

*** * * * ***

**AUTHORIZING THE EBRCSA CHAIR TO EXECUTE, AND THE EXECUTIVE
DIRECTOR TO IMPLEMENT, AN AGREEMENT WITH AVIAT U.S., INC. FOR
MAINTENANCE , REPAIR AND TECHNICAL SUPPORT SERVICES FOR THE
MICROWAVE SYSTEM**

WHEREAS, the East Bay Regional Communications System Authority (“EBRCSA”) P-25 compliant communications system serving Alameda and Contra Costa Counties and individual political jurisdictions therein (the “**System**”) microwave network has been serviced by Aviat U.S., Inc. (“**Aviat**”) pursuant to an agreement that expired on September 30, 2022; and

WHEREAS, Aviat proposed entering into a new contract for a six year term, for a total cost of \$949,148.00 to be paid in the following six annual payments: \$84,620, \$163,425, \$85,754, \$276,781, \$127,464, \$211,104 for repair services, replacement during repair, and remote technical support; and

WHEREAS, EBRCSA staff and technicians have been satisfied with the services provided by Aviat under the prior agreement, and the Operations Committee and Finance Committee have recommended that the proposed contract be approved by the Board of Directors; and

WHEREAS, funds for the Agreement are available in the FY 23/24 Operations Budget.

NOW, THEREFORE, BE IT RESOLVED THAT, good cause appearing therefor, the Chair of the East Bay Regional Communications System Authority is authorized to execute, and the Executive Director is authorized to take such other and further action as necessary to implement, a services agreement with Aviat Networks in form approved by EBRCSA General Counsel, and in an amount not to exceed \$949,148.00.

On motion of xx, seconded by xx, the foregoing Resolution was passed and adopted this 1st day of March 2024, by the following votes:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST: _____
Caroline Soto, Secretary