



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, 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 SPECIAL MEETING

NOTICE OF 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**

AGENDA

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1. **Closed Session:** (None) **Time:** N/A
 2. **Call to Order/Roll Call:** (Regular Session) **Time:** 10:00 a.m.
 3. **Report on Closed Session:** None.
 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. **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
 10. **Board Comments:**

11. Next Action Steps:

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 24 hours before the noted meeting.



Tom McCarthy
Executive Director
December 14, 2023



**East Bay Regional
Communications
System Authority**



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AGENDA ITEM 9.1.

**AGENDA STATEMENT
BOARD OF DIRECTORS
SPECIAL MEETING DATE: December 21, 2023**

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

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

SUBJECT: Transitional Assistance Agreement with Director McCarthy

RECOMMENDATION:

Adopt a resolution authorizing the East Bay Regional Communications System Authority (“**EBRCSA**”) to enter into a Transitional Assistance Agreement with Executive Director Tom McCarthy (“**Director McCarthy**”) to authorize termination of his Services Contract on April 30, 2024 to allow an orderly transition.

SUMMARY/DISCUSSION:

EBRCSA and Director McCarthy entered into a services agreement dated January 30, 2015 whereby Director McCarthy agreed to provide services to EBRCSA at an hourly rate (“**Services Agreement**”). On January 1, 2021, EBRCSA and Director amended the Services Agreement to increase the hourly rate.

Director McCarthy notified EBRCSA of his desire to terminate the Services Agreement on February 29, 2024. However, in order to effectuate an orderly transition, the Chair requested that Director McCarthy continue to provide services to EBRCSA until April 30, 2024 and, thereafter, the Services Agreement will terminate. Director McCarthy has agreed to such request.

The parties have negotiated the terms of a Transitional Assistance Agreement attached hereto as Attachment A.

FISCAL IMPACT

None. Director McCarthy would continue to provide services under the existing Services Agreement to the Authority through April 30, 2024.

RECOMMENDED ACTION:

It is recommended that the Board of Directors adopt a resolution approving the proposed Transitional Assistance Agreement. It is requested that the Board authorize the Chair to execute the Agreement and the Executive Director to take such further action as may be necessary and appropriate to implement it.

Attachments:

“A” – Transitional Assistance Agreement

“B” - Resolution

5559701.1

TRANSITIONAL ASSISTANCE AGREEMENT AND GENERAL RELEASE

THIS TRANSITIONAL ASSISTANCE AGREEMENT AND GENERAL RELEASE (“**Agreement**”) is made by and between the East Bay Communications System Authority, which includes without limitation, its Board of Directors or any Director, Members, officers, departments, committees, predecessors, successors, related entities, independent contractors, attorneys, contractors, agents and assigns past present or future (collectively, “**Authority**”), and Thomas G. McCarthy, a sole proprietor, (“**Contractor**”) (individually, “**Party**” and collectively, “**Parties**”).

RECITALS

WHEREAS, the Parties entered into a services agreement dated January 30, 2015 whereby Contractor agreed to provide services to the Authority (“**Services**”) at an hourly rate of \$150.00 per hour and, on January 1, 2021, Contractor raised the hourly rate of services to \$175.00 per hour (“**Current Rate**”) and the Parties entered into an amendment which correspondingly increased Contractor’s hourly rate (collectively, “**Services Agreement**”); and

WHEREAS, Contractor notified the Authority of his desire to cease operating his sole proprietorship after February 29, 2024 and terminate the Services Agreement on the same date; and

WHEREAS, although Section 13 of the Services Agreement allows termination by Contractor upon default by the Authority and Contractor has not alleged any default by Authority thereunder, the Authority nonetheless agrees to terminate the Services Agreement based upon Contractor’s desire to cease his business and pursuant to the terms and conditions as set forth herein; and

WHEREAS, and in order to effectuate an orderly transition of the Services to another entity, the Parties have agreed that Contractor shall continue to provide the Services to the Authority until April 30, 2024 pursuant to the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. Contractor agrees to provide the Services until April 30, 2024 and the Services Agreement shall terminate effective close of business on April 30, 2024 (“**Termination Date**”). This term is self-executing and requires no further act by either Party for full force or effect.
2. Authority agrees to compensate Contractor for the Services provided until the Termination Date at the Current Rate pursuant to the terms and conditions of the Services Agreement.
3. Contractor agrees to cooperate with the Authority to ensure an orderly transition of the Services to another entity prior to the Termination Date. Such cooperation shall include, but is not limited to, Contractor’s agreement to return all Authority property in his possession before the Termination Date. In addition, Contractor agrees to abide by all the terms and conditions of this Agreement and the Services Agreement not otherwise waived by this Agreement until the Termination Date.
4. Contractor agrees that he does not possess any rights or claims to future contracts with the Authority after the Termination Date.

5. In consideration of the foregoing, Contractor for himself, his heirs, executors, administrators, assigns, and successors, hereby fully and forever, irrevocably and unconditionally releases, discharges and covenants not to sue the Authority, its Board of Directors or any Director, Members, officers, departments, committees, predecessors, successors, related entities, independent contractors, attorneys, contractors, agents and assigns past present or future, from any and all claims, actions, causes of action, judgments, liens, indebtedness, damages, obligations, losses, liabilities, costs, claims for attorneys' fees or costs, and all other claims and rights of action of all kinds and descriptions, which he has or may have, whether known or unknown, suspected or unsuspected, which were raised or which might have been raised, or arise out of, are connected with, or in any manner related to the Services Agreement and/or any matter described in this Agreement, including, without limitation, claims of breach of contract, breach of covenant of good faith and fair dealing, violation of the provisions of the California Labor Code, violation of the Authority's Policies and Procedures, and other Authority enactments, claims of discrimination, harassment and/or retaliation based on any protected activity and/or protected status of any kind, including those under Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment and Housing Act, the California and United States Constitutions, the Americans with Disabilities Act, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1866, misclassification as an independent contractor, claims to any benefits, wages, costs, leave, insurance or other entitlements as an Authority employee, business-related costs and expenses, violations of the Unfair Competition Law, wrongful discharge, retaliation, and all other

claims premised or related to the Services Agreement. Contractor agrees not to file any grievance, claim, lawsuit or cause of action of any kind relating in any way to the Services Agreement or termination thereof.

6. Contractor understands and expressly agrees that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, arising from or attributable to the Services Agreement, this Agreement and/or any act or omission by the Authority prior to the Termination Date. Contractor acknowledges that any and all rights granted to him under Section 1542 of the California Civil Code or any analogous state or federal law or regulation are hereby expressly waived. Contractor recognizes and acknowledges that factors which have induced him to enter into this Agreement might turn out to be incorrect or different from what he had previously anticipated, and Contractor expressly assumes all of the risks of this waiver of California Civil Code Section 1542. Said Section 1542 of the California Civil Code, reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7. In further consideration of the foregoing, Contractor agrees, acknowledges and recognizes that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by Authority which liability or wrongdoing is expressly denied.

8. Contractor has carefully reviewed this Agreement and understands the terms and conditions it contains. By entering into this Agreement, Contractor intends to

be bound by all the terms and conditions set forth in this Agreement. Contractor is entering into this Agreement freely, knowingly and voluntarily.

9. Contractor represents and warrants that he has full power to make the releases and agreements contained herein and has had the opportunity to consult with an attorney before entering into this Agreement. Contractor expressly represents and warrants that he has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by the releases and agreements contained herein. Contractor acknowledges and agrees that this warranty and representation is an essential and material term of the Agreement.

10. Both Parties shall bear their own attorneys' fees in connection with the Agreement.

11. The Parties acknowledge that this Agreement constitutes the sole and entire agreement of the Parties in this matter, that any modifications may only be effected by a writing signed by all affected parties, and that this Agreement and Release supersedes any prior written or oral agreement concerning the subject matter of its provisions. The Parties agree that there are no representations, agreements, arrangements or understandings, either written or oral, between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

12. Each Party has had the opportunity to participate in drafting the Agreement. Any terms, conditions or provisions of the Agreement shall not be construed against one Party and in favor of another by virtue of who actually drafted or circulated the Agreement.

13. The Parties agree to execute all documents and perform all acts necessary to effectuate the terms and purposes of this Agreement.

14. In the event that any term, condition or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, that term, condition or provision shall be deemed to be deleted, and the remaining terms, conditions and provisions shall continue in full force and effect.

15. The validity, interpretation and performance of this Agreement shall be construed and interpreted according to the laws of the State of California.

16. The Parties agree to execute in counterparts, each of which shall be deemed an original instrument and all such counterparts, taken together, shall constitute one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed effective as originals.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate as of the date first herein written.

FOR CONTRACTOR

By: _____
THOMAS G. McCARTHY

**FOR EAST BAY REGIONAL COMMUNICATIONS
SYSTEM AUTHORITY**

By: _____
Name: _____
Title: _____

Approved as to form:

Laura McKinney, Authority Counsel

5557348.1

RESOLUTION NO. 23 - XX

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

**AUTHORIZING THE CHAIR TO EXECUTE AND THE EXECUTIVE DIRECTOR TO
IMPLEMENT A TRANSITIONAL ASSISTANCE AGREEMENT**

WHEREAS, January 30, 2015, the East Bay Regional Communications System Authority (the “**EBRCSA**”) entered into a Services Contract with Tom McCarthy (“**McCarthy**”) which was amended on January 1, 2021;

WHEREAS, McCarthy notified EBRCSA of his desire to terminate the Services Contract on February 29, 2024; and

WHEREAS, in order to effectuate an orderly transition, the Chair requested that Director McCarthy continue to provide services to EBRCSA until April 30, 2024 and, thereafter, the Services Agreement will terminate and McCarthy has agreed to such request; and

WHEREAS, EBRCSA and McCarthy have negotiated the terms of a Transitional Assistance Agreement reflecting such agreement; and

WHEREAS, based on review of the terms of the proposed Transitional Assistance Agreement as discussed in the accompanying staff report and oral report, and as set forth in the proposed Transitional Assistance Agreement attached to the accompanying staff report, together with all public comment received, good cause appears therefor.

NOW, THEREFORE, BE IT RESOLVED THAT good cause appearing therefor, the Board of Directors of the East Bay Regional Communications System Authority does hereby authorize its Chair to execute, and the Executive Director to take further other action as may be necessary and appropriate to implement the proposed Transitional Assistance Agreement, substantially in the form attached to the accompanying staff report.

On motion of Bm. _____, seconded by Bm. _____, the foregoing Resolution was passed and adopted this 21st day of December, 2023, by the following votes:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

Caroline Soto, Secretary

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