



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, 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

FINANCE COMMITTEE MEETING

NOTICE OF REGULAR MEETING

DATE: November 17, 2023

TIME: 11:00 a.m.

PLACE: Alameda County Office of Homeland Security and Emergency Services,
Room 1013
4985 Broder Blvd., Dublin, CA 94568

AGENDA

1. Call to Order/Roll Call
2. Public Comments (Meeting Open to the Public):
At this time, the public is permitted to address the Committee on items within the Committee's subject matter jurisdiction that do not appear on the agenda. 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.
3. Approval of Minutes of September 15, 2023, and September 25, 2023, Special Finance Committee Meetings
4. Lease Agreement with East Bay Municipal Utilities District
5. Approval of Draft 2024 EBRCSA Meeting Schedule
6. Discussion of Annual Election of Board Chair and Vice Chair as required by the JPA Agreement and Bylaws
7. Updates on East Bay Regional Communications System Projects
 - Time Division Multiple Access (TDMA)
 - Encryption
 - Microwave/Ethernet/MPLS
 - The City of Antioch Site on Walton Lane
 - Contra Costa Site in Martinez Replacing 651 Pine Street
 - Wiedemann Project San Ramon
 - Alameda County Parking Lot next to East Dublin BART
 - Search for Recruiter for Executive Director Position

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8. Agenda Items for Next Meeting

- Aviat Repair and Maintenance Agreement

9. 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
November 11, 2023



**East Bay Regional
Communications
System Authority**



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AGENDA ITEM NO. 3.

**AGENDA STATEMENT
FINANCE COMMITTEE SPECIAL MEETING
MEETING DATE: November 17, 2023**

TO: Finance Committee
East Bay Regional Communications System Authority (EBRCSA)

FROM: Tom McCarthy, Executive Director
East Bay Regional Communications System Authority

SUBJECT: Approval of Minutes of the September 15, 2023, and September 25, 2023, Special Finance Committee Meetings

RECOMMENDATIONS:

Approve the minutes of the September 15, 2023 and September 25, 2023, Special Finance Committee meetings.

SUMMARY/DISCUSSION:

The Finance Committee will consider approval of the minutes of the September 15, 2023 and September 25, 2023, Special Finance Committee meetings.

RECOMMENDED ACTION:

It is recommended that the Committee approve the minutes of the September 15, 2023 and September 25, 2023, Special Finance Committee meetings.

Attachment:

Attachment "A" - Draft Minutes September 15, 2023, Special Finance Committee Meeting

Attachment "B" – Draft Minutes September 25, 2023, Special Finance Committee Meeting



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OPERATIONS COMMITTEE MEETING

SPECIAL MEETING

DATE: September 15, 2023

TIME: 10:00 a.m.

PLACE: Alameda County Office of Homeland Security and Emergency Services,
Room 1013
4985 Broder Blvd., Dublin, CA 94568

DRAFT MINUTES

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- 1. Call to Order/Roll Call:** A regular meeting of the Operations Committee was held on Friday, September 15, 2023. The meeting was called to order at 10:02 a.m.

Committee Members Present:

D. Swing, Chief, Pleasanton Police Department
J. King, Chief, Moraga Police Department
P. Meyer, Chief, San Ramon Valley Fire Protection District
M. Nichelini, Acting Deputy Chief, Oakland Fire Department
J. Vorhauer, Assistant Sheriff, Contra Costa County Office of the Sheriff

Staff:

T. McCarthy, Executive Director
C. Boyer, Auditor
C. Soto, Administrative Assistant

Public:

M. Larson, Representative of Motorola

- 2. Public Comments:** None.
- 3. Approval of Minutes of June 2, 2023, Operations Committee Meeting**

On motion of Bm. King, seconded by Bm. Vorhauer and by unanimous vote, the Operations Committee approved the minutes of the June 2, 2023 Operations Committee meeting.

- 4. Motorola SUA and Maintenance Agreement**

Executive Director McCarthy stated when EBRCSA was built, it had a service update agreement with Motorola for ten years. The agreement was set at \$1 million per year for

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the 10 years. The SUA was not combined with the maintenance agreement back then. There were two separate contracts. The cost of the maintenance agreement has gone up every three years. Having no increases for 10 years was a good deal. It has now expired. He has now asked Motorola to put the SUA and maintenance agreement together into a six-year contract. At the end of the six years, you do not know what changes will have occurred in technology. In six years, Motorola will change how consoles work. In the original SUA, the consoles were included as part of the upgrade. The new SUA and maintenance agreement are now both in this contract. The SUA now includes the NICE recording which was separate, they also added MPLS, the MDR computer security component. These critical items increase the cost of the contract. All the new equipment is being inventoried and asset-tagged. Every two years, the SUA refreshes technology and, if necessary, hardware. This combines the SUA, just under \$1 million per year and the maintenance agreement, \$1.4 million a year.

The Operations Committee, Mr. Boyer - Auditor, and the Executive Director discussed the impacts the new agreement costs would have on the budget. They also discussed how a component of the contract cost is a capital cost due to the hardware having useful lives beyond one year. This agreement has been written with the EBRCSA attorney and the attorney from Motorola. There were questions regarding the automatic adjustment for inflation stated in the contract. The cost of the agreement would need to be coupled with an increase in subscription fees. Could the \$1.8 million in the budget earmarked for the site in Antioch be used to help with the budget issues? EBRCSA was already using reserves for a loss in the budget. This contract will generate a rate increase. The last time rates went up was 2019, 2020, and 2021. They were not increased as much as anticipated. The escalator on the CPI needed to be discussed with Motorola so as to not have an open-ended percentage increase.

Executive Director McCarthy stated he would check and report back to the Operations Committee what the Alameda County and Contra Costa Counties recording retention schedules are.

On motion of Bm. King, seconded by Bm. Swing, and by unanimous vote, the Operations Committee agreed to recommend this item to the Board for approval with the exception of the inflation adjustment section on page 73 and with a request that the Executive Director work with Motorola on pricing issues.

5. Contra Costa County ITD Service Agreement

Executive Director McCarthy stated this was a contract with Contra Costa County's radio shop. The radio shop team works on the equipment and out in the field at the sites. This is to extend that contract for one year. It is for time and materials with an increase of 5%, of which is in the budget. This contract will date back to July 1, 2023.

On motion of Bm. King, seconded by Bm. Vorhauer and by unanimous vote, the Operations Committee agreed to recommend to the full Board that EBRCSA amend/extend its current contract with the Contra Costa County Department of Information Technology and increase the contract value from \$2,290,000 to \$2,635,000, an increase of \$345,000, through June 30, 2024. majority vote for approval.

6. Request Direction regarding Recruitment of Executive Director

Executive Director McCarthy stated he would be leaving EBRCSA on February 29, 2024. He was looking for direction as to how to fill the vacancy. Could there be a subcommittee of Board members to work on recruitment with the assistance of a recruitment company?

Bm. Swing stated it might be the time to also have a conversation regarding EBRCSA's administrative structure.

Chair Meyer stated he would like to have Executive Director McCarthy overlap with the new Executive Director.

7. Updates on East Bay Regional Commination System Projects

- Time Division Multiple Access (TDMA)

All the equipment has been installed; some agencies have not completed theirs yet. A deadline will be set and the Executive Director will send out a letter to agencies that have not converted their radios, approximately 600 radios.

- Encryption

Encryption has been put in every one of the dispatch consoles. It is now up to the agencies to put in their encryption. Fleet maps have been written and the code plugs have been written.

- Microwave/MPLS

There is now engineering work being done on the last two microwaves. So, now they are moving through the second phase of the process.

- The City of Antioch Site on Walton Lane

Antioch let its lease expire on the tower so the Executive Director is working with them to get it worked out.

- Carquinez Site Completion

The site at 651 Pine Street in Martinez was demolished so equipment had to be removed. Contra Costa County paid for and built a site in Carquinez. All the finalization was being completed now.

- Wiedemann Project San Ramon

The power distribution is being setup. The dishes are being done. Ball is one of the dishes that connects to it.

- Alameda County Parking Lot next to East Dublin BART

A parking lot is being built next to the East Dublin BART station and it is creating interference from East Dublin BART to Doolan where the master site ties into the ring. There is a 60% degradation. The Executive Director is working with BART. He had reports done in four days and sent them to BART. BART informed him that in 2021 LB Stroebel came out and did some work on the tower, so reports had to be redone.

8. Agenda Items for Next Meeting

- Aviat Repair and Maintenance Agreement
- Antioch
- Mutual Aid: MOTCO wants to come on EBRCSA
- Poll the encryption and estimate timeline

- 9. Adjournment:** With no further business coming before the Operations Committee, the meeting was adjourned at 11:07 a.m.

DRAFT



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SPECIAL MEETING FINANCE COMMITTEE

SPECIAL MEETING

DATE: September 25, 2023

TIME: 11:00 a.m.

PLACE: Alameda County Office of Homeland Security and Emergency Services,
Room 1013
4985 Broder Blvd., Dublin, CA 94568

DRAFT MINUTES

- 1. Call to Order/Roll Call:** A Special meeting of the Finance Committee was held on September 25, 2023. The meeting was called to order at 11:06 a.m.

Committee Members Present:

J. Calabrigo, Town Manager, Town of Danville
A. Love, Chief, Oakland Housing Authority
P. Meyer, Chief, San Ramon Valley Fire
S. Muranishi, County Administrator, Alameda County
S. Perkins, Councilmember, City of San Ramon
M. Shorr, Chief Information Officer, Contra Costa County
C. Silva, Councilmember, City of Walnut Creek
L. Smith, City Manager, City of Dublin

Staff Present:

T. McCarthy, Executive Director
C. Boyer, Auditor
C. Soto, Administrative Assistant

- 2. Public Comments:** None.
- 3. Consider Recommendations to Increase the Monthly Cost of EBRCSA to Ensure Adequate Reserve Funding**

Chair Meyer stated he asked for the meeting because of the Motorola contract and the financial concerns some of the Finance Committee has with it. If the Board is going to approve the contract, it is important to vote on some subscriber fee, whether because of the

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CIP or the cost of the contract or all of the above, it was important to have this discussion. He is hoping to get a recommendation to the entire Board prior to the Motorola contract being approved. He would open the conversation with the following: a July 1, 2024 fee increase to be evaluated every year to ensure that EBRCSA is meeting the goals of EBRCSA to be fiscally prepared and able to meet its obligations.

The Finance Committee discussed how the scenarios of rate increases provided in the staff report were given as options. How often should the reviews be conducted? If annually, when should the review start to facilitate agencies' budget planning, every 18 months? Do review every year with a two-year outlook? There is still no capital replacement plan, and with millions of dollars in capital, just taking care of operating expenses only addresses part of the problem. This would necessitate annual reviews going forward. The Aviat contract is still pending. An additional cost from Motorola is a service management contract quoted at \$98,000. Potentially, as the service area may grow, what other gaps might there be? They support the idea and hope they can come to some solution today on what to do for July 2024. Could 9 months in advance work? Could they have a decision for the December 2023 meeting to implement July 2024? Could they do it again this time next year for a recommendation for the December 2024 meeting?

Bm. Calabrigo stated with what they know from Motorola, they know what the bump in the contract cost is going to be. The big variable is going to be the capital replacement plan.

Craig Boyer, Auditor, stated in the two cash flow scenarios given in the staff report, one is over the years EBRCSA has consistently had capital reserves in the \$10-\$15 million so the first scenario was to try to restore and maintain the \$10-15 million capital reserve scenario. The second scenario was to look at if they went back to the inception of when dues were first implemented per EBRCSA, if they had imposed an increase in dues annually based on CPI, where would EBRCSA be today and then implementing a catch-up to get to the difference between what the dues would be at the CPI increase versus what the dues actually are. With one of the scenarios, the catch-up was completed and then it is kept flat and there going forward. That is the one that has capital reserve deterioration issues going ten years out because there is no additional increases besides catching-up for past activity. The second one, has also implemented a 3% CPI increase once the catch-up was implemented. That second scenario is fairly comparable to the first scenario that was run, which was trying to achieve the \$10-15 million in capital reserves. Those were the scenarios that were run to look at what it would mean in terms of dues structure and how it would affect EBRCSA going forward.

Finance Committee members and the Auditor discussed, in terms of Scenario 1, 2A and 2B, Scenario 1 gets EBRCSA to about \$14 million at the end of the nine years in reserves, Scenario 2A gets EBRCSA to just under \$6 million, and Scenario 2B gets EBRCSA to \$13 million. Scenario 1 and 2B, in terms of the reserve levels at the end of the nine years, are roughly the same. In looking at the numbers in the Motorola contract, could there be an additional increase due to CPI above the numbers provided by Motorola? In all the other operating costs in the budget, what assumptions were being used? For all the other operating costs, if there is a contract associated with it, the contract rate is used, otherwise they use 4% increase per year.

A question was asked regarding the underpayment of fees from last year. The numbers were being calculated.

To just cover the \$1.4 million increase from the Motorola contract, what would rates have to increase to cover that increase? It would take an increase of \$5-6 increase per radio per month to stay even with the one Motorola contract. A point was made in regard to the Motorola contract, if the increase in CPI is up to four percent, it is covered by the contract, but if it is above four percent, Motorola can claim the difference with no ceiling to that number.

Bm. Perkins, seconded by Bm. Silva, made a motion that the Finance Committee recommend to the full Board that EBRCSA adopt a \$5.50 per radio per month increase on July 1, 2024, that would cover the Motorola contract and, implement an annual fee review by the Finance Committee starting in early September.

This represents an 18% increase in subscriber fees. To project a 3% increase going forward, did not solve the problem. EBRCSA has under-funded for a couple of years. The Finance Committee had this discussion earlier this year and the concession was made to reduce the operating reserve by \$1 million. At a minimum, they needed to go back to the Board to recommend to adjust the rates to cover the current costs, and still do not have the capital replacement cost analysis, and do not have the contract from Aviat. The staff report for the increase should include verbiage regarding the significant project costs that were covered by the Board without any rate increases such as the TDMA and microwave upgrades.

EBRCSA's budgeted operating expenses are \$4.5 million and also have \$5 million of capital as well as \$.5 million of debt, with total expenses of \$10 million. So, reserves are about 150%. What EBRCSA held in reserves is primarily capital. It is not an operating reserve to be used year over year. Those dollars will be used once there is a capital replacement plan.

Suggested percent increases and dollar increases were discussed, as well as whether to project one or two years in advance.

On motion of Chair Meyer, seconded by Bm. Love, and by majority vote (Bms. Meyer, Love and Shorr voting aye, Bms. Calabrigo, Muranishi, Perkins, Silva, and Smith voting no), the motion made as an amendment to the previous motion to recommend to the full Board an increase in rates of \$3 per radio, per month as of July 2024, with a minimum escalator of 3% a year beginning in July of that year with an annual review, and a review of the capital replacement program, failed.

On motion of Bm. Calabrigo, seconded by Bm. Smith and by tie vote (Bms. Calabrigo, Perkins, Silva and Smith voting aye, Bms. Love, Meyer, Muranishi and Shore voting no), the motion to recommend to the full Board an increase of \$3 per radio per year in Year 1 (July 2024), \$3 increase per radio per month in Year 2, and annual review of fees with Year 3 and beyond, failed.

On motion of Bm. Smith, seconded by Bm. Silva and by majority vote (Bm. Calabrigo, Love, Perkins, Silva and Smith voting aye, Bms. Meyer, Muranishi and Shorr voting no), the Finance Committee recommended to the full Board a \$3 increase per radio per month for July 2024, a \$3 increase per radio per month for the second year (July 2025), with a minimum 3% increase with an annual review, and a review of the capital replacement plan.

The Finance Committee requested Mr. Boyer provide cash flows for the above increases in the associated staff reports for the Board Meeting on September 29, 2023.

4. Motorola SUA and Maintenance Agreement with Any Necessary Discussion of Increased Subscriber Cost

Executive Director McCarthy stated attorneys from both the Authority and Motorola have reviewed and submitted the contract. This is a six-year contract. The contract was cut down to the most necessary requirements. The Nice recording has been added as a third-party item. Security has also been added to the contract. Motorola is a locked system. This contract gives three complete refreshes for the System, one every two years.

The Finance Committee members and Executive Director discussed the need to have a cap on CPI in the contract, but were told Motorola had that same clause in all its contracts. What they had done for EBRCSA was raise the base amount increase from 3% to 4%. The Committee asked for distinction between operating costs and capital costs associated with this contract.

On motion of Bm. Perkins, seconded by Bm. Silva and by majority vote (Bm. Muranishi absent), the Finance Committee agreed to recommend to the full Board for approval the proposed Motorola Agreement for ASTRO Maintenance, ASTRO SUA, MPLS, MDR, and NICE SUA and Maintenance; and with inclusion of a budget amendment to the full Board for approval.

5. Adjournment: With no further business coming before the Finance Committee, the meeting was adjourned at 12:48 p.m.



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AGENDA ITEM 4.

**AGENDA STATEMENT
FINANCE COMMITTEE MEETING
MEETING DATE: November 17, 2023**

TO: Finance Committee
East Bay Regional Communications System Authority (EBRCSA)

FROM: Thomas G. McCarthy, Executive Director
East Bay Regional Communications System Authority

SUBJECT: Enter Into a Lease Agreement with the East Bay Municipal Utility District

RECOMMENDATIONS:

Review, and if Committee agrees, make a recommendation to the Board of Directors to renew a lease agreement with East Bay Municipal Utilities District (EBMUD) for East Bay Regional Communications System Authority equipment shelters located at the EBMUD Reservoir sites Seneca, Pearl, Carter (Alta Mesa), and Skyline.

SUMMARY/DISCUSSION:

The East Bay Regional Communications System Authority (EBRCSA) built its system utilizing existing towers and shelters, where it could, on the existing sites in Alameda and Contra Costa Counties. EBRCSA also built new sites necessary for coverage at Seneca, Pearl, Carter (Alta Mesa), and Skyline reservoirs, on property owned by East Bay Municipal Utilities District (EBMUD). Lease agreements for these sites were developed between EBMUD and EBRCSA commencing January 1, 2017, and expire December 31, 2023. A new lease agreement is attached for recommendation to the Board of Directors. The request is to approve the agreement with EBMUD commencing January 1, 2024, and expiring December 31, 2028.

The Lease agreement between EBMUD and the EBRCSA remained the same and no increase to the Base Rent Adjustment. The new term of the lease begins January 1, 2024, and ends on December 31, 2028. EBRCSA agrees to pay EBMUD, in advance, Base Rent, the annual sum of \$17,910.78 payable within the first 30 days of the start of each yearly anniversary of the Commencement Date. The Base Rent Adjustment, payable hereunder shall be adjusted by 3%

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annually starting January 1, 2025, and every year thereafter. The annual adjustment will be calculated by increasing the previous year's rent by 3%.

FISCAL IMPACT

EBRCSA has a line item in its budget for lease payments. The FY 23/24 budget includes the cost of the EBMUD lease for FY 23/24 and will not require a budget adjustment for the Fiscal Year.

RECOMMENDED ACTION:

It is requested that the Committee recommend to the Board of Directors to enter into the Lease agreement with East Bay Municipal Utilities District.

Attachment "A" Pearl Agreement
Attachment "B" Skyline Agreement
Attachment "C" Seneca Agreement
Attachment "D" Carter Agreement

SUCCEEDING EMERGENCY COMMUNICATION SYSTEM LEASE

(Not to be Recorded)

THIS LEASE, made this ____ day of _____, 20____, by and between East Bay Municipal Utility District, a public corporation of the State of California, hereinafter designated as “Lessor,” and East Bay Regional Communication System Authority, hereinafter designated as “Lessee.”

WHEREAS, Lessor owns the real property located at the end of Monte Cresta Ave and the Monte Cresta Trail, Richmond, CA 94806, commonly known as Pearl Reservoir, more specifically described as Assessor Parcel Number 419-180-005-3 and as further described in **Exhibit B** to this Lease, (the “**Property**”) attached hereto and made a part hereof; and

WHEREAS, Lessor and Lessee entered into a certain Emergency Communications System Lease dated March 21, 2018 that commenced on January 1, 2017 and is set to expire on December 31, 2023; and

WHEREAS, as of the Commencement Date (as defined in Section 3 below), it is the intent of the Lessor and Lessee to enter into a succeeding lease with new terms, covenants, and conditions with the original Lease having no further force or effect as of such date.

WITNESSETH:

1. PREMISES

Lessor, in consideration of the payment of rent hereinafter specified to be paid by Lessee and of the covenants and agreements herein contained to be performed and observed by Lessee, does hereby lease, demise and let to Lessee for the purpose hereinafter specified, that certain property (“the Premises”), which are a portion of the Property, delineated and described on **Exhibit A** consisting of the use of Lessor’s existing telecommunication tower along with appurtenances of 500 square feet, along with the use of the equipment shelter approximately two hundred (200) square feet for the placement of Lessee’s equipment, including utility and access routes to the Premises.

2. USE OF PREMISES

Lessee shall use the Premises only for the purpose of installing, maintaining, operating, replacing, and removing P-25 compliant communication system equipment along with the necessary cable and conduit to connect the communication equipment to the antennas and to telephone and electrical facilities, subject to the provisions of Section 8, below. Lessee shall provide a description of the facilities accompanied by a photo simulation of the proposed facility that accurately depicts the equipment to be placed on the Premises. The description and photo simulation will both be incorporated into the Lease as **Exhibit C**.

3. TERM

The lease Term commences on January 1, 2024 (“Commencement Date”) and ends on December 31, 2028 (“Expiration Date”) subject to renewal and/or termination rights as may be hereinafter set forth.

4. RENT

- A. Base Rent: Starting with the Commencement Date, Lessee agrees to pay Lessor, in advance, as Base Rent, the annual sum of seventeen thousand nine hundred ten dollars and seventy eight cents (\$17,910.78) payable in advance on or before the Commencement Date of the Term and annually thereafter to the Lessor at 375 11th St, MS 903, Oakland, CA 94607.
- B. Base Rent Adjustment. The amount of Base Rent payable hereunder shall be adjusted by 3% annually starting January 1, 2025, and every year thereafter. The annual adjustment be calculated by increasing previous year's Base Rent by the 3 percent.
- C. Late Rent. Should the annual Base Rent payment not be paid in full within the first thirty days of the anniversary of the Commencement Date, a fifteen percent (15%) late fee shall be added to the annual rent payment due. Lessor's right to collect a late fee shall not be deemed an extension of the Due Date nor prevent the Lessor from exercising any other rights and remedies available under this Lease and by law.
- D. All Rent Payment to Lessor shall be sent to: 375 11th St, MS#903, Oakland, CA 94607.

5. UTILITIES

Lessee agrees to furnish at Lessee's sole cost and expense, all water, gas, heat, light, power and all other utilities and operating infrastructure required at the Premises.

6. LESSOR'S RIGHTS

- A. Lessor reserves the right to use the Property, excluding the area delineated on Exhibit A, at any and all times, for Lessor's operations and shall at all times during the Term of this Lease have the right to enter upon the Premises for any purpose necessary in the conduct of Lessor's operations.
- B. It is understood that construction, reconstruction, maintenance, and use of the reservoir, pumping plants, pipelines and other facilities or improvements of Lessor, present or future, upon the Property shall at all times be paramount to any rights under this Lease, provided that Lessor will not unreasonably interfere with Lessee's use of the Premises.
- C. The construction, reconstruction, maintenance, and use of the facilities of Lessee, and all work upon or in connection therewith, shall at no time and in no way whatever interfere with the present or future operations of Lessor; the location of the facilities, the construction, reconstruction, and maintenance thereof, and all work in connection therewith, shall be done and made under the supervision and to the reasonable satisfaction of Lessor.
- D. Upon completion of the installation of its facilities or any improvements, Lessee shall promptly return as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work and Lessee shall not commit or suffer to be committed any waste upon the Premises or any nuisance thereon and agrees to keep the Premises in a neat, clean, sanitary and orderly condition at all times during

occupancy, and not to permit any amount of rubbish, garbage or refuse to accumulate and remain thereon at any time. If Lessee fails so to keep the Property as stated herein, then after thirty (30) days written notice to Lessee, Lessor may perform the necessary work at the reasonable expense of Lessee, which expense Lessee agrees to pay to Lessor upon demand.

7. ACCESS

Where Lessor holds rights of access to the Property in fee title, Lessor grants Lessee access to the Property via use of the access road as described in Exhibit B, and a right of access to the source of electrical and telephone facilities, twenty-four (24) hours a day, seven (7) days a week as depicted in Exhibit A. Where Lessor does not own access rights in fee title, Lessee shall be solely responsible for obtaining any and all rights required from third parties to access the Premises. Lessor will, however, provide Lessee with copies of any applicable easement agreements granting Lessor access to the Property. If Lessee uses Lessor's existing access road, Lessor and Lessee will share equally in road maintenance costs as determined and billed by Lessor. Lessor agrees to permit Lessee free ingress and egress to the Premises to conduct such surveys, structural strength analyses, subsurface boring tests and other activities of a similar nature as Lessee may deem necessary at the sole cost of Lessee.

8. PRIOR APPROVAL

Lessee agrees that prior to construction of Lessee's facilities on the Premises, Lessee shall submit to Lessor for final approval the approved building permit from the appropriate permitting agency, the final construction plans and a detailed description and photo depiction of the improvements to be built. Lessor's review of the permit and plans will be limited to checking for compliance with the terms of this Lease as to the size and location of Lessee's facilities and for conflicts with any District infrastructure on the Property. Upon Lessor's approval, the final construction plans shall replace Exhibit A and the detailed description and photo depiction shall replace Exhibit C.

9. CONDITION OF PREMISES

- A. The taking of possession of the Premises by Lessee shall, in itself, constitute acknowledgment by Lessee that the Premises are in good condition and satisfactory for their use.
- B. Lessee specifically acknowledges that Lessor has made no representations concerning the condition of the Premises, the soil, its bearing capacity, or the fitness of the Premises or any improvements, including but not limited to the compliance of the Premises or any improvements with any federal, state, or local building code or ordinance, and Lessee expressly waives any duty Lessor might have to make any such disclosures.
- C. Lessee acknowledges that to the best of Lessee's knowledge, the Premises will safely support the type of improvements to be constructed and maintained by Lessee under the terms and conditions of this Lease, and that Lessee accepts the Premises in an "as is" condition.

10. LIENS

Lessee shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

11. TREES

Lessee agrees that no trees will be damaged and/or removed during installation of Lessee's facilities or any improvements without mitigation approved in advance by Lessor. During the term of this Lease, trimming of trees must be minimized and shall be subject to prior approval by Lessor.

12. INTERFERENCE

- A. Lessee agrees that any facilities constructed or equipment installed on the Premises or modifications to the improvements as described in Exhibit C, shall be constructed, installed and operated at all times in such a manner that they will not interfere with Lessor's present communications transmitters and receiver stations if any, and in the event of such interference, Lessee agrees, at its own costs and expense, to take all necessary steps to eliminate such interference whether so required by the Federal Communications Commission or not. In the event that such interference shall develop and such interference is not eliminated by Lessee within seven (7) days after written notice from Lessor to do so, the facility or equipment causing such interference shall be taken out of service by Lessee until the problem is corrected to the complete satisfaction of Lessor. The term "interference" as used herein may be direct or consequential, and includes, but is not limited to, intermediation and desensitizing of Lessor's receiving equipment by Lessee's transmitter operations.
- B. Lessee agrees that any radio or cellular equipment installed on the Premises shall be frequency compatible with all other radio and cellular transmitting and receiving equipment existing on any site owned or controlled by Lessor at the time its initial radio installation is made. If at a future date a transmitter from another location other than those owned or controlled by Lessor should cause interference to previously installed equipment on any site owned or controlled by Lessor by causing interference with frequencies generated by Lessee's equipment, it shall be Lessee's responsibility to make such corrections as are necessary to eliminate such interference.

13. GOVERNMENTAL APPROVALS

Lessee shall, at its sole cost and expense, comply with all applicable requirements, rules, regulations and environmental documentation pertaining to facilities, equipment and operations to be conducted on the Premises, including all requirements imposed by the Bay Area Air Quality Management District, the City of Richmond, County of Contra Costa, the State of California and the United States of America. Lessor agrees to cooperate with Lessee with respect to obtaining any required zoning or other governmental approvals or permits for the Premises and Lessee's facilities, including providing signatures where necessary on Lessee's governmental permit applications. Lessee acknowledges, however, that Lessor is not a permitting entity and shall not be

responsible for obtaining or maintaining any necessary governmental approvals on behalf of Lessee.

Lessee further agrees to be responsible for complying with any environmental regulations or permits that may be required under this Lease, including but not limited to, applying for and maintaining a Hazardous Materials Business Plan (HMBP), any hazardous materials storage permit that may be required, and compliance with any storm water regulations.

14. MODIFICATIONS AND IMPROVEMENTS

- A. Once Lessee's improvements are installed on the Premises, as depicted in Exhibit A and detailed in Exhibit C, Lessee will not make any alterations to the site without obtaining the prior written approval of Lessor. Lessee must request consent to the modifications in writing, submit proposed plans that will be submitted to the appropriate permitting agency, a copy of the permit application being submitted to the permitting agency, and a letter of authorization. If Lessee will require Lessor, as property owner to sign a permit application or other similar document to be submitted to the permitting agency, Lessor will require a letter from the Lessee that certifies all documentation submitted to the permitting agency is true and correct and that Lessee indemnifies the Lessor against any claims resulting from erroneous representations or misrepresentations. Any alterations to the site from the approved improvements as identified in Exhibit A and Exhibit C will require an amendment to the Lease and may require compensation from Lessee.
- B. Upon Lessee receiving approval from the appropriate permitting agency, Lessee must submit to Lessor a copy of the approved permit, a copy of the final construction plans that will supplement or replace Exhibit A and a written description of the improvements with a photo simulation of the modified site that will supplement or replace Exhibit C.
- C. Lessee shall provide Lessor, without charge or expense, space as necessary for Lessor's communications equipment either inside or on top of Lessee's improvements, to be utilized solely in connection with Lessor's operations as a municipal utility district. Lessor acknowledges and agrees that Lessor's communications equipment may not interfere with any of Lessee's approved improvements as detailed in Exhibit A, and Lessor shall submit plans and specifications to Lessee for review to determine any impact on Lessee's improvements. Within 30 days, Lessee shall either approve Lessor's plans and specifications or deny approval if Lessee reasonably determines that either a technical or structural interference is likely to occur. Failure by Lessee to approve or deny approval of Lessor's plans and specifications within 30 days shall be deemed approval.
- D. Lessor shall be solely responsible for all costs associated with the installation and maintenance of Lessor's equipment or improvements on the Premises.

15. INDEMNIFICATION AND DAMAGES

- A. Lessee expressly agrees to indemnify, defend and hold harmless Lessor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Lessee's operation or performance under this Lease, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the Premises or on the adjacent Lessor's property, released by Lessee, its officers, employees, or contractors, as a result of Lessee's construction, reconstruction, maintenance, use, or removal of its facility.

Notwithstanding any other provision, Lessee expressly agrees to indemnify, defend, and hold harmless Lessor in any lawsuit related to the lease.

- B. Damages: Lessee shall be responsible for and shall reimburse Lessor for any damage or loss to Lessor's present or future facilities on the Property to the extent directly or indirectly contributed to or caused by Lessee's operation or performance under this Lease, including, but not limited to, any damage or loss due to Lessee's deposit of Hazardous Materials as defined in section 16.C on the Property.
- C. Assumption of Risk: Lessee agrees to assume all risk of damage to any property of Lessee or any other property under the control or custody of Lessee while upon the Property or rights-of-way of Lessor or in proximity thereto, caused by or contributed to in any way by Lessor's construction, reconstruction, operation, maintenance, repair, or use of pipelines, reservoirs or other facilities or improvements or roadways of Lessor, present or future.

16. HAZARDOUS MATERIALS

- A. Representation: Lessor represents that it has conducted no site investigation(s) for hazardous materials and has no knowledge of any hazardous materials (as defined below) existing on or about the Premises in violation of any applicable law.
- B. Lessee represents and warrants to Lessor that Lessee will not, and will not knowingly permit any third party to, generate, store or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below).
- C. Definition of Hazardous Materials: In this Lease, "hazardous materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state of California, including, without limitation, the California Health and Safety Code and the California Water Code; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

D. Lessor and Lessee acknowledge that from time to time Lessor may be required by various governmental agencies having jurisdiction over the Property to provide a list of hazardous materials present on the Property. If Lessor is required to provide a list of hazardous materials present on the Property by any governmental agency having jurisdiction over the Property, Lessee shall, within fifteen (15) business days after receipt of a written request from Lessor, provide to Lessor a written statement identifying the types and amounts of hazardous materials being stored and/or used by Lessee within the Premises.

17. INSURANCE REQUIREMENTS

See Exhibit "D", Insurance Requirements, attached hereto and made a part hereof.

18. ASSIGNABILITY

Lessee shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in the Lease or in the Premises.

19. DEFAULT

It is understood and agreed that if Lessee fails to pay any installment of rent as it becomes due, or if Lessee defaults on any of the other covenants, agreements or terms of this Lease, and if upon receipt of ten (10) days' written notice in the case of a monetary default, thirty (30) days' written notice in the case of a non-monetary default or seven (7) days' written notice in the case of a frequency incompatibility default, Lessee shall fail or refuse to correct the default, Lessor at its option may re-enter the Premises and remove all improvements therefrom, and may terminate this Lease or take possession of the Premises as the agent and for the account of Lessee, and may lease or rent the whole, or any part of the Premises for the balance or any part of the term of this Lease and retain all rents received and apply them in payment on any rents owed by Lessee. The performance of any or all of these acts by Lessor shall not release Lessee from the full and strict compliance with all of the terms, conditions and covenants of this Lease. If the nature of Lessee's default is such that more than thirty (30) days are reasonably required to cure the default, then Lessee shall not be in default if Lessee commences the cure within this thirty (30) day period and thereafter diligently prosecutes such cure to completion.

20. WAIVER

The waiver by Lessor of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition. Lessor's subsequent acceptance of rent shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of the rent.

21. REMEDIES

It is understood that the remedies provided for Lessor in case of a violation of the terms of this Lease by Lessee are not exclusive, but are in addition to any remedies provided by law, any of which Lessor shall have the right to use at its option.

22. RELOCATION

In the event Lessor's operations necessitate the relocation of Lessee's facilities, Lessee shall have no right to relocation benefits or payments from Lessor, and Lessee shall be solely responsible for all costs of any necessary relocation. Lessee hereby specifically waives any rights to, and releases Lessor from, any and all claims for relocation benefits and/or relocation payments to which Lessee might otherwise be entitled. Lessee shall hold Lessor harmless from and indemnify Lessor against any and all liability, cost, and expense suffered or incurred by Lessee and arising in connection with any such right or claim asserted by Lessee.

23. CONDEMNATION

If any part of the Premises is condemned for a public use and a part of the Premises remains that is capable of occupation and use as authorized under this Lease, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor. If all of the Premises is condemned or if such part is condemned so that there does not remain a portion capable of occupation and use as herein authorized, this Lease shall thereupon terminate. If a part or all of the Premises is condemned, all compensation awarded upon such condemnation, except such compensation as shall be specifically awarded to Lessee for loss of or damages to fixtures owned by Lessee, or business interruption or moving expenses, shall go to Lessor and Lessee shall have no claim thereto and Lessee irrevocably assigns and transfers to Lessor any and all rights to all other compensation or damages to which Lessee may become entitled during the term of this Lease by reason of the condemnation.

24. TAXES AND ASSESSMENTS:

The property interest created by this Lease may be subject to property taxation and the Lessee may be subject to the payment of property taxes levied on this interest. Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by any tax or assessment levying body upon any interest in this Lease or any possessory right that Lessee may have in or to the Premises under this Lease.

25. TERMINATION (NONDEFAULT)

Lessor's Right to Terminate. Lessor may terminate this Lease upon at least one (1) year notice to Lessee.

After expiration of Term, if lease is in holdover, Lessor may terminate occupancy upon at least thirty (30) days' notice to Lessee.

Lessee's Right to Terminate. If the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of Lessee's

facilities is revoked or withdrawn, or if Lessor fails to have proper ownership of the Property or authority to enter into this Lease, then Lessee shall have the right to terminate this Lease upon at least 180 days written notice to Lessor.

Upon termination, neither party will owe any further obligation under the terms of this Lease except for Lessee's responsibility to remove all of Lessee's facilities from the Premises and restore the Premises to its original condition, as near as practicable in accordance with Section 28, below.

Upon any early termination of this Lease, any prepaid rent shall be prorated from the date of termination and returned to Lessee.

26. SURVIVAL

The provisions of Sections 15, 16 and 20 of this Lease will survive the expiration or termination of this Lease.

27. HOLD-OVER

Any holding over after the expiration of the Initial Term or an Extended Term, with the consent of Lessor, shall be construed to be a tenancy from month to month. All terms and conditions of the lease, excluding Base Rent shall be in full force and effect during Hold-Over.

During Hold-Over, the Base Rent shall increase by one hundred percent (100%) above the previous year's rent paid by Lessee. The full Base Rent shall be due and payable on the anniversary date of the commencement of the lease.

28. REMOVAL OF LESSEE'S FACILITIES UPON TERMINATION

A. In the event of the termination of this Lease by reason of the breach of this Lease by Lessee, or by not exercising one or both of the renewal options, or by the expiration of this Lease, at Lessor's option all towers, buildings and improvements other than "trade fixtures" constructed on the Premises by Lessee shall become and remain the property of Lessor, at no cost to Lessor, except as otherwise provided by this Section.

B. If Lessor decides not to retain all or a portion of the towers, buildings and improvements constructed by Lessee, upon termination of this Lease for any reason Lessee shall remove all towers, buildings and improvements as directed by Lessor within thirty (30) days following termination of this Lease. Lessee agrees to fill in all excavations with solidly compacted earth and to leave said Premises in a neat and clean condition following any such removal save and except normal wear and tear and acts beyond Lessee's control. Should Lessee fail to complete the removal of Lessee's facilities within thirty (30) days following termination of this Lease, rent shall accrue at Hold-Over rates until all equipment has been satisfactorily removed and the Premises have been left in satisfactory condition.

C. Within thirty (30) days following termination of this Lease, Lessee shall at Lessee's expense eliminate and pay in full any encumbrances, liens and debts incurred by Lessee with respect to any improvements to remain on the property.

D. Towers, buildings or other permanent structural improvements on the Premises shall not be considered as “trade fixtures” for the purpose of this Section.

29. NOTICE

A. Any Notice of Default or written notice of termination of this Lease shall be served by the Party giving notice either personally, by registered United States mail, postage prepaid, or by a national courier or express mail service, addressed to:

Manager of Real Estate Services
East Bay Municipal Utility District
375 Eleventh St., Mail Stop 903
Oakland California 94607

or at such other address as shall have been last furnished in writing by Lessor to Lessee.

[Lessee's Address]

or at such other address as shall have been last furnished in writing by Lessee to Lessor.

Personal delivery or mailing in accordance with this Section shall constitute a good, sufficient and lawful notice and service in all cases.

B. Any other notice or approval required under this Lease may be sent to the receiving Party in the manner provided in Section 29.A, above, or by email to the following email addresses:

District: realestate@ebmud.com

Lessee: [email address (include any cc's)]

30. EXISTING CONDITION

This Lease is made subject to all existing liens, encumbrances, conditions and restrictions of record affecting the Premises and is also subject to all existing rights, rights-of-way, licenses, leases, reservations, and easements by whomsoever held, in and to the Premises which predate this Lease.

31. BINDING PROVISIONS

Lease shall be binding upon and inure to the benefit of the executors, administrators and permitted assigns of the respective parties hereto.

32. NEUTRAL INTERPRETATION

In any action or proceeding to construe the terms of this Lease, it shall be considered the product of negotiation by and between the Parties. No clause or provision shall be interpreted more strongly in favor of or against one Party or the other based upon the source of the draftsmanship, but shall be interpreted in a neutral manner.

33. TITLE AND QUIET POSSESSION

Lessor represents and agrees (a) that it is the owner of the Property; (b) that it has the right to enter into this Lease; (c) that the person signing this Lease has the authority to sign; (d) that Lessee is entitled to access to the Premises at all times and to the quiet possession of the Premises throughout the term so long as Lessee is not in default beyond the expiration of any cure period; and (e) that, except in case of emergency, Lessor shall not handle or otherwise disturb Lessee's antennas or PCS equipment.

34. ENTIRE AGREEMENT

This Lease (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal representations or understandings between the parties.

35. SEVERABILITY

If any provision of this Lease is held to be invalid or unenforceable with respect to any party, the remainder will not be affected and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

36. ATTORNEYS FEES

The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Lease is entitled to receive its reasonable attorneys' fees, limited to the rate of local independent counsel in Alameda County.

37. GOVERNING LAW

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.

38. JURISDICTION

Lessor and Lessee agree that all disputes, disagreements, or claims arising in connection with this Lease shall be submitted to the exclusive jurisdiction of the state and federal courts of the State of California, with venue in Alameda County. This choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to this Lease in any jurisdiction other than that specified in this Section.

39. RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, joint venture, or any association between Lessor and Lessee other than that of landlord and tenant.

40. NONDISCRIMINATION

There shall be no discrimination in the performance of this Lease against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. Lessee shall not establish or permit any such practice(s) of discrimination with reference to the Lease or any part. Violation of this Section shall be deemed to be in material breach of this Lease.

41. INCORPORATION OF RECITALS

The recitals set forth above are incorporated into the Lease and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Lease in duplicate, the day and year first above written.

LESSEE

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Name

By: _____
MATT ELAWADY

Its: _____

Manager of Real Estate Services

LESSEE

LESSOR

EXHIBIT "A"
DEPICTION OF PREMISES
(ATTACHED)

EXHIBIT "B"
LEGAL DESCRIPTION OF PROPERTY
(ATTACHED)

EXHIBIT "C"
DETAILED WRITTEN DESCRIPTION AND PHOTO SIMULATION OF SITE EQUIPMENT
AND IMPROVEMENTS

EXHIBIT "D"

INSURANCE REQUIREMENTS

I. Provisions Applicable to All Required Insurance

- A. Prior to the beginning of and throughout the duration of Services, and for any additional period of time as specified below, LESSEE shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.
- B. LESSEE shall provide Verification of Insurance as required by this Lease by providing the completed Verification of Insurance as requested below signing and submitting this Exhibit "C" to the DISTRICT. The Exhibit "C" may be signed by an officer of the LESSEE (Agent) or by the Insurance Broker for the LESSEE. LESSEE shall update Exhibit "C" throughout the specified term of the insurance required by this Lease by resubmitting the completed Exhibit "C" prior to the expiration date of any of the required insurance. The updated Exhibit "C" shall become a part of the Lease but shall not require a change order to the Lease. The Notice to Proceed shall not be issued, and LESSEE shall not commence Services until such insurance has been accepted by the DISTRICT.
- C. LESSEE shall carry and maintain the minimum insurance requirements as defined in this Lease. LESSEE shall ensure that its independent contractors maintain, appropriate insurance coverage and limits required in this Lease to the extent they apply to the scope of the services to be performed by any party acting on LESSEE's behalf.
- D. Acceptance of verification of Insurance by the DISTRICT shall not relieve LESSEE of any of the insurance requirements, nor decrease liability of LESSEE.
- E. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and all coverage shall be at least as broad as the requirements listed in this Lease.
- F. Any self-insurance, or self-insured retentions (SIRs) applicable to the required insurance coverage must be declared to and accepted by the DISTRICT.
- G. At the option and request of the DISTRICT, LESSEE shall provide documentation of its financial ability to pay the self-insurance, or SIR.
- H. Any policies with a SIR shall provide that any SIR may be satisfied, in whole or in part, by the DISTRICT or the additional insured at its sole and absolute discretion.
- I. Unless otherwise accepted by the DISTRICT, all required insurance must be placed with insurers with a current A.M. Best's rating of no less than A-V.
- J. LESSEE shall defend the DISTRICT and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier.
- K. For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified) the retroactive date must be shown and must be before the date of this Lease, and before the beginning of any Services related to this Lease.
- L. Insurance must be maintained and updated Verification of Insurance be provided to the DISTRICT before the expiration of insurance by having LESSEE's insurance broker or agent update, sign and return Exhibit "C" to the DISTRICT's contract manager. For all claims-made policies the updated Verification of Insurance must be provided to the DISTRICT for at least three (3) years after expiration of this Lease.
- M. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Lease or the start of any Services related to this Lease, LESSEE must purchase an extended reporting period for a minimum of three (3) years after expiration of the Lease.
- N. In the event of a coverage dispute arising from a claim, the District may request a copy of the applicable policies' giving rise to such dispute which shall be submitted to the DISTRICT for review.
- O. Where additional insured coverage is required, the additional insured coverage shall be "primary and non-contributory," and will not seek contribution from the DISTRICT's insurance or self-insurance.
- P. LESSEE agrees to provide immediate Notice to the DISTRICT of any loss or claim against LESSEE arising out of, pertaining to, or in any way relating to this Lease, or Services performed under this Lease. The DISTRICT assumes no obligation or liability by such Notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the DISTRICT.
- Q. LESSEE agrees, upon request by the DISTRICT, to provide complete and endorsements within 10 days of such request.

R. It is LESSEE's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of the DISTRICT to obtain proof of insurance required under this Lease shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard.

S. Notice of Cancellation/Non-Renewal/Material Reduction The insurance requirements hereunder are mandatory and the DISTRICT may, at its sole and absolute discretion, terminate the services provided by LESSEE, should LESSEE breach its obligations to maintain the required coverage and limits set forth in this Lease. No coverage required hereunder shall be cancelled, non-renewed or materially reduced in coverage or limits without the DISTRICT being provided at least thirty (30) days prior written notice, other than cancellation for the non-payment of premiums, in which event the DISTRICT shall be provided ten (10) days prior written notice. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction of the stated requirements does not require notice beyond submission to the DISTRICT of an updated Verification of Insurance which shall be met by having the LESSEE's insurance broker or agent update, sign and return this Exhibit "C".

II. Workers' Compensation and Employer's Liability Insurance Coverage

A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:

Coverage A. Statutory Benefits Limits

Coverage B. Employer's Liability of not less than:

Bodily Injury by accident: \$1,000,000 each accident

Bodily Injury by disease: \$1,000,000 each employee

Bodily Injury by disease: \$1,000,000 policy limit

B. LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

C. If there is an onsite exposure of injury to LESSEE or any party acting on LESSEE's behalf under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage is required for such injuries or claims.

D. If LESSEE is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, LESSEE must return the completed Verification of Insurance confirming that LESSEE has no employees and is exempt from the State of California Workers' Compensation requirements.

E. If LESSEE is self-insured with respect to Workers' Compensation coverage, LESSEE shall provide to the DISTRICT a Certificate of Consent to Self-Insure from the California Department of Industrial Relations. Such self-insurance shall meet the minimum limit requirements and shall waive subrogation rights in favor of the DISTRICT as stated below in section "F."

F. Waiver of Subrogation. Workers' Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that LESSEE and each insurer waive any and all rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers. LESSEE shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in any way relating to LESSEE's failure to provide waiver of subrogation from the insurance carrier for claims arising out of Lessee's use, occupancy, or operations under this Lease.

Verification of Workers' Compensation and Employer's Liability Insurance Coverage

By checking the box and signing below, I hereby verify that the LESSEE is exempt from the State of California's requirement to carry workers' compensation insurance.

As the LESSEE's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries workers' compensation insurance as required by this Lease, including the relevant provisions applicable to all required insurance.

Self-Insured Retention: Amount: \$ _____

Policy Limit: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

III. Commercial General Liability Insurance (“CGL”) Coverage

- A. LESSEE’s insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.
- C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:
- | | |
|------------------------------------|--|
| Bodily Injury and Property Damage | \$2,000,000 per occurrence & aggregate |
| Personal Injury/Advertising Injury | \$2,000,000 per occurrence & aggregate |
| Products/Completed Operations | \$2,000,000 per occurrence & aggregate |
- D. Coverage must be on an occurrence basis.
- E. Coverage for Products, and Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any “prior work” coverage limitation or exclusion applicable to any Services performed by LESSEE and/or independent contractor and/or any party acting on LESSEE’s behalf under this Lease.
- F. Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all leased Premises and operations in any way related to this Lease.
- G. There will be no exclusion for explosions, collapse, or underground liability (XCU).
- H. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by LESSEE or on LESSEE’s behalf.
- I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by LESSEE under this Lease as an “insured contract.”
- J. Waiver of Subrogation. The policy shall be endorsed to include a Waiver of Subrogation ensuring that the LESSEE and its insurer(s) waive any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, agents, volunteers, and employees. LESSEE shall defend and pay any and all damages, fees, and costs, of any kind, arising out of, pertaining to, or in any way resulting from LESSEE’s failure to provide the waiver of subrogation from its insurance carrier(s) for claims arising out of LESSEE’s use, occupancy, or operations under this Lease.
- K. “Independent Contractor’s Liability.” LESSEE shall maintain, or ensure that its independent contractors maintain, appropriate insurance coverage and limits for liability and/or damages arising out of, pertaining to, or in any way resulting from Services provided under this Lease.

To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying, excess and umbrella policies that shall be evidenced in each case by an endorsement. The Additional Insureds must be covered for liability arising in whole, or in part, from any leased Premises, Products, Ongoing Operations, and Completed Operations by or on behalf of LESSEE, in any way related to Services performed under this Lease.

- L. A severability of interest provision must apply for all the Additional Insureds, ensuring that LESSEE’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies’ limit(s).

Verification of Commercial General Liability (CGL) Insurance Coverage

As the LESSEE’S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Commercial General Liability insurance, as required by this Lease, including the relevant

provisions applicable to all required insurance:

Self-Insured: Amount: \$ _____

Policy Limit: Per Occurrence: \$ _____ **Aggregate: \$** _____

Policy Number: _____

Policy Period: from: _____ **to:** _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

IV. Business Auto Liability Insurance Coverage

LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

A. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.

B. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:

Each Occurrence Limit (per accident) and in the Aggregate:	\$2,000,000
Bodily Injury and Property Damage:	\$2,000,000

C. Coverage must include either "owned, non-owned, and hired" autos or "any" automobile

This provision ensures the policy covers losses arising out of use of company-owned vehicles ("owned autos"), employee's personal autos ("non-owned autos" meaning not owned by company/insured) or autos that are rented or leased ("hired autos").

D. If LESSEE is transporting hazardous materials or contaminants, evidence of the Motor Carrier Act Endorsement-hazardous materials clean-up (MCS-90, or its equivalent) must be provided.

E. If LESSEE's Scope of Services under this Lease exposes a potential pollution liability risk related to transport of potential pollutants, seepage, release, escape or discharge of any nature (threatened or actual) of pollutants into the environment arising out of, pertaining to, or in any way related to LESSEE's or any party acting on behalf of LESSEE's performance under this Lease, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the LESSEE's Pollution Liability Policies if such policy has no exclusions that would restrict coverage under this Lease. Coverage shall also include leakage of fuel or other "pollutants" needed for the normal functioning of covered autos.

F. To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying and excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of LESSEE, in any way related to Services performed under this Lease.

G. A severability of interest provision must apply for all the Additional Insureds, ensuring that LESSEE's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

Verification of Business Auto Liability Insurance Coverage

As the LESSEE'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Business Automobile Liability insurance, as required by this Lease, including the relevant provisions applicable to all required insurance:

Self-Insured: Amount: \$ _____

Policy Limit: Per Accident/Occurrence \$ _____ Aggregate: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

V. Pollution Liability Insurance Coverage

- A. LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.
- C. Minimum Requirements: Pollution Liability Insurance with minimum limits, as follows:
Each Claim or Occurrence Limit: \$2,000,000;
Aggregate Limit: \$2,000,000.
- D. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants, arising out of, pertaining to, or in any way resulting from any Services performed by LESSEE under this Lease; including any transportation of hazardous wastes, hazardous materials, or contaminants.
- E. If Coverage is written on a claims-made form, the following shall apply:
1. The retroactive date must be shown, and must be before the date of the Lease or the beginning of the Services.
 2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Lease, LESSEE must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.
- F. Insurance shall include prior acts coverage sufficient to cover the services under this Lease.

Verification of Pollution Liability Insurance Coverage

As the LESSEE'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Pollution Liability insurance, as required by this Lease, including the relevant provisions applicable to all required insurance.

Self-Insured: Amount: \$ _____

Policy Limit: Per Claim \$ _____ Aggregate: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

SUCCEEDING EMERGENCY COMMUNICATION SYSTEM LEASE

(Not to be Recorded)

THIS LEASE, made this ____ day of _____, 20____, by and between East Bay Municipal Utility District, a public corporation of the State of California, hereinafter designated as “Lessor,” and East Bay Regional Communication System Authority, hereinafter designated as “Lessee.”

WHEREAS, Lessor owns the real property located off Skyline Blvd, Canyon CA 94516, commonly known as Skyline Reservoir, more specifically described as Assessor Parcel Number 257-060-002-9 and as further described in **Exhibit B** to this Lease, (the “**Property**”) attached hereto and made a part hereof; and

WHEREAS, Lessor and Lessee entered into a certain Emergency Communications System Lease dated March 21, 2018 that commenced on January 1, 2017 and is set to expire on December 31, 2023; and

WHEREAS, as of the Commencement Date (as defined in Section 3 below), it is the intent of the Lessor and Lessee to enter into a succeeding lease with new terms, covenants, and conditions with the original Lease having no further force or effect as of such date.

WITNESSETH:

1. PREMISES

Lessor, in consideration of the payment of rent hereinafter specified to be paid by Lessee and of the covenants and agreements herein contained to be performed and observed by Lessee, does hereby lease, demise and let to Lessee for the purpose hereinafter specified, that certain property (“the Premises”), which are a portion of the Property, delineated and described on **Exhibit A** for the placement of Lessee’s equipment, including utility and access routes to the Premises.

2. USE OF PREMISES

Lessee shall use the Premises only for the purpose of installing, maintaining, operating, replacing, and removing P-25 compliant communication system equipment along with the necessary cable and conduit to connect the communication equipment to the antennas and to telephone and electrical facilities, subject to the provisions of Section 8, below. Lessee shall provide a description of the facilities accompanied by a photo simulation of the proposed facility that accurately depicts the equipment to be placed on the Premises. The description and photo simulation will both be incorporated into the Lease as **Exhibit C**.

3. TERM

The lease Term commences on January 1, 2024 (“Commencement Date”) and ends on December 31, 2028 (“Expiration Date”) subject to renewal and/or termination rights as may be hereinafter set forth.

4. RENT

- A. Base Rent: Starting with the Commencement Date, Lessee agrees to pay Lessor, in advance, as Base Rent, the annual sum of seventeen thousand nine hundred ten dollars and seventy eight cents (\$17,910.78) payable in advance on or before the Commencement Date of the Term and annually thereafter to the Lessor at 375 11th St, MS 903, Oakland, CA 94607.
- B. Base Rent Adjustment. The amount of Base Rent payable hereunder shall be adjusted by 3% annually starting January 1, 2025, and every year thereafter. The annual adjustment be calculated by increasing previous year's Base Rent by the 3 percent.
- C. Late Rent. Should the annual Base Rent payment not be paid in full within the first thirty days of the anniversary of the Commencement Date, a fifteen percent (15%) late fee shall be added to the annual rent payment due. Lessor's right to collect a late fee shall not be deemed an extension of the Due Date nor prevent the Lessor from exercising any other rights and remedies available under this Lease and by law.
- D. All Rent Payment to Lessor shall be sent to: 375 11th St, MS#903, Oakland, CA 94607.

5. UTILITIES

Lessee agrees to furnish at Lessee's sole cost and expense, all water, gas, heat, light, power and all other utilities and operating infrastructure required at the Premises.

6. LESSOR'S RIGHTS

- A. Lessor reserves the right to use the Property, excluding the area delineated on Exhibit A, at any and all times, for Lessor's operations and shall at all times during the Term of this Lease have the right to enter upon the Premises for any purpose necessary in the conduct of Lessor's operations.
- B. It is understood that construction, reconstruction, maintenance, and use of the reservoir, pumping plants, pipelines and other facilities or improvements of Lessor, present or future, upon the Property shall at all times be paramount to any rights under this Lease, provided that Lessor will not unreasonably interfere with Lessee's use of the Premises.
- C. The construction, reconstruction, maintenance, and use of the facilities of Lessee, and all work upon or in connection therewith, shall at no time and in no way whatever interfere with the present or future operations of Lessor; the location of the facilities, the construction, reconstruction, and maintenance thereof, and all work in connection therewith, shall be done and made under the supervision and to the reasonable satisfaction of Lessor.
- D. Upon completion of the installation of its facilities or any improvements, Lessee shall promptly return as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work and Lessee shall not commit or suffer to be committed any waste upon the Premises or any nuisance thereon and agrees to keep the Premises in a neat, clean, sanitary and orderly condition at all times during occupancy, and not to permit any amount of rubbish, garbage or refuse to accumulate and remain thereon at any time. If Lessee fails so to keep the Property as stated

herein, then after thirty (30) days written notice to Lessee, Lessor may perform the necessary work at the reasonable expense of Lessee, which expense Lessee agrees to pay to Lessor upon demand.

7. ACCESS

Where Lessor holds rights of access to the Property in fee title, Lessor grants Lessee access to the Property via use of the access road as described in Exhibit B, and a right of access to the source of electrical and telephone facilities, twenty-four (24) hours a day, seven (7) days a week as depicted in Exhibit A. Where Lessor does not own access rights in fee title, Lessee shall be solely responsible for obtaining any and all rights required from third parties to access the Premises. Lessor will, however, provide Lessee with copies of any applicable easement agreements granting Lessor access to the Property. If Lessee uses Lessor's existing access road, Lessor and Lessee will share equally in road maintenance costs as determined and billed by Lessor. Lessor agrees to permit Lessee free ingress and egress to the Premises to conduct such surveys, structural strength analyses, subsurface boring tests and other activities of a similar nature as Lessee may deem necessary at the sole cost of Lessee.

8. PRIOR APPROVAL

Lessee agrees that prior to construction of Lessee's facilities on the Premises, Lessee shall submit to Lessor for final approval the approved building permit from the appropriate permitting agency, the final construction plans and a detailed description and photo depiction of the improvements to be built. Lessor's review of the permit and plans will be limited to checking for compliance with the terms of this Lease as to the size and location of Lessee's facilities and for conflicts with any District infrastructure on the Property. Upon Lessor's approval, the final construction plans shall replace Exhibit A and the detailed description and photo depiction shall replace Exhibit C.

9. CONDITION OF PREMISES

- A. The taking of possession of the Premises by Lessee shall, in itself, constitute acknowledgment by Lessee that the Premises are in good condition and satisfactory for their use.
- B. Lessee specifically acknowledges that Lessor has made no representations concerning the condition of the Premises, the soil, its bearing capacity, or the fitness of the Premises or any improvements, including but not limited to the compliance of the Premises or any improvements with any federal, state, or local building code or ordinance, and Lessee expressly waives any duty Lessor might have to make any such disclosures.
- C. Lessee acknowledges that to the best of Lessee's knowledge, the Premises will safely support the type of improvements to be constructed and maintained by Lessee under the terms and conditions of this Lease, and that Lessee accepts the Premises in an "as is" condition.

10. LIENS

Lessee shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

11. TREES

Lessee agrees that no trees will be damaged and/or removed during installation of Lessee's facilities or any improvements without mitigation approved in advance by Lessor. During the term of this Lease, trimming of trees must be minimized and shall be subject to prior approval by Lessor.

12. INTERFERENCE

- A. Lessee agrees that any facilities constructed or equipment installed on the Premises or modifications to the improvements as described in Exhibit C, shall be constructed, installed and operated at all times in such a manner that they will not interfere with Lessor's present communications transmitters and receiver stations if any, and in the event of such interference, Lessee agrees, at its own costs and expense, to take all necessary steps to eliminate such interference whether so required by the Federal Communications Commission or not. In the event that such interference shall develop and such interference is not eliminated by Lessee within seven (7) days after written notice from Lessor to do so, the facility or equipment causing such interference shall be taken out of service by Lessee until the problem is corrected to the complete satisfaction of Lessor. The term "interference" as used herein may be direct or consequential, and includes, but is not limited to, intermediation and desensitizing of Lessor's receiving equipment by Lessee's transmitter operations.
- B. Lessee agrees that any radio or cellular equipment installed on the Premises shall be frequency compatible with all other radio and cellular transmitting and receiving equipment existing on any site owned or controlled by Lessor at the time its initial radio installation is made. If at a future date a transmitter from another location other than those owned or controlled by Lessor should cause interference to previously installed equipment on any site owned or controlled by Lessor by causing interference with frequencies generated by Lessee's equipment, it shall be Lessee's responsibility to make such corrections as are necessary to eliminate such interference.

13. GOVERNMENTAL APPROVALS

Lessee shall, at its sole cost and expense, comply with all applicable requirements, rules, regulations and environmental documentation pertaining to facilities, equipment and operations to be conducted on the Premises, including all requirements imposed by the Bay Area Air Quality Management District, the City of Richmond, County of Contra Costa, the State of California and the United States of America. Lessor agrees to cooperate with Lessee with respect to obtaining any required zoning or other governmental approvals or permits for the Premises and Lessee's facilities, including providing signatures where necessary on Lessee's governmental permit applications. Lessee acknowledges, however, that Lessor is not a permitting entity and shall not be responsible for obtaining or maintaining any necessary governmental approvals on behalf of Lessee.

Lessee further agrees to be responsible for complying with any environmental regulations or permits that may be required under this Lease, including but not limited to, applying for and maintaining a Hazardous Materials Business Plan (HMBP), any hazardous materials storage permit that may be required, and compliance with any storm water regulations.

14. MODIFICATIONS AND IMPROVEMENTS

- A. Once Lessee's improvements are installed on the Premises, as depicted in Exhibit A and detailed in Exhibit C, Lessee will not make any alterations to the site without obtaining the prior written approval of Lessor. Lessee must request consent to the modifications in writing, submit proposed plans that will be submitted to the appropriate permitting agency, a copy of the permit application being submitted to the permitting agency, and a letter of authorization. If Lessee will require Lessor, as property owner to sign a permit application or other similar document to be submitted to the permitting agency, Lessor will require a letter from the Lessee that certifies all documentation submitted to the permitting agency is true and correct and that Lessee indemnifies the Lessor against any claims resulting from erroneous representations or misrepresentations. Any alterations to the site from the approved improvements as identified in Exhibit A and Exhibit C will require an amendment to the Lease and may require compensation from Lessee.
- B. Upon Lessee receiving approval from the appropriate permitting agency, Lessee must submit to Lessor a copy of the approved permit, a copy of the final construction plans that will supplement or replace Exhibit A and a written description of the improvements with a photo simulation of the modified site that will supplement or replace Exhibit C.
- C. Lessee shall provide Lessor, without charge or expense, space as necessary for Lessor's communications equipment either inside or on top of Lessee's improvements, to be utilized solely in connection with Lessor's operations as a municipal utility district. Lessor acknowledges and agrees that Lessor's communications equipment may not interfere with any of Lessee's approved improvements as detailed in Exhibit A, and Lessor shall submit plans and specifications to Lessee for review to determine any impact on Lessee's improvements. Within 30 days, Lessee shall either approve Lessor's plans and specifications or deny approval if Lessee reasonably determines that either a technical or structural interference is likely to occur. Failure by Lessee to approve or deny approval of Lessor's plans and specifications within 30 days shall be deemed approval.
- D. Lessor shall be solely responsible for all costs associated with the installation and maintenance of Lessor's equipment or improvements on the Premises.

15. INDEMNIFICATION AND DAMAGES

- A. Lessee expressly agrees to indemnify, defend and hold harmless Lessor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Lessee's operation or performance under this Lease, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the Premises or on the adjacent Lessor's property, released by Lessee, its officers, employees, or contractors, as a result of Lessee's construction, reconstruction, maintenance, use, or removal of its facility.

Notwithstanding any other provision, Lessee expressly agrees to indemnify, defend, and hold harmless Lessor in any lawsuit related to the lease.

- B. Damages: Lessee shall be responsible for and shall reimburse Lessor for any damage or loss to Lessor's present or future facilities on the Property to the extent directly or indirectly contributed to or caused by Lessee's operation or performance under this Lease, including, but not limited to, any damage or loss due to Lessee's deposit of Hazardous Materials as defined in section 16.C on the Property.
- C. Assumption of Risk: Lessee agrees to assume all risk of damage to any property of Lessee or any other property under the control or custody of Lessee while upon the Property or rights-of-way of Lessor or in proximity thereto, caused by or contributed to in any way by Lessor's construction, reconstruction, operation, maintenance, repair, or use of pipelines, reservoirs or other facilities or improvements or roadways of Lessor, present or future.

16. HAZARDOUS MATERIALS

- A. Representation: Lessor represents that it has conducted no site investigation(s) for hazardous materials and has no knowledge of any hazardous materials (as defined below) existing on or about the Premises in violation of any applicable law.
- B. Lessee represents and warrants to Lessor that Lessee will not, and will not knowingly permit any third party to, generate, store or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below).
- C. Definition of Hazardous Materials: In this Lease, "hazardous materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state of California, including, without limitation, the California Health and Safety Code and the California Water Code; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

D. Lessor and Lessee acknowledge that from time to time Lessor may be required by various governmental agencies having jurisdiction over the Property to provide a list of hazardous materials present on the Property. If Lessor is required to provide a list of hazardous materials present on the Property by any governmental agency having jurisdiction over the Property, Lessee shall, within fifteen (15) business days after receipt of a written request from Lessor, provide to Lessor a written statement identifying the types and amounts of hazardous materials being stored and/or used by Lessee within the Premises.

17. INSURANCE REQUIREMENTS

See Exhibit "D", Insurance Requirements, attached hereto and made a part hereof.

18. ASSIGNABILITY

Lessee shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in the Lease or in the Premises.

19. DEFAULT

It is understood and agreed that if Lessee fails to pay any installment of rent as it becomes due, or if Lessee defaults on any of the other covenants, agreements or terms of this Lease, and if upon receipt of ten (10) days' written notice in the case of a monetary default, thirty (30) days' written notice in the case of a non-monetary default or seven (7) days' written notice in the case of a frequency incompatibility default, Lessee shall fail or refuse to correct the default, Lessor at its option may re-enter the Premises and remove all improvements therefrom, and may terminate this Lease or take possession of the Premises as the agent and for the account of Lessee, and may lease or rent the whole, or any part of the Premises for the balance or any part of the term of this Lease and retain all rents received and apply them in payment on any rents owed by Lessee. The performance of any or all of these acts by Lessor shall not release Lessee from the full and strict compliance with all of the terms, conditions and covenants of this Lease, If the nature of Lessee's default is such that more than thirty (30) days are reasonably required to cure the default, then Lessee shall not be in default if Lessee commences the cure within this thirty (30) day period and thereafter diligently prosecutes such cure to completion.

20. WAIVER

The waiver by Lessor of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition. Lessor's subsequent acceptance of rent shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of the rent.

21. REMEDIES

It is understood that the remedies provided for Lessor in case of a violation of the terms of this Lease by Lessee are not exclusive, but are in addition to any remedies provided by law, any of which Lessor shall have the right to use at its option.

22. RELOCATION

In the event Lessor's operations necessitate the relocation of Lessee's facilities, Lessee shall have no right to relocation benefits or payments from Lessor, and Lessee shall be solely responsible for all costs of any necessary relocation. Lessee hereby specifically waives any rights to, and releases Lessor from, any and all claims for relocation benefits and/or relocation payments to which Lessee might otherwise be entitled. Lessee shall hold Lessor harmless from and indemnify Lessor against any and all liability, cost, and expense suffered or incurred by Lessee and arising in connection with any such right or claim asserted by Lessee.

23. CONDEMNATION

If any part of the Premises is condemned for a public use and a part of the Premises remains that is capable of occupation and use as authorized under this Lease, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor. If all of the Premises is condemned or if such part is condemned so that there does not remain a portion capable of occupation and use as herein authorized, this Lease shall thereupon terminate. If a part or all of the Premises is condemned, all compensation awarded upon such condemnation, except such compensation as shall be specifically awarded to Lessee for loss of or damages to fixtures owned by Lessee, or business interruption or moving expenses, shall go to Lessor and Lessee shall have no claim thereto and Lessee irrevocably assigns and transfers to Lessor any and all rights to all other compensation or damages to which Lessee may become entitled during the term of this Lease by reason of the condemnation.

24. TAXES AND ASSESSMENTS:

The property interest created by this Lease may be subject to property taxation and the Lessee may be subject to the payment of property taxes levied on this interest. Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by any tax or assessment levying body upon any interest in this Lease or any possessory right that Lessee may have in or to the Premises under this Lease.

25. TERMINATION (NONDEFAULT)

Lessor's Right to Terminate. Lessor may terminate this Lease upon at least one (1) year notice to Lessee.

After expiration of Term, if lease is in holdover, Lessor may terminate occupancy upon at least thirty (30) days' notice to Lessee.

Lessee's Right to Terminate. If the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of Lessee's facilities is revoked or withdrawn, or if Lessor fails to have proper ownership of the

Property or authority to enter into this Lease, then Lessee shall have the right to terminate this Lease upon at least 180 days written notice to Lessor.

Upon termination, neither party will owe any further obligation under the terms of this Lease except for Lessee's responsibility to remove all of Lessee's facilities from the Premises and restore the Premises to its original condition, as near as practicable in accordance with Section 28, below.

Upon any early termination of this Lease, any prepaid rent shall be prorated from the date of termination and returned to Lessee.

26. SURVIVAL

The provisions of Sections 15, 16 and 20 of this Lease will survive the expiration or termination of this Lease.

27. HOLD-OVER

Any holding over after the expiration of the Initial Term or an Extended Term, with the consent of Lessor, shall be construed to be a tenancy from month to month. All terms and conditions of the lease, excluding Base Rent shall be in full force and effect during Hold-Over.

During Hold-Over, the Base Rent shall increase by one hundred percent (100%) above the previous year's rent paid by Lessee. The full Base Rent shall be due and payable on the anniversary date of the commencement of the lease.

28. REMOVAL OF LESSEE'S FACILITIES UPON TERMINATION

- A. In the event of the termination of this Lease by reason of the breach of this Lease by Lessee, or by not exercising one or both of the renewal options, or by the expiration of this Lease, at Lessor's option all towers, buildings and improvements other than "trade fixtures" constructed on the Premises by Lessee shall become and remain the property of Lessor, at no cost to Lessor, except as otherwise provided by this Section.
- B. If Lessor decides not to retain all or a portion of the towers, buildings and improvements constructed by Lessee, upon termination of this Lease for any reason Lessee shall remove all towers, buildings and improvements as directed by Lessor within thirty (30) days following termination of this Lease. Lessee agrees to fill in all excavations with solidly compacted earth and to leave said Premises in a neat and clean condition following any such removal save and except normal wear and tear and acts beyond Lessee's control. Should Lessee fail to complete the removal of Lessee's facilities within thirty (30) days following termination of this Lease, rent shall accrue at Hold-Over rates until all equipment has been satisfactorily removed and the Premises have been left in satisfactory condition.
- C. Within thirty (30) days following termination of this Lease, Lessee shall at Lessee's expense eliminate and pay in full any encumbrances, liens and debts incurred by Lessee with respect to any improvements to remain on the property.

D. Towers, buildings or other permanent structural improvements on the Premises shall not be considered as “trade fixtures” for the purpose of this Section.

29. NOTICE

A. Any Notice of Default or written notice of termination of this Lease shall be served by the Party giving notice either personally, by registered United States mail, postage prepaid, or by a national courier or express mail service, addressed to:

Manager of Real Estate Services
East Bay Municipal Utility District
375 Eleventh St., Mail Stop 903
Oakland California 94607

or at such other address as shall have been last furnished in writing by Lessor to Lessee.

[Lessee's Address]

or at such other address as shall have been last furnished in writing by Lessee to Lessor.

Personal delivery or mailing in accordance with this Section shall constitute a good, sufficient and lawful notice and service in all cases.

B. Any other notice or approval required under this Lease may be sent to the receiving Party in the manner provided in Section 29.A, above, or by email to the following email addresses:

District: realestate@ebmud.com

Lessee: [email address (include any cc's)]

30. EXISTING CONDITION

This Lease is made subject to all existing liens, encumbrances, conditions and restrictions of record affecting the Premises and is also subject to all existing rights, rights-of-way, licenses, leases, reservations, and easements by whomsoever held, in and to the Premises which predate this Lease.

31. BINDING PROVISIONS

Lease shall be binding upon and inure to the benefit of the executors, administrators and permitted assigns of the respective parties hereto.

32. NEUTRAL INTERPRETATION

In any action or proceeding to construe the terms of this Lease, it shall be considered the product of negotiation by and between the Parties. No clause or provision shall be interpreted more strongly in favor of or against one Party or the other based upon the source of the draftsmanship, but shall be interpreted in a neutral manner.

33. TITLE AND QUIET POSSESSION

Lessor represents and agrees (a) that it is the owner of the Property; (b) that it has the right to enter into this Lease; (c) that the person signing this Lease has the authority to sign; (d) that Lessee is entitled to access to the Premises at all times and to the quiet possession of the Premises throughout the term so long as Lessee is not in default beyond the expiration of any cure period; and (e) that, except in case of emergency, Lessor shall not handle or otherwise disturb Lessee's antennas or PCS equipment.

34. ENTIRE AGREEMENT

This Lease (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal representations or understandings between the parties.

35. SEVERABILITY

If any provision of this Lease is held to be invalid or unenforceable with respect to any party, the remainder will not be affected and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

36. ATTORNEYS FEES

The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Lease is entitled to receive its reasonable attorneys' fees, limited to the rate of local independent counsel in Alameda County.

37. GOVERNING LAW

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.

38. JURISDICTION

Lessor and Lessee agree that all disputes, disagreements, or claims arising in connection with this Lease shall be submitted to the exclusive jurisdiction of the state and federal courts of the State of California, with venue in Alameda County. This choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to this Lease in any jurisdiction other than that specified in this Section.

39. RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, joint venture, or any association between Lessor and Lessee other than that of landlord and tenant.

40. NONDISCRIMINATION

There shall be no discrimination in the performance of this Lease against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. Lessee shall not establish or permit any such practice(s) of discrimination with reference to the Lease or any part. Violation of this Section shall be deemed to be in material breach of this Lease.

41. INCORPORATION OF RECITALS

The recitals set forth above are incorporated into the Lease and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Lease in duplicate, the day and year first above written.

LESSEE

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____

Name

By: _____

MATT ELAWADY

Manager of Real Estate Services

Its: _____

LESSEE

LESSOR

EXHIBIT "A"
DEPICTION OF PREMISES
(ATTACHED)

EXHIBIT "B"
LEGAL DESCRIPTION OF PROPERTY
(ATTACHED)

EXHIBIT "C"
DETAILED WRITTEN DESCRIPTION AND PHOTO SIMULATION OF SITE EQUIPMENT
AND IMPROVEMENTS

EXHIBIT "D" INSURANCE REQUIREMENTS

I. Provisions Applicable to All Required Insurance

- A. Prior to the beginning of and throughout the duration of Services, and for any additional period of time as specified below, LESSEE shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.
- B. LESSEE shall provide Verification of Insurance as required by this Lease by providing the completed Verification of Insurance as requested below signing and submitting this Exhibit "C" to the DISTRICT. The Exhibit "C" may be signed by an officer of the LESSEE (Agent) or by the Insurance Broker for the LESSEE. LESSEE shall update Exhibit "C" throughout the specified term of the insurance required by this Lease by resubmitting the completed Exhibit "C" prior to the expiration date of any of the required insurance. The updated Exhibit "C" shall become a part of the Lease but shall not require a change order to the Lease. The Notice to Proceed shall not be issued, and LESSEE shall not commence Services until such insurance has been accepted by the DISTRICT.
- C. LESSEE shall carry and maintain the minimum insurance requirements as defined in this Lease. LESSEE shall ensure that its independent contractors maintain, appropriate insurance coverage and limits required in this Lease to the extent they apply to the scope of the services to be performed by any party acting on LESSEE's behalf.
- D. Acceptance of verification of Insurance by the DISTRICT shall not relieve LESSEE of any of the insurance requirements, nor decrease liability of LESSEE.
- E. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and all coverage shall be at least as broad as the requirements listed in this Lease.
- F. Any self-insurance, or self-insured retentions (SIRs) applicable to the required insurance coverage must be declared to and accepted by the DISTRICT.
- G. At the option and request of the DISTRICT, LESSEE shall provide documentation of its financial ability to pay the self-insurance, or SIR.
- H. Any policies with a SIR shall provide that any SIR may be satisfied, in whole or in part, by the DISTRICT or the additional insured at its sole and absolute discretion.
- I. Unless otherwise accepted by the DISTRICT, all required insurance must be placed with insurers with a current A.M. Best's rating of no less than A-V.
- J. LESSEE shall defend the DISTRICT and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier.
- K. For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified) the retroactive date must be shown and must be before the date of this Lease, and before the beginning of any Services related to this Lease.
- L. Insurance must be maintained and updated Verification of Insurance be provided to the DISTRICT before the expiration of insurance by having LESSEE's insurance broker or agent update, sign and return Exhibit "C" to the DISTRICT's contract manager. For all claims-made policies the updated Verification of Insurance must be provided to the DISTRICT for at least three (3) years after expiration of this Lease.
- M. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Lease or the start of any Services related to this Lease, LESSEE must purchase an extended reporting period for a minimum of three (3) years after expiration of the Lease.
- N. In the event of a coverage dispute arising from a claim, the District may request a copy of the applicable policies' giving rise to such dispute which shall be submitted to the DISTRICT for review.
- O. Where additional insured coverage is required, the additional insured coverage shall be "primary and non-contributory," and will not seek contribution from the DISTRICT's insurance or self-insurance.
- P. LESSEE agrees to provide immediate Notice to the DISTRICT of any loss or claim against LESSEE arising out of, pertaining to, or in any way relating to this Lease, or Services performed under this Lease. The DISTRICT assumes no obligation or liability by such Notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the DISTRICT.
- Q. LESSEE agrees, upon request by the DISTRICT, to provide complete and endorsements within 10 days of such request.

R. It is LESSEE's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of the DISTRICT to obtain proof of insurance required under this Lease shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard.

S. Notice of Cancellation/Non-Renewal/Material Reduction The insurance requirements hereunder are mandatory and the DISTRICT may, at its sole and absolute discretion, terminate the services provided by LESSEE, should LESSEE breach its obligations to maintain the required coverage and limits set forth in this Lease. No coverage required hereunder shall be cancelled, non-renewed or materially reduced in coverage or limits without the DISTRICT being provided at least thirty (30) days prior written notice, other than cancellation for the non-payment of premiums, in which event the DISTRICT shall be provided ten (10) days prior written notice. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction of the stated requirements does not require notice beyond submission to the DISTRICT of an updated Verification of Insurance which shall be met by having the LESSEE's insurance broker or agent update, sign and return this Exhibit "C".

II. Workers' Compensation and Employer's Liability Insurance Coverage

A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:

Coverage A. Statutory Benefits Limits

Coverage B. Employer's Liability of not less than:

Bodily Injury by accident: \$1,000,000 each accident

Bodily Injury by disease: \$1,000,000 each employee

Bodily Injury by disease: \$1,000,000 policy limit

B. LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

C. If there is an onsite exposure of injury to LESSEE or any party acting on LESSEE's behalf under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage is required for such injuries or claims.

D. If LESSEE is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, LESSEE must return the completed Verification of Insurance confirming that LESSEE has no employees and is exempt from the State of California Workers' Compensation requirements.

E. If LESSEE is self-insured with respect to Workers' Compensation coverage, LESSEE shall provide to the DISTRICT a Certificate of Consent to Self-Insure from the California Department of Industrial Relations. Such self-insurance shall meet the minimum limit requirements and shall waive subrogation rights in favor of the DISTRICT as stated below in section "F."

F. Waiver of Subrogation. Workers' Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that LESSEE and each insurer waive any and all rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers. LESSEE shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in any way relating to LESSEE's failure to provide waiver of subrogation from the insurance carrier for claims arising out of Lessee's use, occupancy, or operations under this Lease.

Verification of Workers' Compensation and Employer's Liability Insurance Coverage

By checking the box and signing below, I hereby verify that the LESSEE is exempt from the State of California's requirement to carry workers' compensation insurance.

As the LESSEE's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries workers' compensation insurance as required by this Lease, including the relevant provisions applicable to all required insurance.

Self-Insured Retention: Amount: \$ _____

Policy Limit: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

III. Commercial General Liability Insurance (“CGL”) Coverage

- A. LESSEE’s insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.
- C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:

Bodily Injury and Property Damage	\$2,000,000 per occurrence & aggregate
Personal Injury/Advertising Injury	\$2,000,000 per occurrence & aggregate
Products/Completed Operations	\$2,000,000 per occurrence & aggregate
- D. Coverage must be on an occurrence basis.
- E. Coverage for Products, and Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any “prior work” coverage limitation or exclusion applicable to any Services performed by LESSEE and/or independent contractor and/or any party acting on LESSEE’s behalf under this Lease.
- F. Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all leased Premises and operations in any way related to this Lease.
- G. There will be no exclusion for explosions, collapse, or underground liability (XCU).
- H. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by LESSEE or on LESSEE’s behalf.
- I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by LESSEE under this Lease as an “insured contract.”
- J. Waiver of Subrogation. The policy shall be endorsed to include a Waiver of Subrogation ensuring that the LESSEE and its insurer(s) waive any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, agents, volunteers, and employees. LESSEE shall defend and pay any and all damages, fees, and costs, of any kind, arising out of, pertaining to, or in any way resulting from LESSEE’s failure to provide the waiver of subrogation from its insurance carrier(s) for claims arising out of LESSEE’s use, occupancy, or operations under this Lease.
- K. “Independent Contractor’s Liability.” LESSEE shall maintain, or ensure that its independent contractors maintain, appropriate insurance coverage and limits for liability and/or damages arising out of, pertaining to, or in any way resulting from Services provided under this Lease.

To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying, excess and umbrella policies that shall be evidenced in each case by an endorsement. The Additional Insureds must be covered for liability arising in whole, or in part, from any leased Premises, Products, Ongoing Operations, and Completed Operations by or on behalf of LESSEE, in any way related to Services performed under this Lease.

- L. A severability of interest provision must apply for all the Additional Insureds, ensuring that LESSEE’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies’ limit(s).

Verification of Commercial General Liability (CGL) Insurance Coverage

As the LESSEE’S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Commercial General Liability insurance, as required by this Lease, including the relevant

provisions applicable to all required insurance:

Self-Insured: Amount: \$ _____

Policy Limit: Per Occurrence: \$ _____ **Aggregate: \$** _____

Policy Number: _____

Policy Period: from: _____ **to:** _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

IV. Business Auto Liability Insurance Coverage

LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

A. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.

B. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:

Each Occurrence Limit (per accident) and in the Aggregate:	\$2,000,000
Bodily Injury and Property Damage:	\$2,000,000

C. Coverage must include either "owned, non-owned, and hired" autos or "any" automobile

This provision ensures the policy covers losses arising out of use of company-owned vehicles ("owned autos"), employee's personal autos ("non-owned autos" meaning not owned by company/insured) or autos that are rented or leased ("hired autos").

D. If LESSEE is transporting hazardous materials or contaminants, evidence of the Motor Carrier Act Endorsement-hazardous materials clean-up (MCS-90, or its equivalent) must be provided.

E. If LESSEE's Scope of Services under this Lease exposes a potential pollution liability risk related to transport of potential pollutants, seepage, release, escape or discharge of any nature (threatened or actual) of pollutants into the environment arising out of, pertaining to, or in any way related to LESSEE's or any party acting on behalf of LESSEE's performance under this Lease, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the LESSEE's Pollution Liability Policies if such policy has no exclusions that would restrict coverage under this Lease. Coverage shall also include leakage of fuel or other "pollutants" needed for the normal functioning of covered autos.

F. To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying and excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of LESSEE, in any way related to Services performed under this Lease.

G. A severability of interest provision must apply for all the Additional Insureds, ensuring that LESSEE's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

Verification of Business Auto Liability Insurance Coverage

As the LESSEE'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Business Automobile Liability insurance, as required by this Lease, including the relevant provisions applicable to all required insurance:

Self-Insured: Amount: \$ _____

Policy Limit: Per Accident/Occurrence \$ _____ Aggregate: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

V. Pollution Liability Insurance Coverage

- A. LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.

C. Minimum Requirements: Pollution Liability Insurance with minimum limits, as follows:

Each Claim or Occurrence Limit: \$2,000,000;
Aggregate Limit: \$2,000,000.

D. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants, arising out of, pertaining to, or in any way resulting from any Services performed by LESSEE under this Lease; including any transportation of hazardous wastes, hazardous materials, or contaminants.

E. If Coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Lease or the beginning of the Services.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Lease, LESSEE must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.

F. Insurance shall include prior acts coverage sufficient to cover the services under this Lease.

Verification of Pollution Liability Insurance Coverage

As the LESSEE'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Pollution Liability insurance, as required by this Lease, including the relevant provisions applicable to all required insurance.

Self-Insured: Amount: \$ _____

Policy Limit: Per Claim \$ _____ Aggregate: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

SUCCEEDING EMERGENCY COMMUNICATION SYSTEM LEASE

(Not to be Recorded)

THIS LEASE, made this ____ day of _____, 20____, by and between East Bay Municipal Utility District, a public corporation of the State of California, hereinafter designated as “Lessor,” and East Bay Regional Communication System Authority, hereinafter designated as “Lessee.”

WHEREAS, Lessor owns the real property located off Seneca St, Oakland, CA 94621, commonly known as what was Seneca Reservoir, more specifically described as Assessor Parcel Number 43A-4761-1-9 and as further described in **Exhibit B** to this Lease, (the “**Property**”) attached hereto and made a part hereof; and

WHEREAS, Lessor and Lessee entered into a certain Emergency Communications System Lease dated October 31, 2018, that commenced on January 1, 2017 and is set to expire on December 31, 2023; and

WHEREAS, as of the Commencement Date (as defined in Section 3 below), it is the intent of the Lessor and Lessee to enter into a succeeding lease with new terms, covenants, and conditions with the original Lease having no further force or effect as of such date.

WITNESSETH:

1. PREMISES

Lessor, in consideration of the payment of rent hereinafter specified to be paid by Lessee and of the covenants and agreements herein contained to be performed and observed by Lessee, does hereby lease, demise and let to Lessee for the purpose hereinafter specified, that certain property (“the Premises”), which are a portion of the Property, delineated and described on **Exhibit A** for the placement of Lessee’s equipment, including utility and access routes to the Premises.

2. USE OF PREMISES

Lessee shall use the Premises only for the purpose of installing, maintaining, operating, replacing, and removing P-25 compliant communication system equipment along with the necessary cable and conduit to connect the communication equipment to the antennas and to telephone and electrical facilities, subject to the provisions of Section 8, below. Lessee shall provide a description of the facilities accompanied by a photo simulation of the proposed facility that accurately depicts the equipment to be placed on the Premises. The description and photo simulation will both be incorporated into the Lease as **Exhibit C**.

3. TERM

The lease Term commences on January 1, 2024 (“Commencement Date”) and ends on December 31, 2028 (“Expiration Date”) subject to renewal and/or termination rights as may be hereinafter set forth.

4. RENT

- A. Base Rent: Starting with the Commencement Date, Lessee agrees to pay Lessor, in advance, as Base Rent, the annual sum of seventeen thousand nine hundred ten dollars and seventy eight cents (\$17,910.78) payable in advance on or before the Commencement Date of the Term and annually thereafter to the Lessor at 375 11th St, MS 903, Oakland, CA 94607.
- B. Base Rent Adjustment. The amount of Base Rent payable hereunder shall be adjusted by 3% annually starting January 1, 2025, and every year thereafter. The annual adjustment be calculated by increasing previous year's Base Rent by the 3 percent.
- C. Late Rent. Should the annual Base Rent payment not be paid in full within the first thirty days of the anniversary of the Commencement Date, a fifteen percent (15%) late fee shall be added to the annual rent payment due. Lessor's right to collect a late fee shall not be deemed an extension of the Due Date nor prevent the Lessor from exercising any other rights and remedies available under this Lease and by law.
- D. All Rent Payment to Lessor shall be sent to: 375 11th St, MS#903, Oakland, CA 94607.

5. UTILITIES

Lessee agrees to furnish at Lessee's sole cost and expense, all water, gas, heat, light, power and all other utilities and operating infrastructure required at the Premises.

6. LESSOR'S RIGHTS

- A. Lessor reserves the right to use the Property, excluding the area delineated on Exhibit A, at any and all times, for Lessor's operations and shall at all times during the Term of this Lease have the right to enter upon the Premises for any purpose necessary in the conduct of Lessor's operations.
- B. It is understood that construction, reconstruction, maintenance, and use of the reservoir, pumping plants, pipelines and other facilities or improvements of Lessor, present or future, upon the Property shall at all times be paramount to any rights under this Lease, provided that Lessor will not unreasonably interfere with Lessee's use of the Premises.
- C. The construction, reconstruction, maintenance, and use of the facilities of Lessee, and all work upon or in connection therewith, shall at no time and in no way whatever interfere with the present or future operations of Lessor; the location of the facilities, the construction, reconstruction, and maintenance thereof, and all work in connection therewith, shall be done and made under the supervision and to the reasonable satisfaction of Lessor.
- D. Upon completion of the installation of its facilities or any improvements, Lessee shall promptly return as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work and Lessee shall not commit or suffer to be committed any waste upon the Premises or any nuisance thereon and agrees to keep the Premises in a neat, clean, sanitary and orderly condition at all times during occupancy, and not to permit any amount of rubbish, garbage or refuse to accumulate and remain thereon at any time. If Lessee fails so to keep the Property as stated

herein, then after thirty (30) days written notice to Lessee, Lessor may perform the necessary work at the reasonable expense of Lessee, which expense Lessee agrees to pay to Lessor upon demand.

7. ACCESS

Where Lessor holds rights of access to the Property in fee title, Lessor grants Lessee access to the Property via use of the access road as described in Exhibit B, and a right of access to the source of electrical and telephone facilities, twenty-four (24) hours a day, seven (7) days a week as depicted in Exhibit A. Where Lessor does not own access rights in fee title, Lessee shall be solely responsible for obtaining any and all rights required from third parties to access the Premises. Lessor will, however, provide Lessee with copies of any applicable easement agreements granting Lessor access to the Property. If Lessee uses Lessor's existing access road, Lessor and Lessee will share equally in road maintenance costs as determined and billed by Lessor. Lessor agrees to permit Lessee free ingress and egress to the Premises to conduct such surveys, structural strength analyses, subsurface boring tests and other activities of a similar nature as Lessee may deem necessary at the sole cost of Lessee.

8. PRIOR APPROVAL

Lessee agrees that prior to construction of Lessee's facilities on the Premises, Lessee shall submit to Lessor for final approval the approved building permit from the appropriate permitting agency, the final construction plans and a detailed description and photo depiction of the improvements to be built. Lessor's review of the permit and plans will be limited to checking for compliance with the terms of this Lease as to the size and location of Lessee's facilities and for conflicts with any District infrastructure on the Property. Upon Lessor's approval, the final construction plans shall replace Exhibit A and the detailed description and photo depiction shall replace Exhibit C.

9. CONDITION OF PREMISES

- A. The taking of possession of the Premises by Lessee shall, in itself, constitute acknowledgment by Lessee that the Premises are in good condition and satisfactory for their use.
- B. Lessee specifically acknowledges that Lessor has made no representations concerning the condition of the Premises, the soil, its bearing capacity, or the fitness of the Premises or any improvements, including but not limited to the compliance of the Premises or any improvements with any federal, state, or local building code or ordinance, and Lessee expressly waives any duty Lessor might have to make any such disclosures.
- C. Lessee acknowledges that to the best of Lessee's knowledge, the Premises will safely support the type of improvements to be constructed and maintained by Lessee under the terms and conditions of this Lease, and that Lessee accepts the Premises in an "as is" condition.

10. LIENS

Lessee shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

11. TREES

Lessee agrees that no trees will be damaged and/or removed during installation of Lessee's facilities or any improvements without mitigation approved in advance by Lessor. During the term of this Lease, trimming of trees must be minimized and shall be subject to prior approval by Lessor.

12. INTERFERENCE

- A. Lessee agrees that any facilities constructed or equipment installed on the Premises or modifications to the improvements as described in Exhibit C, shall be constructed, installed and operated at all times in such a manner that they will not interfere with Lessor's present communications transmitters and receiver stations if any, and in the event of such interference, Lessee agrees, at its own costs and expense, to take all necessary steps to eliminate such interference whether so required by the Federal Communications Commission or not. In the event that such interference shall develop and such interference is not eliminated by Lessee within seven (7) days after written notice from Lessor to do so, the facility or equipment causing such interference shall be taken out of service by Lessee until the problem is corrected to the complete satisfaction of Lessor. The term "interference" as used herein may be direct or consequential, and includes, but is not limited to, intermediation and desensitizing of Lessor's receiving equipment by Lessee's transmitter operations.
- B. Lessee agrees that any radio or cellular equipment installed on the Premises shall be frequency compatible with all other radio and cellular transmitting and receiving equipment existing on any site owned or controlled by Lessor at the time its initial radio installation is made. If at a future date a transmitter from another location other than those owned or controlled by Lessor should cause interference to previously installed equipment on any site owned or controlled by Lessor by causing interference with frequencies generated by Lessee's equipment, it shall be Lessee's responsibility to make such corrections as are necessary to eliminate such interference.

13. GOVERNMENTAL APPROVALS

Lessee shall, at its sole cost and expense, comply with all applicable requirements, rules, regulations and environmental documentation pertaining to facilities, equipment and operations to be conducted on the Premises, including all requirements imposed by the Bay Area Air Quality Management District, the City of Richmond, County of Contra Costa, the State of California and the United States of America. Lessor agrees to cooperate with Lessee with respect to obtaining any required zoning or other governmental approvals or permits for the Premises and Lessee's facilities, including providing signatures where necessary on Lessee's governmental permit applications. Lessee acknowledges, however, that Lessor is not a permitting entity and shall not be responsible for obtaining or maintaining any necessary governmental approvals on behalf of Lessee.

Lessee further agrees to be responsible for complying with any environmental regulations or permits that may be required under this Lease, including but not limited to, applying for and maintaining a Hazardous Materials Business Plan (HMBP), any hazardous materials storage permit that may be required, and compliance with any storm water regulations.

14. MODIFICATIONS AND IMPROVEMENTS

- A. Once Lessee's improvements are installed on the Premises, as depicted in Exhibit A and detailed in Exhibit C, Lessee will not make any alterations to the site without obtaining the prior written approval of Lessor. Lessee must request consent to the modifications in writing, submit proposed plans that will be submitted to the appropriate permitting agency, a copy of the permit application being submitted to the permitting agency, and a letter of authorization. If Lessee will require Lessor, as property owner to sign a permit application or other similar document to be submitted to the permitting agency, Lessor will require a letter from the Lessee that certifies all documentation submitted to the permitting agency is true and correct and that Lessee indemnifies the Lessor against any claims resulting from erroneous representations or misrepresentations. Any alterations to the site from the approved improvements as identified in Exhibit A and Exhibit C will require an amendment to the Lease and may require compensation from Lessee.
- B. Upon Lessee receiving approval from the appropriate permitting agency, Lessee must submit to Lessor a copy of the approved permit, a copy of the final construction plans that will supplement or replace Exhibit A and a written description of the improvements with a photo simulation of the modified site that will supplement or replace Exhibit C.
- C. Lessee shall provide Lessor, without charge or expense, space as necessary for Lessor's communications equipment either inside or on top of Lessee's improvements, to be utilized solely in connection with Lessor's operations as a municipal utility district. Lessor acknowledges and agrees that Lessor's communications equipment may not interfere with any of Lessee's approved improvements as detailed in Exhibit A, and Lessor shall submit plans and specifications to Lessee for review to determine any impact on Lessee's improvements. Within 30 days, Lessee shall either approve Lessor's plans and specifications or deny approval if Lessee reasonably determines that either a technical or structural interference is likely to occur. Failure by Lessee to approve or deny approval of Lessor's plans and specifications within 30 days shall be deemed approval.
- D. Lessor shall be solely responsible for all costs associated with the installation and maintenance of Lessor's equipment or improvements on the Premises.

15. INDEMNIFICATION AND DAMAGES

- A. Lessee expressly agrees to indemnify, defend and hold harmless Lessor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Lessee's operation or performance under this Lease, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the Premises or on the adjacent Lessor's property, released by Lessee, its officers, employees, or contractors, as a result of Lessee's construction, reconstruction, maintenance, use, or removal of its facility.

Notwithstanding any other provision, Lessee expressly agrees to indemnify, defend, and hold harmless Lessor in any lawsuit related to the lease.

- B. Damages: Lessee shall be responsible for and shall reimburse Lessor for any damage or loss to Lessor's present or future facilities on the Property to the extent directly or indirectly contributed to or caused by Lessee's operation or performance under this Lease, including, but not limited to, any damage or loss due to Lessee's deposit of Hazardous Materials as defined in section 16.C on the Property.
- C. Assumption of Risk: Lessee agrees to assume all risk of damage to any property of Lessee or any other property under the control or custody of Lessee while upon the Property or rights-of-way of Lessor or in proximity thereto, caused by or contributed to in any way by Lessor's construction, reconstruction, operation, maintenance, repair, or use of pipelines, reservoirs or other facilities or improvements or roadways of Lessor, present or future.

16. HAZARDOUS MATERIALS

- A. Representation: Lessor represents that it has conducted no site investigation(s) for hazardous materials and has no knowledge of any hazardous materials (as defined below) existing on or about the Premises in violation of any applicable law.
- B. Lessee represents and warrants to Lessor that Lessee will not, and will not knowingly permit any third party to, generate, store or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below).
- C. Definition of Hazardous Materials: In this Lease, "hazardous materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state of California, including, without limitation, the California Health and Safety Code and the California Water Code; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

D. Lessor and Lessee acknowledge that from time to time Lessor may be required by various governmental agencies having jurisdiction over the Property to provide a list of hazardous materials present on the Property. If Lessor is required to provide a list of hazardous materials present on the Property by any governmental agency having jurisdiction over the Property, Lessee shall, within fifteen (15) business days after receipt of a written request from Lessor, provide to Lessor a written statement identifying the types and amounts of hazardous materials being stored and/or used by Lessee within the Premises.

17. INSURANCE REQUIREMENTS

See Exhibit "D", Insurance Requirements, attached hereto and made a part hereof.

18. ASSIGNABILITY

Lessee shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in the Lease or in the Premises.

19. DEFAULT

It is understood and agreed that if Lessee fails to pay any installment of rent as it becomes due, or if Lessee defaults on any of the other covenants, agreements or terms of this Lease, and if upon receipt of ten (10) days' written notice in the case of a monetary default, thirty (30) days' written notice in the case of a non-monetary default or seven (7) days' written notice in the case of a frequency incompatibility default, Lessee shall fail or refuse to correct the default, Lessor at its option may re-enter the Premises and remove all improvements therefrom, and may terminate this Lease or take possession of the Premises as the agent and for the account of Lessee, and may lease or rent the whole, or any part of the Premises for the balance or any part of the term of this Lease and retain all rents received and apply them in payment on any rents owed by Lessee. The performance of any or all of these acts by Lessor shall not release Lessee from the full and strict compliance with all of the terms, conditions and covenants of this Lease, If the nature of Lessee's default is such that more than thirty (30) days are reasonably required to cure the default, then Lessee shall not be in default if Lessee commences the cure within this thirty (30) day period and thereafter diligently prosecutes such cure to completion.

20. WAIVER

The waiver by Lessor of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition. Lessor's subsequent acceptance of rent shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of the rent.

21. REMEDIES

It is understood that the remedies provided for Lessor in case of a violation of the terms of this Lease by Lessee are not exclusive, but are in addition to any remedies provided by law, any of which Lessor shall have the right to use at its option.

22. RELOCATION

In the event Lessor's operations necessitate the relocation of Lessee's facilities, Lessee shall have no right to relocation benefits or payments from Lessor, and Lessee shall be solely responsible for all costs of any necessary relocation. Lessee hereby specifically waives any rights to, and releases Lessor from, any and all claims for relocation benefits and/or relocation payments to which Lessee might otherwise be entitled. Lessee shall hold Lessor harmless from and indemnify Lessor against any and all liability, cost, and expense suffered or incurred by Lessee and arising in connection with any such right or claim asserted by Lessee.

23. CONDEMNATION

If any part of the Premises is condemned for a public use and a part of the Premises remains that is capable of occupation and use as authorized under this Lease, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor. If all of the Premises is condemned or if such part is condemned so that there does not remain a portion capable of occupation and use as herein authorized, this Lease shall thereupon terminate. If a part or all of the Premises is condemned, all compensation awarded upon such condemnation, except such compensation as shall be specifically awarded to Lessee for loss of or damages to fixtures owned by Lessee, or business interruption or moving expenses, shall go to Lessor and Lessee shall have no claim thereto and Lessee irrevocably assigns and transfers to Lessor any and all rights to all other compensation or damages to which Lessee may become entitled during the term of this Lease by reason of the condemnation.

24. TAXES AND ASSESSMENTS:

The property interest created by this Lease may be subject to property taxation and the Lessee may be subject to the payment of property taxes levied on this interest. Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by any tax or assessment levying body upon any interest in this Lease or any possessory right that Lessee may have in or to the Premises under this Lease.

25. TERMINATION (NONDEFAULT)

Lessor's Right to Terminate. Lessor may terminate this Lease upon at least one (1) year notice to Lessee.

After expiration of Term, if lease is in holdover, Lessor may terminate occupancy upon at least thirty (30) days' notice to Lessee.

Lessee's Right to Terminate. If the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of Lessee's facilities is revoked or withdrawn, or if Lessor fails to have proper ownership of the

Property or authority to enter into this Lease, then Lessee shall have the right to terminate this Lease upon at least 180 days written notice to Lessor.

Upon termination, neither party will owe any further obligation under the terms of this Lease except for Lessee's responsibility to remove all of Lessee's facilities from the Premises and restore the Premises to its original condition, as near as practicable in accordance with Section 28, below.

Upon any early termination of this Lease, any prepaid rent shall be prorated from the date of termination and returned to Lessee.

26. SURVIVAL

The provisions of Sections 15, 16 and 20 of this Lease will survive the expiration or termination of this Lease.

27. HOLD-OVER

Any holding over after the expiration of the Initial Term or an Extended Term, with the consent of Lessor, shall be construed to be a tenancy from month to month. All terms and conditions of the lease, excluding Base Rent shall be in full force and effect during Hold-Over.

During Hold-Over, the Base Rent shall increase by one hundred percent (100%) above the previous year's rent paid by Lessee. The full Base Rent shall be due and payable on the anniversary date of the commencement of the lease.

28. REMOVAL OF LESSEE'S FACILITIES UPON TERMINATION

A. In the event of the termination of this Lease by reason of the breach of this Lease by Lessee, or by not exercising one or both of the renewal options, or by the expiration of this Lease, at Lessor's option all towers, buildings and improvements other than "trade fixtures" constructed on the Premises by Lessee shall become and remain the property of Lessor, at no cost to Lessor, except as otherwise provided by this Section.

B. If Lessor decides not to retain all or a portion of the towers, buildings and improvements constructed by Lessee, upon termination of this Lease for any reason Lessee shall remove all towers, buildings and improvements as directed by Lessor within thirty (30) days following termination of this Lease. Lessee agrees to fill in all excavations with solidly compacted earth and to leave said Premises in a neat and clean condition following any such removal save and except normal wear and tear and acts beyond Lessee's control. Should Lessee fail to complete the removal of Lessee's facilities within thirty (30) days following termination of this Lease, rent shall accrue at Hold-Over rates until all equipment has been satisfactorily removed and the Premises have been left in satisfactory condition.

C. Within thirty (30) days following termination of this Lease, Lessee shall at Lessee's expense eliminate and pay in full any encumbrances, liens and debts incurred by Lessee with respect to any improvements to remain on the property.

D. Towers, buildings or other permanent structural improvements on the Premises shall not be considered as “trade fixtures” for the purpose of this Section.

29. NOTICE

A. Any Notice of Default or written notice of termination of this Lease shall be served by the Party giving notice either personally, by registered United States mail, postage prepaid, or by a national courier or express mail service, addressed to:

Manager of Real Estate Services
East Bay Municipal Utility District
375 Eleventh St., Mail Stop 903
Oakland California 94607

or at such other address as shall have been last furnished in writing by Lessor to Lessee.

[Lessee's Address]

or at such other address as shall have been last furnished in writing by Lessee to Lessor.

Personal delivery or mailing in accordance with this Section shall constitute a good, sufficient and lawful notice and service in all cases.

B. Any other notice or approval required under this Lease may be sent to the receiving Party in the manner provided in Section 29.A, above, or by email to the following email addresses:

District: realestate@ebmud.com

Lessee: [email address (include any cc's)]

30. EXISTING CONDITION

This Lease is made subject to all existing liens, encumbrances, conditions and restrictions of record affecting the Premises and is also subject to all existing rights, rights-of-way, licenses, leases, reservations, and easements by whomsoever held, in and to the Premises which predate this Lease.

31. BINDING PROVISIONS

Lease shall be binding upon and inure to the benefit of the executors, administrators and permitted assigns of the respective parties hereto.

32. NEUTRAL INTERPRETATION

In any action or proceeding to construe the terms of this Lease, it shall be considered the product of negotiation by and between the Parties. No clause or provision shall be interpreted more strongly in favor of or against one Party or the other based upon the source of the draftsmanship, but shall be interpreted in a neutral manner.

33. TITLE AND QUIET POSSESSION

Lessor represents and agrees (a) that it is the owner of the Property; (b) that it has the right to enter into this Lease; (c) that the person signing this Lease has the authority to sign; (d) that Lessee is entitled to access to the Premises at all times and to the quiet possession of the Premises throughout the term so long as Lessee is not in default beyond the expiration of any cure period; and (e) that, except in case of emergency, Lessor shall not handle or otherwise disturb Lessee's antennas or PCS equipment.

34. ENTIRE AGREEMENT

This Lease (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal representations or understandings between the parties.

35. SEVERABILITY

If any provision of this Lease is held to be invalid or unenforceable with respect to any party, the remainder will not be affected and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

36. ATTORNEYS FEES

The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Lease is entitled to receive its reasonable attorneys' fees, limited to the rate of local independent counsel in Alameda County.

37. GOVERNING LAW

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.

38. JURISDICTION

Lessor and Lessee agree that all disputes, disagreements, or claims arising in connection with this Lease shall be submitted to the exclusive jurisdiction of the state and federal courts of the State of California, with venue in Alameda County. This choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to this Lease in any jurisdiction other than that specified in this Section.

39. RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, joint venture, or any association between Lessor and Lessee other than that of landlord and tenant.

40. NONDISCRIMINATION

There shall be no discrimination in the performance of this Lease against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. Lessee shall not establish or permit any such practice(s) of discrimination with reference to the Lease or any part. Violation of this Section shall be deemed to be in material breach of this Lease.

41. INCORPORATION OF RECITALS

The recitals set forth above are incorporated into the Lease and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Lease in duplicate, the day and year first above written.

LESSEE

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____

Name

By: _____

MATT ELAWADY

Manager of Real Estate Services

Its: _____

LESSEE

LESSOR

EXHIBIT "A"
DEPICTION OF PREMISES
(ATTACHED)

EXHIBIT "B"
LEGAL DESCRIPTION OF PROPERTY
(ATTACHED)

EXHIBIT "C"
DETAILED WRITTEN DESCRIPTION AND PHOTO SIMULATION OF SITE EQUIPMENT
AND IMPROVEMENTS

EXHIBIT "D"

INSURANCE REQUIREMENTS

I. Provisions Applicable to All Required Insurance

- A. Prior to the beginning of and throughout the duration of Services, and for any additional period of time as specified below, LESSEE shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.
- B. LESSEE shall provide Verification of Insurance as required by this Lease by providing the completed Verification of Insurance as requested below signing and submitting this Exhibit "C" to the DISTRICT. The Exhibit "C" may be signed by an officer of the LESSEE (Agent) or by the Insurance Broker for the LESSEE. LESSEE shall update Exhibit "C" throughout the specified term of the insurance required by this Lease by resubmitting the completed Exhibit "C" prior to the expiration date of any of the required insurance. The updated Exhibit "C" shall become a part of the Lease but shall not require a change order to the Lease. The Notice to Proceed shall not be issued, and LESSEE shall not commence Services until such insurance has been accepted by the DISTRICT.
- C. LESSEE shall carry and maintain the minimum insurance requirements as defined in this Lease. LESSEE shall ensure that its independent contractors maintain, appropriate insurance coverage and limits required in this Lease to the extent they apply to the scope of the services to be performed by any party acting on LESSEE's behalf.
- D. Acceptance of verification of Insurance by the DISTRICT shall not relieve LESSEE of any of the insurance requirements, nor decrease liability of LESSEE.
- E. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and all coverage shall be at least as broad as the requirements listed in this Lease.
- F. Any self-insurance, or self-insured retentions (SIRs) applicable to the required insurance coverage must be declared to and accepted by the DISTRICT.
- G. At the option and request of the DISTRICT, LESSEE shall provide documentation of its financial ability to pay the self-insurance, or SIR.
- H. Any policies with a SIR shall provide that any SIR may be satisfied, in whole or in part, by the DISTRICT or the additional insured at its sole and absolute discretion.
- I. Unless otherwise accepted by the DISTRICT, all required insurance must be placed with insurers with a current A.M. Best's rating of no less than A-V.
- J. LESSEE shall defend the DISTRICT and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier.
- K. For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified) the retroactive date must be shown and must be before the date of this Lease, and before the beginning of any Services related to this Lease.
- L. Insurance must be maintained and updated Verification of Insurance be provided to the DISTRICT before the expiration of insurance by having LESSEE's insurance broker or agent update, sign and return Exhibit "C" to the DISTRICT's contract manager. For all claims-made policies the updated Verification of Insurance must be provided to the DISTRICT for at least three (3) years after expiration of this Lease.
- M. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Lease or the start of any Services related to this Lease, LESSEE must purchase an extended reporting period for a minimum of three (3) years after expiration of the Lease.
- N. In the event of a coverage dispute arising from a claim, the District may request a copy of the applicable policies' giving rise to such dispute which shall be submitted to the DISTRICT for review.
- O. Where additional insured coverage is required, the additional insured coverage shall be "primary and non-contributory," and will not seek contribution from the DISTRICT's insurance or self-insurance.
- P. LESSEE agrees to provide immediate Notice to the DISTRICT of any loss or claim against LESSEE arising out of, pertaining to, or in any way relating to this Lease, or Services performed under this Lease. The DISTRICT assumes no obligation or liability by such Notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the DISTRICT.
- Q. LESSEE agrees, upon request by the DISTRICT, to provide complete and endorsements within 10 days of such request.

R. It is LESSEE's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of the DISTRICT to obtain proof of insurance required under this Lease shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard.

S. Notice of Cancellation/Non-Renewal/Material Reduction The insurance requirements hereunder are mandatory and the DISTRICT may, at its sole and absolute discretion, terminate the services provided by LESSEE, should LESSEE breach its obligations to maintain the required coverage and limits set forth in this Lease. No coverage required hereunder shall be cancelled, non-renewed or materially reduced in coverage or limits without the DISTRICT being provided at least thirty (30) days prior written notice, other than cancellation for the non-payment of premiums, in which event the DISTRICT shall be provided ten (10) days prior written notice. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction of the stated requirements does not require notice beyond submission to the DISTRICT of an updated Verification of Insurance which shall be met by having the LESSEE's insurance broker or agent update, sign and return this Exhibit "C".

II. Workers' Compensation and Employer's Liability Insurance Coverage

A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:

Coverage A. Statutory Benefits Limits

Coverage B. Employer's Liability of not less than:

Bodily Injury by accident: \$1,000,000 each accident

Bodily Injury by disease: \$1,000,000 each employee

Bodily Injury by disease: \$1,000,000 policy limit

B. LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

C. If there is an onsite exposure of injury to LESSEE or any party acting on LESSEE's behalf under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage is required for such injuries or claims.

D. If LESSEE is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, LESSEE must return the completed Verification of Insurance confirming that LESSEE has no employees and is exempt from the State of California Workers' Compensation requirements.

E. If LESSEE is self-insured with respect to Workers' Compensation coverage, LESSEE shall provide to the DISTRICT a Certificate of Consent to Self-Insure from the California Department of Industrial Relations. Such self-insurance shall meet the minimum limit requirements and shall waive subrogation rights in favor of the DISTRICT as stated below in section "F."

F. Waiver of Subrogation. Workers' Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that LESSEE and each insurer waive any and all rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers. LESSEE shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in any way relating to LESSEE's failure to provide waiver of subrogation from the insurance carrier for claims arising out of Lessee's use, occupancy, or operations under this Lease.

Verification of Workers' Compensation and Employer's Liability Insurance Coverage

By checking the box and signing below, I hereby verify that the LESSEE is exempt from the State of California's requirement to carry workers' compensation insurance.

As the LESSEE's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries workers' compensation insurance as required by this Lease, including the relevant provisions applicable to all required insurance.

Self-Insured Retention: Amount: \$ _____

Policy Limit: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

III. Commercial General Liability Insurance (“CGL”) Coverage

- A. LESSEE’s insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.
- C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:
- | | |
|------------------------------------|--|
| Bodily Injury and Property Damage | \$2,000,000 per occurrence & aggregate |
| Personal Injury/Advertising Injury | \$2,000,000 per occurrence & aggregate |
| Products/Completed Operations | \$2,000,000 per occurrence & aggregate |
- D. Coverage must be on an occurrence basis.
- E. Coverage for Products, and Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any “prior work” coverage limitation or exclusion applicable to any Services performed by LESSEE and/or independent contractor and/or any party acting on LESSEE’s behalf under this Lease.
- F. Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all leased Premises and operations in any way related to this Lease.
- G. There will be no exclusion for explosions, collapse, or underground liability (XCU).
- H. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by LESSEE or on LESSEE’s behalf.
- I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by LESSEE under this Lease as an “insured contract.”
- J. Waiver of Subrogation. The policy shall be endorsed to include a Waiver of Subrogation ensuring that the LESSEE and its insurer(s) waive any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, agents, volunteers, and employees. LESSEE shall defend and pay any and all damages, fees, and costs, of any kind, arising out of, pertaining to, or in any way resulting from LESSEE’s failure to provide the waiver of subrogation from its insurance carrier(s) for claims arising out of LESSEE’s use, occupancy, or operations under this Lease.
- K. “Independent Contractor’s Liability.” LESSEE shall maintain, or ensure that its independent contractors maintain, appropriate insurance coverage and limits for liability and/or damages arising out of, pertaining to, or in any way resulting from Services provided under this Lease.

To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying, excess and umbrella policies that shall be evidenced in each case by an endorsement. The Additional Insureds must be covered for liability arising in whole, or in part, from any leased Premises, Products, Ongoing Operations, and Completed Operations by or on behalf of LESSEE, in any way related to Services performed under this Lease.

- L. A severability of interest provision must apply for all the Additional Insureds, ensuring that LESSEE’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies’ limit(s).

Verification of Commercial General Liability (CGL) Insurance Coverage

As the LESSEE’S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Commercial General Liability insurance, as required by this Lease, including the relevant

provisions applicable to all required insurance:

Self-Insured: Amount: \$ _____

Policy Limit: Per Occurrence: \$ _____ **Aggregate: \$** _____

Policy Number: _____

Policy Period: from: _____ **to:** _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

IV. Business Auto Liability Insurance Coverage

LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

A. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.

B. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:

Each Occurrence Limit (per accident) and in the Aggregate:	\$2,000,000
Bodily Injury and Property Damage:	\$2,000,000

C. Coverage must include either "owned, non-owned, and hired" autos or "any" automobile

This provision ensures the policy covers losses arising out of use of company-owned vehicles ("owned autos"), employee's personal autos ("non-owned autos" meaning not owned by company/insured) or autos that are rented or leased ("hired autos").

D. If LESSEE is transporting hazardous materials or contaminants, evidence of the Motor Carrier Act Endorsement-hazardous materials clean-up (MCS-90, or its equivalent) must be provided.

E. If LESSEE's Scope of Services under this Lease exposes a potential pollution liability risk related to transport of potential pollutants, seepage, release, escape or discharge of any nature (threatened or actual) of pollutants into the environment arising out of, pertaining to, or in any way related to LESSEE's or any party acting on behalf of LESSEE's performance under this Lease, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the LESSEE's Pollution Liability Policies if such policy has no exclusions that would restrict coverage under this Lease. Coverage shall also include leakage of fuel or other "pollutants" needed for the normal functioning of covered autos.

F. To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying and excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of LESSEE, in any way related to Services performed under this Lease.

G. A severability of interest provision must apply for all the Additional Insureds, ensuring that LESSEE's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

Verification of Business Auto Liability Insurance Coverage

As the LESSEE'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Business Automobile Liability insurance, as required by this Lease, including the relevant provisions applicable to all required insurance:

Self-Insured: Amount: \$ _____

Policy Limit: Per Accident/Occurrence \$ _____ Aggregate: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

V. Pollution Liability Insurance Coverage

- A. LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.

C. Minimum Requirements: Pollution Liability Insurance with minimum limits, as follows:

Each Claim or Occurrence Limit: \$2,000,000;
Aggregate Limit: \$2,000,000.

D. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants, arising out of, pertaining to, or in any way resulting from any Services performed by LESSEE under this Lease; including any transportation of hazardous wastes, hazardous materials, or contaminants.

E. If Coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Lease or the beginning of the Services.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Lease, LESSEE must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.

F. Insurance shall include prior acts coverage sufficient to cover the services under this Lease.

Verification of Pollution Liability Insurance Coverage

As the LESSEE'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Pollution Liability insurance, as required by this Lease, including the relevant provisions applicable to all required insurance.

Self-Insured: Amount: \$ _____

Policy Limit: Per Claim \$ _____ Aggregate: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

SUCCEEDING EMERGENCY COMMUNICATION SYSTEM LEASE

(Not to be Recorded)

THIS LEASE, made this ____ day of _____, 20____, by and between East Bay Municipal Utility District, a public corporation of the State of California, hereinafter designated as “Lessor,” and East Bay Regional Communication System Authority, hereinafter designated as “Lessee.”

WHEREAS, Lessor owns the real property located at the end of Moraga Rd, Moraga, CA 94556, commonly known as Carter Reservoir, more specifically described as Assessor Parcel Number 258-160-056-2 and as further described in **Exhibit B** to this Lease, (the “**Property**”) attached hereto and made a part hereof; and

WHEREAS, Lessor and Lessee entered into a certain Emergency Communications System Lease dated March 21, 2018 that commenced on January 1, 2017 and is set to expire on December 31, 2023; and

WHEREAS, as of the Commencement Date (as defined in Section 3 below), it is the intent of the Lessor and Lessee to enter into a succeeding lease with new terms, covenants, and conditions with the original Lease having no further force or effect as of such date.

WITNESSETH:

1. PREMISES

Lessor, in consideration of the payment of rent hereinafter specified to be paid by Lessee and of the covenants and agreements herein contained to be performed and observed by Lessee, does hereby lease, demise and let to Lessee for the purpose hereinafter specified, that certain property (“the Premises”), which are a portion of the Property, delineated and described on **Exhibit A** for the placement of Lessee’s equipment, including utility and access routes to the Premises.

2. USE OF PREMISES

Lessee shall use the Premises only for the purpose of installing, maintaining, operating, replacing, and removing P-25 compliant communication system equipment along with the necessary cable and conduit to connect the communication equipment to the antennas and to telephone and electrical facilities, subject to the provisions of Section 8, below. Lessee shall provide a description of the facilities accompanied by a photo simulation of the proposed facility that accurately depicts the equipment to be placed on the Premises. The description and photo simulation will both be incorporated into the Lease as **Exhibit C**.

3. TERM

The lease Term commences on January 1, 2024 (“Commencement Date”) and ends on December 31, 2028 (“Expiration Date”) subject to renewal and/or termination rights as may be hereinafter set forth.

4. RENT

- A. Base Rent: Starting with the Commencement Date, Lessee agrees to pay Lessor, in advance, as Base Rent, the annual sum of seventeen thousand nine hundred ten dollars and seventy eight cents (\$17,910.78) payable in advance on or before the Commencement Date of the Term and annually thereafter to the Lessor at 375 11th St, MS 903, Oakland, CA 94607.
- B. Base Rent Adjustment. The amount of Base Rent payable hereunder shall be adjusted by 3% annually starting January 1, 2025, and every year thereafter. The annual adjustment be calculated by increasing previous year's Base Rent by the 3 percent.
- C. Late Rent. Should the annual Base Rent payment not be paid in full within the first thirty days of the anniversary of the Commencement Date, a fifteen percent (15%) late fee shall be added to the annual rent payment due. Lessor's right to collect a late fee shall not be deemed an extension of the Due Date nor prevent the Lessor from exercising any other rights and remedies available under this Lease and by law.
- D. All Rent Payment to Lessor shall be sent to: 375 11th St, MS#903, Oakland, CA 94607.

5. UTILITIES

Lessee agrees to furnish at Lessee's sole cost and expense, all water, gas, heat, light, power and all other utilities and operating infrastructure required at the Premises.

6. LESSOR'S RIGHTS

- A. Lessor reserves the right to use the Property, excluding the area delineated on Exhibit A, at any and all times, for Lessor's operations and shall at all times during the Term of this Lease have the right to enter upon the Premises for any purpose necessary in the conduct of Lessor's operations.
- B. It is understood that construction, reconstruction, maintenance, and use of the reservoir, pumping plants, pipelines and other facilities or improvements of Lessor, present or future, upon the Property shall at all times be paramount to any rights under this Lease, provided that Lessor will not unreasonably interfere with Lessee's use of the Premises.
- C. The construction, reconstruction, maintenance, and use of the facilities of Lessee, and all work upon or in connection therewith, shall at no time and in no way whatever interfere with the present or future operations of Lessor; the location of the facilities, the construction, reconstruction, and maintenance thereof, and all work in connection therewith, shall be done and made under the supervision and to the reasonable satisfaction of Lessor.
- D. Upon completion of the installation of its facilities or any improvements, Lessee shall promptly return as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work and Lessee shall not commit or suffer to be committed any waste upon the Premises or any nuisance thereon and agrees to keep the Premises in a neat, clean, sanitary and orderly condition at all times during occupancy, and not to permit any amount of rubbish, garbage or refuse to accumulate and remain thereon at any time. If Lessee fails so to keep the Property as stated

herein, then after thirty (30) days written notice to Lessee, Lessor may perform the necessary work at the reasonable expense of Lessee, which expense Lessee agrees to pay to Lessor upon demand.

7. ACCESS

Where Lessor holds rights of access to the Property in fee title, Lessor grants Lessee access to the Property via use of the access road as described in Exhibit B, and a right of access to the source of electrical and telephone facilities, twenty-four (24) hours a day, seven (7) days a week as depicted in Exhibit A. Where Lessor does not own access rights in fee title, Lessee shall be solely responsible for obtaining any and all rights required from third parties to access the Premises. Lessor will, however, provide Lessee with copies of any applicable easement agreements granting Lessor access to the Property. If Lessee uses Lessor's existing access road, Lessor and Lessee will share equally in road maintenance costs as determined and billed by Lessor. Lessor agrees to permit Lessee free ingress and egress to the Premises to conduct such surveys, structural strength analyses, subsurface boring tests and other activities of a similar nature as Lessee may deem necessary at the sole cost of Lessee.

8. PRIOR APPROVAL

Lessee agrees that prior to construction of Lessee's facilities on the Premises, Lessee shall submit to Lessor for final approval the approved building permit from the appropriate permitting agency, the final construction plans and a detailed description and photo depiction of the improvements to be built. Lessor's review of the permit and plans will be limited to checking for compliance with the terms of this Lease as to the size and location of Lessee's facilities and for conflicts with any District infrastructure on the Property. Upon Lessor's approval, the final construction plans shall replace Exhibit A and the detailed description and photo depiction shall replace Exhibit C.

9. CONDITION OF PREMISES

- A. The taking of possession of the Premises by Lessee shall, in itself, constitute acknowledgment by Lessee that the Premises are in good condition and satisfactory for their use.
- B. Lessee specifically acknowledges that Lessor has made no representations concerning the condition of the Premises, the soil, its bearing capacity, or the fitness of the Premises or any improvements, including but not limited to the compliance of the Premises or any improvements with any federal, state, or local building code or ordinance, and Lessee expressly waives any duty Lessor might have to make any such disclosures.
- C. Lessee acknowledges that to the best of Lessee's knowledge, the Premises will safely support the type of improvements to be constructed and maintained by Lessee under the terms and conditions of this Lease, and that Lessee accepts the Premises in an "as is" condition.

10. LIENS

Lessee shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

11. TREES

Lessee agrees that no trees will be damaged and/or removed during installation of Lessee's facilities or any improvements without mitigation approved in advance by Lessor. During the term of this Lease, trimming of trees must be minimized and shall be subject to prior approval by Lessor.

12. INTERFERENCE

- A. Lessee agrees that any facilities constructed or equipment installed on the Premises or modifications to the improvements as described in Exhibit C, shall be constructed, installed and operated at all times in such a manner that they will not interfere with Lessor's present communications transmitters and receiver stations if any, and in the event of such interference, Lessee agrees, at its own costs and expense, to take all necessary steps to eliminate such interference whether so required by the Federal Communications Commission or not. In the event that such interference shall develop and such interference is not eliminated by Lessee within seven (7) days after written notice from Lessor to do so, the facility or equipment causing such interference shall be taken out of service by Lessee until the problem is corrected to the complete satisfaction of Lessor. The term "interference" as used herein may be direct or consequential, and includes, but is not limited to, intermediation and desensitizing of Lessor's receiving equipment by Lessee's transmitter operations.
- B. Lessee agrees that any radio or cellular equipment installed on the Premises shall be frequency compatible with all other radio and cellular transmitting and receiving equipment existing on any site owned or controlled by Lessor at the time its initial radio installation is made. If at a future date a transmitter from another location other than those owned or controlled by Lessor should cause interference to previously installed equipment on any site owned or controlled by Lessor by causing interference with frequencies generated by Lessee's equipment, it shall be Lessee's responsibility to make such corrections as are necessary to eliminate such interference.

13. GOVERNMENTAL APPROVALS

Lessee shall, at its sole cost and expense, comply with all applicable requirements, rules, regulations and environmental documentation pertaining to facilities, equipment and operations to be conducted on the Premises, including all requirements imposed by the Bay Area Air Quality Management District, the City of Richmond, County of Contra Costa, the State of California and the United States of America. Lessor agrees to cooperate with Lessee with respect to obtaining any required zoning or other governmental approvals or permits for the Premises and Lessee's facilities, including providing signatures where necessary on Lessee's governmental permit applications. Lessee acknowledges, however, that Lessor is not a permitting entity and shall not be responsible for obtaining or maintaining any necessary governmental approvals on behalf of Lessee.

Lessee further agrees to be responsible for complying with any environmental regulations or permits that may be required under this Lease, including but not limited to, applying for and maintaining a Hazardous Materials Business Plan (HMBP), any hazardous materials storage permit that may be required, and compliance with any storm water regulations.

14. MODIFICATIONS AND IMPROVEMENTS

- A. Once Lessee's improvements are installed on the Premises, as depicted in Exhibit A and detailed in Exhibit C, Lessee will not make any alterations to the site without obtaining the prior written approval of Lessor. Lessee must request consent to the modifications in writing, submit proposed plans that will be submitted to the appropriate permitting agency, a copy of the permit application being submitted to the permitting agency, and a letter of authorization. If Lessee will require Lessor, as property owner to sign a permit application or other similar document to be submitted to the permitting agency, Lessor will require a letter from the Lessee that certifies all documentation submitted to the permitting agency is true and correct and that Lessee indemnifies the Lessor against any claims resulting from erroneous representations or misrepresentations. Any alterations to the site from the approved improvements as identified in Exhibit A and Exhibit C will require an amendment to the Lease and may require compensation from Lessee.
- B. Upon Lessee receiving approval from the appropriate permitting agency, Lessee must submit to Lessor a copy of the approved permit, a copy of the final construction plans that will supplement or replace Exhibit A and a written description of the improvements with a photo simulation of the modified site that will supplement or replace Exhibit C.
- C. Lessee shall provide Lessor, without charge or expense, space as necessary for Lessor's communications equipment either inside or on top of Lessee's improvements, to be utilized solely in connection with Lessor's operations as a municipal utility district. Lessor acknowledges and agrees that Lessor's communications equipment may not interfere with any of Lessee's approved improvements as detailed in Exhibit A, and Lessor shall submit plans and specifications to Lessee for review to determine any impact on Lessee's improvements. Within 30 days, Lessee shall either approve Lessor's plans and specifications or deny approval if Lessee reasonably determines that either a technical or structural interference is likely to occur. Failure by Lessee to approve or deny approval of Lessor's plans and specifications within 30 days shall be deemed approval.
- D. Lessor shall be solely responsible for all costs associated with the installation and maintenance of Lessor's equipment or improvements on the Premises.

15. INDEMNIFICATION AND DAMAGES

- A. Lessee expressly agrees to indemnify, defend and hold harmless Lessor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of Lessee's operation or performance under this Lease, including all costs, claims and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) within the Premises or on the adjacent Lessor's property, released by Lessee, its officers, employees, or contractors, as a result of Lessee's construction, reconstruction, maintenance, use, or removal of its facility.

Notwithstanding any other provision, Lessee expressly agrees to indemnify, defend, and hold harmless Lessor in any lawsuit related to the lease.

- B. Damages: Lessee shall be responsible for and shall reimburse Lessor for any damage or loss to Lessor's present or future facilities on the Property to the extent directly or indirectly contributed to or caused by Lessee's operation or performance under this Lease, including, but not limited to, any damage or loss due to Lessee's deposit of Hazardous Materials as defined in section 16.C on the Property.
- C. Assumption of Risk: Lessee agrees to assume all risk of damage to any property of Lessee or any other property under the control or custody of Lessee while upon the Property or rights-of-way of Lessor or in proximity thereto, caused by or contributed to in any way by Lessor's construction, reconstruction, operation, maintenance, repair, or use of pipelines, reservoirs or other facilities or improvements or roadways of Lessor, present or future.

16. HAZARDOUS MATERIALS

- A. Representation: Lessor represents that it has conducted no site investigation(s) for hazardous materials and has no knowledge of any hazardous materials (as defined below) existing on or about the Premises in violation of any applicable law.
- B. Lessee represents and warrants to Lessor that Lessee will not, and will not knowingly permit any third party to, generate, store or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below).
- C. Definition of Hazardous Materials: In this Lease, "hazardous materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state of California, including, without limitation, the California Health and Safety Code and the California Water Code; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

D. Lessor and Lessee acknowledge that from time to time Lessor may be required by various governmental agencies having jurisdiction over the Property to provide a list of hazardous materials present on the Property. If Lessor is required to provide a list of hazardous materials present on the Property by any governmental agency having jurisdiction over the Property, Lessee shall, within fifteen (15) business days after receipt of a written request from Lessor, provide to Lessor a written statement identifying the types and amounts of hazardous materials being stored and/or used by Lessee within the Premises.

17. INSURANCE REQUIREMENTS

See Exhibit "D", Insurance Requirements, attached hereto and made a part hereof.

18. ASSIGNABILITY

Lessee shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in the Lease or in the Premises.

19. DEFAULT

It is understood and agreed that if Lessee fails to pay any installment of rent as it becomes due, or if Lessee defaults on any of the other covenants, agreements or terms of this Lease, and if upon receipt of ten (10) days' written notice in the case of a monetary default, thirty (30) days' written notice in the case of a non-monetary default or seven (7) days' written notice in the case of a frequency incompatibility default, Lessee shall fail or refuse to correct the default, Lessor at its option may re-enter the Premises and remove all improvements therefrom, and may terminate this Lease or take possession of the Premises as the agent and for the account of Lessee, and may lease or rent the whole, or any part of the Premises for the balance or any part of the term of this Lease and retain all rents received and apply them in payment on any rents owed by Lessee. The performance of any or all of these acts by Lessor shall not release Lessee from the full and strict compliance with all of the terms, conditions and covenants of this Lease, If the nature of Lessee's default is such that more than thirty (30) days are reasonably required to cure the default, then Lessee shall not be in default if Lessee commences the cure within this thirty (30) day period and thereafter diligently prosecutes such cure to completion.

20. WAIVER

The waiver by Lessor of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition. Lessor's subsequent acceptance of rent shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of the rent.

21. REMEDIES

It is understood that the remedies provided for Lessor in case of a violation of the terms of this Lease by Lessee are not exclusive, but are in addition to any remedies provided by law, any of which Lessor shall have the right to use at its option.

22. RELOCATION

In the event Lessor's operations necessitate the relocation of Lessee's facilities, Lessee shall have no right to relocation benefits or payments from Lessor, and Lessee shall be solely responsible for all costs of any necessary relocation. Lessee hereby specifically waives any rights to, and releases Lessor from, any and all claims for relocation benefits and/or relocation payments to which Lessee might otherwise be entitled. Lessee shall hold Lessor harmless from and indemnify Lessor against any and all liability, cost, and expense suffered or incurred by Lessee and arising in connection with any such right or claim asserted by Lessee.

23. CONDEMNATION

If any part of the Premises is condemned for a public use and a part of the Premises remains that is capable of occupation and use as authorized under this Lease, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor. If all of the Premises is condemned or if such part is condemned so that there does not remain a portion capable of occupation and use as herein authorized, this Lease shall thereupon terminate. If a part or all of the Premises is condemned, all compensation awarded upon such condemnation, except such compensation as shall be specifically awarded to Lessee for loss of or damages to fixtures owned by Lessee, or business interruption or moving expenses, shall go to Lessor and Lessee shall have no claim thereto and Lessee irrevocably assigns and transfers to Lessor any and all rights to all other compensation or damages to which Lessee may become entitled during the term of this Lease by reason of the condemnation.

24. TAXES AND ASSESSMENTS:

The property interest created by this Lease may be subject to property taxation and the Lessee may be subject to the payment of property taxes levied on this interest. Lessee agrees to pay all lawful taxes, assessments or charges which at any time may be levied by any tax or assessment levying body upon any interest in this Lease or any possessory right that Lessee may have in or to the Premises under this Lease.

25. TERMINATION (NONDEFAULT)

Lessor's Right to Terminate. Lessor may terminate this Lease upon at least one (1) year notice to Lessee.

After expiration of Term, if lease is in holdover, Lessor may terminate occupancy upon at least thirty (30) days' notice to Lessee.

Lessee's Right to Terminate. If the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of Lessee's facilities is revoked or withdrawn, or if Lessor fails to have proper ownership of the

Property or authority to enter into this Lease, then Lessee shall have the right to terminate this Lease upon at least 180 days written notice to Lessor.

Upon termination, neither party will owe any further obligation under the terms of this Lease except for Lessee's responsibility to remove all of Lessee's facilities from the Premises and restore the Premises to its original condition, as near as practicable in accordance with Section 28, below.

Upon any early termination of this Lease, any prepaid rent shall be prorated from the date of termination and returned to Lessee.

26. SURVIVAL

The provisions of Sections 15, 16 and 20 of this Lease will survive the expiration or termination of this Lease.

27. HOLD-OVER

Any holding over after the expiration of the Initial Term or an Extended Term, with the consent of Lessor, shall be construed to be a tenancy from month to month. All terms and conditions of the lease, excluding Base Rent shall be in full force and effect during Hold-Over.

During Hold-Over, the Base Rent shall increase by one hundred percent (100%) above the previous year's rent paid by Lessee. The full Base Rent shall be due and payable on the anniversary date of the commencement of the lease.

28. REMOVAL OF LESSEE'S FACILITIES UPON TERMINATION

A. In the event of the termination of this Lease by reason of the breach of this Lease by Lessee, or by not exercising one or both of the renewal options, or by the expiration of this Lease, at Lessor's option all towers, buildings and improvements other than "trade fixtures" constructed on the Premises by Lessee shall become and remain the property of Lessor, at no cost to Lessor, except as otherwise provided by this Section.

B. If Lessor decides not to retain all or a portion of the towers, buildings and improvements constructed by Lessee, upon termination of this Lease for any reason Lessee shall remove all towers, buildings and improvements as directed by Lessor within thirty (30) days following termination of this Lease. Lessee agrees to fill in all excavations with solidly compacted earth and to leave said Premises in a neat and clean condition following any such removal save and except normal wear and tear and acts beyond Lessee's control. Should Lessee fail to complete the removal of Lessee's facilities within thirty (30) days following termination of this Lease, rent shall accrue at Hold-Over rates until all equipment has been satisfactorily removed and the Premises have been left in satisfactory condition.

C. Within thirty (30) days following termination of this Lease, Lessee shall at Lessee's expense eliminate and pay in full any encumbrances, liens and debts incurred by Lessee with respect to any improvements to remain on the property.

D. Towers, buildings or other permanent structural improvements on the Premises shall not be considered as “trade fixtures” for the purpose of this Section.

29. NOTICE

A. Any Notice of Default or written notice of termination of this Lease shall be served by the Party giving notice either personally, by registered United States mail, postage prepaid, or by a national courier or express mail service, addressed to:

Manager of Real Estate Services
East Bay Municipal Utility District
375 Eleventh St., Mail Stop 903
Oakland California 94607

or at such other address as shall have been last furnished in writing by Lessor to Lessee.

[Lessee's Address]

or at such other address as shall have been last furnished in writing by Lessee to Lessor.

Personal delivery or mailing in accordance with this Section shall constitute a good, sufficient and lawful notice and service in all cases.

B. Any other notice or approval required under this Lease may be sent to the receiving Party in the manner provided in Section 29.A, above, or by email to the following email addresses:

District: realestate@ebmud.com

Lessee: [email address (include any cc's)]

30. EXISTING CONDITION

This Lease is made subject to all existing liens, encumbrances, conditions and restrictions of record affecting the Premises and is also subject to all existing rights, rights-of-way, licenses, leases, reservations, and easements by whomsoever held, in and to the Premises which predate this Lease.

31. BINDING PROVISIONS

Lease shall be binding upon and inure to the benefit of the executors, administrators and permitted assigns of the respective parties hereto.

32. NEUTRAL INTERPRETATION

In any action or proceeding to construe the terms of this Lease, it shall be considered the product of negotiation by and between the Parties. No clause or provision shall be interpreted more strongly in favor of or against one Party or the other based upon the source of the draftsmanship, but shall be interpreted in a neutral manner.

33. TITLE AND QUIET POSSESSION

Lessor represents and agrees (a) that it is the owner of the Property; (b) that it has the right to enter into this Lease; (c) that the person signing this Lease has the authority to sign; (d) that Lessee is entitled to access to the Premises at all times and to the quiet possession of the Premises throughout the term so long as Lessee is not in default beyond the expiration of any cure period; and (e) that, except in case of emergency, Lessor shall not handle or otherwise disturb Lessee's antennas or PCS equipment.

34. ENTIRE AGREEMENT

This Lease (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal representations or understandings between the parties.

35. SEVERABILITY

If any provision of this Lease is held to be invalid or unenforceable with respect to any party, the remainder will not be affected and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

36. ATTORNEYS FEES

The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Lease is entitled to receive its reasonable attorneys' fees, limited to the rate of local independent counsel in Alameda County.

37. GOVERNING LAW

This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.

38. JURISDICTION

Lessor and Lessee agree that all disputes, disagreements, or claims arising in connection with this Lease shall be submitted to the exclusive jurisdiction of the state and federal courts of the State of California, with venue in Alameda County. This choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to this Lease in any jurisdiction other than that specified in this Section.

39. RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, joint venture, or any association between Lessor and Lessee other than that of landlord and tenant.

40. NONDISCRIMINATION

There shall be no discrimination in the performance of this Lease against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. Lessee shall not establish or permit any such practice(s) of discrimination with reference to the Lease or any part. Violation of this Section shall be deemed to be in material breach of this Lease.

41. INCORPORATION OF RECITALS

The recitals set forth above are incorporated into the Lease and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Lease in duplicate, the day and year first above written.

LESSEE

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____

Name

By: _____

MATT ELAWADY

Manager of Real Estate Services

Its: _____

LESSEE

LESSOR

EXHIBIT "A"
DEPICTION OF PREMISES
(ATTACHED)

EXHIBIT "B"
LEGAL DESCRIPTION OF PROPERTY
(ATTACHED)

EXHIBIT "C"
DETAILED WRITTEN DESCRIPTION AND PHOTO SIMULATION OF SITE EQUIPMENT
AND IMPROVEMENTS

EXHIBIT "D"

INSURANCE REQUIREMENTS

I. Provisions Applicable to All Required Insurance

- A. Prior to the beginning of and throughout the duration of Services, and for any additional period of time as specified below, LESSEE shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.
- B. LESSEE shall provide Verification of Insurance as required by this Lease by providing the completed Verification of Insurance as requested below signing and submitting this Exhibit "C" to the DISTRICT. The Exhibit "C" may be signed by an officer of the LESSEE (Agent) or by the Insurance Broker for the LESSEE. LESSEE shall update Exhibit "C" throughout the specified term of the insurance required by this Lease by resubmitting the completed Exhibit "C" prior to the expiration date of any of the required insurance. The updated Exhibit "C" shall become a part of the Lease but shall not require a change order to the Lease. The Notice to Proceed shall not be issued, and LESSEE shall not commence Services until such insurance has been accepted by the DISTRICT.
- C. LESSEE shall carry and maintain the minimum insurance requirements as defined in this Lease. LESSEE shall ensure that its independent contractors maintain, appropriate insurance coverage and limits required in this Lease to the extent they apply to the scope of the services to be performed by any party acting on LESSEE's behalf.
- D. Acceptance of verification of Insurance by the DISTRICT shall not relieve LESSEE of any of the insurance requirements, nor decrease liability of LESSEE.
- E. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and all coverage shall be at least as broad as the requirements listed in this Lease.
- F. Any self-insurance, or self-insured retentions (SIRs) applicable to the required insurance coverage must be declared to and accepted by the DISTRICT.
- G. At the option and request of the DISTRICT, LESSEE shall provide documentation of its financial ability to pay the self-insurance, or SIR.
- H. Any policies with a SIR shall provide that any SIR may be satisfied, in whole or in part, by the DISTRICT or the additional insured at its sole and absolute discretion.
- I. Unless otherwise accepted by the DISTRICT, all required insurance must be placed with insurers with a current A.M. Best's rating of no less than A-V.
- J. LESSEE shall defend the DISTRICT and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier.
- K. For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified) the retroactive date must be shown and must be before the date of this Lease, and before the beginning of any Services related to this Lease.
- L. Insurance must be maintained and updated Verification of Insurance be provided to the DISTRICT before the expiration of insurance by having LESSEE's insurance broker or agent update, sign and return Exhibit "C" to the DISTRICT's contract manager. For all claims-made policies the updated Verification of Insurance must be provided to the DISTRICT for at least three (3) years after expiration of this Lease.
- M. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Lease or the start of any Services related to this Lease, LESSEE must purchase an extended reporting period for a minimum of three (3) years after expiration of the Lease.
- N. In the event of a coverage dispute arising from a claim, the District may request a copy of the applicable policies' giving rise to such dispute which shall be submitted to the DISTRICT for review.
- O. Where additional insured coverage is required, the additional insured coverage shall be "primary and non-contributory," and will not seek contribution from the DISTRICT's insurance or self-insurance.
- P. LESSEE agrees to provide immediate Notice to the DISTRICT of any loss or claim against LESSEE arising out of, pertaining to, or in any way relating to this Lease, or Services performed under this Lease. The DISTRICT assumes no obligation or liability by such Notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the DISTRICT.
- Q. LESSEE agrees, upon request by the DISTRICT, to provide complete and endorsements within 10 days of such request.

R. It is LESSEE's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of the DISTRICT to obtain proof of insurance required under this Lease shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard.

S. Notice of Cancellation/Non-Renewal/Material Reduction The insurance requirements hereunder are mandatory and the DISTRICT may, at its sole and absolute discretion, terminate the services provided by LESSEE, should LESSEE breach its obligations to maintain the required coverage and limits set forth in this Lease. No coverage required hereunder shall be cancelled, non-renewed or materially reduced in coverage or limits without the DISTRICT being provided at least thirty (30) days prior written notice, other than cancellation for the non-payment of premiums, in which event the DISTRICT shall be provided ten (10) days prior written notice. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction of the stated requirements does not require notice beyond submission to the DISTRICT of an updated Verification of Insurance which shall be met by having the LESSEE's insurance broker or agent update, sign and return this Exhibit "C".

II. Workers' Compensation and Employer's Liability Insurance Coverage

A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:

Coverage A. Statutory Benefits Limits

Coverage B. Employer's Liability of not less than:

Bodily Injury by accident: \$1,000,000 each accident

Bodily Injury by disease: \$1,000,000 each employee

Bodily Injury by disease: \$1,000,000 policy limit

B. LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

C. If there is an onsite exposure of injury to LESSEE or any party acting on LESSEE's behalf under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage is required for such injuries or claims.

D. If LESSEE is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, LESSEE must return the completed Verification of Insurance confirming that LESSEE has no employees and is exempt from the State of California Workers' Compensation requirements.

E. If LESSEE is self-insured with respect to Workers' Compensation coverage, LESSEE shall provide to the DISTRICT a Certificate of Consent to Self-Insure from the California Department of Industrial Relations. Such self-insurance shall meet the minimum limit requirements and shall waive subrogation rights in favor of the DISTRICT as stated below in section "F."

F. Waiver of Subrogation. Workers' Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that LESSEE and each insurer waive any and all rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers. LESSEE shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in any way relating to LESSEE's failure to provide waiver of subrogation from the insurance carrier for claims arising out of Lessee's use, occupancy, or operations under this Lease.

Verification of Workers' Compensation and Employer's Liability Insurance Coverage

By checking the box and signing below, I hereby verify that the LESSEE is exempt from the State of California's requirement to carry workers' compensation insurance.

As the LESSEE's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries workers' compensation insurance as required by this Lease, including the relevant provisions applicable to all required insurance.

Self-Insured Retention: Amount: \$ _____

Policy Limit: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

III. Commercial General Liability Insurance (“CGL”) Coverage

- A. LESSEE’s insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.
- C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:
- | | |
|------------------------------------|--|
| Bodily Injury and Property Damage | \$2,000,000 per occurrence & aggregate |
| Personal Injury/Advertising Injury | \$2,000,000 per occurrence & aggregate |
| Products/Completed Operations | \$2,000,000 per occurrence & aggregate |
- D. Coverage must be on an occurrence basis.
- E. Coverage for Products, and Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any “prior work” coverage limitation or exclusion applicable to any Services performed by LESSEE and/or independent contractor and/or any party acting on LESSEE’s behalf under this Lease.
- F. Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all leased Premises and operations in any way related to this Lease.
- G. There will be no exclusion for explosions, collapse, or underground liability (XCU).
- H. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by LESSEE or on LESSEE’s behalf.
- I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by LESSEE under this Lease as an “insured contract.”
- J. Waiver of Subrogation. The policy shall be endorsed to include a Waiver of Subrogation ensuring that the LESSEE and its insurer(s) waive any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, agents, volunteers, and employees. LESSEE shall defend and pay any and all damages, fees, and costs, of any kind, arising out of, pertaining to, or in any way resulting from LESSEE’s failure to provide the waiver of subrogation from its insurance carrier(s) for claims arising out of LESSEE’s use, occupancy, or operations under this Lease.
- K. “Independent Contractor’s Liability.” LESSEE shall maintain, or ensure that its independent contractors maintain, appropriate insurance coverage and limits for liability and/or damages arising out of, pertaining to, or in any way resulting from Services provided under this Lease.

To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying, excess and umbrella policies that shall be evidenced in each case by an endorsement. The Additional Insureds must be covered for liability arising in whole, or in part, from any leased Premises, Products, Ongoing Operations, and Completed Operations by or on behalf of LESSEE, in any way related to Services performed under this Lease.

- L. A severability of interest provision must apply for all the Additional Insureds, ensuring that LESSEE’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies’ limit(s).

Verification of Commercial General Liability (CGL) Insurance Coverage

As the LESSEE’S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Commercial General Liability insurance, as required by this Lease, including the relevant

provisions applicable to all required insurance:

Self-Insured: Amount: \$ _____

Policy Limit: Per Occurrence: \$ _____ **Aggregate: \$** _____

Policy Number: _____

Policy Period: from: _____ **to:** _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

IV. Business Auto Liability Insurance Coverage

LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

A. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.

B. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:

Each Occurrence Limit (per accident) and in the Aggregate:	\$2,000,000
Bodily Injury and Property Damage:	\$2,000,000

C. Coverage must include either "owned, non-owned, and hired" autos or "any" automobile

This provision ensures the policy covers losses arising out of use of company-owned vehicles ("owned autos"), employee's personal autos ("non-owned autos" meaning not owned by company/insured) or autos that are rented or leased ("hired autos").

D. If LESSEE is transporting hazardous materials or contaminants, evidence of the Motor Carrier Act Endorsement-hazardous materials clean-up (MCS-90, or its equivalent) must be provided.

E. If LESSEE's Scope of Services under this Lease exposes a potential pollution liability risk related to transport of potential pollutants, seepage, release, escape or discharge of any nature (threatened or actual) of pollutants into the environment arising out of, pertaining to, or in any way related to LESSEE's or any party acting on behalf of LESSEE's performance under this Lease, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the LESSEE's Pollution Liability Policies if such policy has no exclusions that would restrict coverage under this Lease. Coverage shall also include leakage of fuel or other "pollutants" needed for the normal functioning of covered autos.

F. To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying and excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of LESSEE, in any way related to Services performed under this Lease.

G. A severability of interest provision must apply for all the Additional Insureds, ensuring that LESSEE's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

Verification of Business Auto Liability Insurance Coverage

As the LESSEE'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Business Automobile Liability insurance, as required by this Lease, including the relevant provisions applicable to all required insurance:

Self-Insured: Amount: \$ _____

Policy Limit: Per Accident/Occurrence \$ _____ Aggregate: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____

V. Pollution Liability Insurance Coverage

- A. LESSEE's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Lease are the minimum coverage and limits required of LESSEE. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the LESSEE.

C. Minimum Requirements: Pollution Liability Insurance with minimum limits, as follows:

Each Claim or Occurrence Limit:	\$2,000,000;
Aggregate Limit:	\$2,000,000.

- D. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants, arising out of, pertaining to, or in any way resulting from any Services performed by LESSEE under this Lease; including any transportation of hazardous wastes, hazardous materials, or contaminants.

E. If Coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Lease or the beginning of the Services.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Lease, LESSEE must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.

F. Insurance shall include prior acts coverage sufficient to cover the services under this Lease.

Verification of Pollution Liability Insurance Coverage

As the LESSEE'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the LESSEE carries Pollution Liability insurance, as required by this Lease, including the relevant provisions applicable to all required insurance.

Self-Insured: Amount: \$ _____

Policy Limit: Per Claim \$ _____ Aggregate: \$ _____

Policy Number: _____

Policy Period: from: _____ to: _____

Insurance Carrier Name: _____

Insurance Broker or Agent: Print Name: _____

Insurance Broker or Agent's Signature: _____



**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, 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

AGENDA ITEM NO. 5.

**AGENDA STATEMENT
FINANCE COMMITTEE MEETING
MEETING DATE: November 17, 2023**

TO: Finance Committee
East Bay Regional Communications System Authority (EBRCSA)

FROM: Tom McCarthy, Executive Director
East Bay Regional Communications System Authority

SUBJECT: Approval of Draft 2024 EBRCSA Meeting Schedule

RECOMMENDATIONS:

Approve the Draft 2024 EBRCSA Meeting Schedule.

SUMMARY/DISCUSSION:

The Finance Committee will review the Draft 2024 meeting schedule for the Board of Directors, Finance Committee, Operations Committee, and Technical Advisory Committee Meetings.

RECOMMENDED ACTION:

Recommend that the Board of Directors approve the Draft 2024 EBRCSA Meeting Schedule.

Attachment – Draft 2024 EBRCSA Meeting Schedule



East Bay Regional Communications System Authority



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2024 EBRCSA BOARD AND COMMITTEE MEETING SCHEDULE

REGULAR MEETINGS

Board of Directors

March 1	10:00-12:00	Assembly Room, Alameda County OES
May 3	10:00-12:00	Assembly Room, Alameda County OES
September 13	10:00-12:00	Assembly Room, Alameda County OES
December 6	10:00-12:00	Assembly Room, Alameda County OES

Committees:

February 16

Operations Committee 10:00-11:00 Room 1013

Finance Committee 11:00-12:00 Room 1013

April 19

Operations Committee 10:00-11:00 Room 1013

Finance Committee 11:00-12:00 Room 1013

August 30

Operations Committee 10:00-11:00 Room 1013

Finance Committee 11:00-12:00 Room 1013

November 22

Operations Committee 10:00-11:00 Room 1013

Finance Committee 11:00-12:00 Room 1013

TAC Meetings: First Thursday of the Month 09:30-11:00 in Room 1013 (if available) or 40% side

February 1

March 7

April 4

May 2

June 6

July 11

August 1

September 5

October 3

November 7

December 5



**East Bay Regional
Communications
System Authority**



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AGENDA ITEM NO. 6.

**AGENDA STATEMENT
FINANCE COMMITTEE MEETING
MEETING DATE: November 17, 2023**

TO: Finance Committee
East Bay Regional Communications System Authority (EBRCSA)

FROM: Tom McCarthy, Executive Director
East Bay Regional Communications System Authority

SUBJECT: Discussion of Annual Election of a Board Chair and Vice Chair as Required by the JPA Agreement and Bylaws

RECOMMENDATIONS:

Recommend to the Board of Directors the Annual Election of a Board Chair and Vice Chair, as required by the JPA Agreement and Bylaws, be held at the December 1, 2023, Board of Directors meeting.

SUMMARY/DISCUSSION:

The JPA Agreement and Bylaws for the Authority state that the Board Presiding officers shall be a Chair and Vice-Chair, elected annually from among its membership, to preside at meetings. In the absence of the Chair, the Board shall be presided over by the Vice-Chair. The positions of Chair and Vice-Chair will be filled by a representative from each County. If the Chair is from Alameda County, the Vice-Chair will be from Contra Costa County. If the Chair is from Contra Costa County, the Vice-Chair will be from Alameda County.

The Board of Directors will receive nominations from sitting members of the Board to fill the positions of Chair and Vice-Chair. The Board will vote on the nominations for Chair and Vice-

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Chair following Roberts's Rules of Order. The newly elected Chair and Vice Chair will assume their positions at the conclusion of the meeting and will continue in the positions for one year.

RECOMMENDED ACTION:

It is recommended that the Committee recommend to the Board of Directors to hold the election of Board Chair and Vice Chair as required by the JPA Agreement and Bylaws, at the December 1, 2023 Board of Directors meeting.