



## **East Bay Regional Communications System Authority**



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

### **BOARD OF DIRECTORS MEETING**

#### **NOTICE OF REGULAR MEETING**

**DATE: February 23, 2018**

**TIME: 10:00 a.m.**

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

### **AGENDA**

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1. **Closed Session:** (None) **Time:** N/A
  2. **Call to Order/Roll Call:** (Regular Session) **Time:** 10:00 a.m.
  3. **Report on Closed Session:** None
  4. **Public Comments (Meeting Open to the Public):**  
At this time, the public is permitted to address the Board on items within the Board's subject matter jurisdiction that do not appear on the agenda. Please step to the podium and clearly state your name for the record. In accordance with State Law, no action or discussion may take place on any item not appearing on the posted agenda. If the item requires action, it will be referred to staff and/or placed on the next agenda. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of three (3) minutes. If you wish to comment on an item that is on the agenda, please wait until the item is read for consideration, and then make your way to the podium. Please limit comments to a maximum of three (3) minutes.
  5. **Presentations:** None
  6. **Approval of Minutes**
    - 6.1 Approval of Minutes from the Board Meeting of December 1, 2017
  7. **Written Communications:** None
  8. **Public Hearings:** None
  9. **Action Items:**
    - 9.1 Consider recommendation to increase the monthly cost of EBRCSA subscriber units to ensure adequate funding for necessary future upgrade to Time Division Multiple Access (TDMA).

- 9.2 Consider Lease Agreement with East Bay Municipal Utility District for the lease of the Carter (Alta Mesa), Pearl, and Skyline Sites.
- 9.3 Consider entering into a contract with CSI Communications for engineering assistance and project review. We currently use the contract Contra Costa County has with CSI Communications.
- 9.4 Consider adoption of a resolution for a budget change to the 2017 – 2018 EBRCSA Budget
- 9.5 Consider a Master Contract with Motorola Solutions, Inc. and EBRCSA for member agencies to purchase Subscriber Units.

10. **Committee Updates:**

- 10.1 Receive Informational Report on Recent Finance Committee Activities.
- 10.2 Receive Informational Report on Recent Operations Committee Activities.

11. **Reports:**

- 11.1 East Bay Regional Communications System Authority (EBRCSA) transition to Phase II, from Frequency Division Multiple Access (FDMA) to Time Division Multiple Access (TDMA) initial Project Schedule.
- 11.2 Update on Alameda County agreeing to assist with RFP for the Multi-Year Plan for system equipment replacement and upgrade.
- 11.3 Provide an update concerning system upgrade to system 7.17, which is part of the SUA II through Motorola.

12. **Board Comments:**

13. **Next Action Steps:**

14. **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*

Tom McCarthy  
Executive Director  
Dated: February 19, 2018



**East Bay Regional  
Communications  
System Authority**



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**AGENDA ITEM NO. 6.1**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: February 23, 2018**

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

**FROM:** Sheriff G. Ahern, Board Chair  
East Bay Regional Communications System Authority

**SUBJECT:** Approval of Minutes of the December 1, 2017 Board of Directors Meeting

**RECOMMENDATIONS:**

Approve the minutes of the December 1, 2017 Board of Directors Meeting.

**SUMMARY/DISCUSSION:**

The Board of Directors will consider approval of the minutes of the December 1, 2017 Board of Directors Meeting.

**RECOMMENDED ACTION:**

It is recommended that the Board of Directors approve the minutes of the December 1, 2017 Board of Directors Meeting.



## **East Bay Regional Communications System Authority**



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### **BOARD OF DIRECTORS MEETING**

#### **REGULAR MEETING**

**DATE: December 1, 2017**

**TIME:** 10:00 a.m.

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

#### **MINUTES**

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**1. Call to Order/Roll Call: (Regular Session) **Time:** 10:06 a.m.**

G. Ahern, J. Calabrigo, M. Casten (Alternate), J. Diaz, T. Dupuis (Alternate), R. McBain, M. McQuiston, P. Morris, P. Mulligan, C. Nice (Alternate), S. Perkins, M. Roberts, K. Stepper (Alternate), D. White, M. Williams

**Staff Members Present:**

T. McCarthy, A. Tyrvanen, C. Soto

**Public Present:**

G. Poole, Motorola

**2. Announcement of  
Closed Session Topics/Adjournment to Closed Session:**

Conference with Real Property Negotiators

Property #1: Pearl Site, a portion of Lot 122, as shown on the Map of the San Pablo Rancho filed March 1, 1894 in the office the County Recorder of Contra Costa County.

Property #2: EBMUD Carter Reservoir on Alta Mesa Drive, Moraga, Lot CC-659

Agency negotiator(s): Tom McCarthy Executive Director

Negotiating parties: East Bay Municipal Utilities District

Under negotiation: Price and terms of payment.

**3. Report Out of Closed Session: No report out of Closed Session.**

4. **Public Comments:** None.

5. **Presentations:** None.

6. **Approval of Minutes**

**6.1 Approval of Minutes from the Board Meeting of October 27, 2017**

Bm. Perkins asked that references to the Board meeting of December 1, 2017, be corrected. They read “December 2, 2017” in the minutes, they should read “December 1, 2017”.

On motion of Bm. Stepper, seconded Bm. Perkins by and by unanimous vote, the Board approved the minutes of the October 27, 2017 Board Meeting, as amended.

7. **Written Communications:** None.

8. **Public Hearings:** None.

9. **Action Items:**

**9.1 Consider adoption of a Resolution Approving Change Order #27 with Motorola Systems, Inc., transition to Phase II, from Frequency Division Multiple Access (FDMA) to Time Division Multiple Access (TDMA)**

Director McCarthy presented the Staff Report and advised that Time Division Multiple Access (TDMA) would double capacity on the System. It would also keep the System on the same platform, TDMA, as surrounding counties. Member agency radios might need to be upgraded. The Authority had been taking inventory and would provide member agencies with a list of radios, and upgrades, if needed. The Director had been meeting with member agencies to inform them of the needed transition to TDMA. The cost was \$7.9 million, with options from Motorola of five- or seven-year financing.

Bm. Calabrigo stated although there was not a quorum at the Finance Committee meeting, there was a consensus by those members present that of the two leasing options, the five-year leasing option was preferred.

Bm. Roberts asked when the Authority would provide member agencies radio inventory lists, and when would they need to have the new radios.

Director McCarthy stated if the agencies had not received their lists yet, they would get them next week. The TDMA transition would be phased in between 18 months to 3 years, with radios needed in 2-1/2 years, at the latest.

On motion of Bm. Morris, seconded by Bm. Roberts and by unanimous vote, the Board of Directors adopted Resolution No. 17-10 Authorizing the Chair to Execute and the Executive Director to Implement a Contract Change Order with Motorola Solutions, Inc. to Transition the EBRCSA System from Frequency Division Multiple Access to Time Division Multiple Access.

## **9.2 Consider Recommendation to Increase the Monthly Cost of EBRCSA to Ensure Adequate Reserve for Necessary Future Upgrades**

Director McCarthy presented the Staff Report and advised there needed to be a 2/3 member vote for this item to pass, but because there were not enough members present today, they would only provide this as an informational item. He would discuss this further with Authority Counsel, Robin Donoghue.

Director McCarthy stated this item involved three parts: TDMA upgrade, upgrade of microwaves to ethernet, and replacement of batteries, and associated costs. The Finance Committee had discussed this item and by consensus of those members present, they recommended an increase in radio fees of \$8 per radio per month starting July 1, 2018, then an increase of \$3 per radio per month for each of the following four fiscal years.

Bm. Calabrigo stated there was a need to do a more comprehensive capital replacement plan for the entire System. The spreadsheet presented in the Staff Report illustrated a way to stagger the replacements and costs. There needed to be an \$8 per radio increase now, and the other increases would cover future capital replacement costs. It was necessary to give the member agencies an idea of future rates for long-term budget planning purposes.

On motion of Bm. Perkins, seconded by Bm. Stepper and by unanimous vote, the Board of Directors adopted Resolution No. 17-11 Approving Increased Radio Charges for the EBRCSA System Over a Five-Year Period and Authorizing the Chair and the Executive Director to Take All Actions Necessary and Appropriate To Implement Such Increases.

## **9.3 Adopt 2018 EBRCSA Calendar Committee and Board Meetings**

The Board agreed to have Director McCarthy review attendance of Committee members and ask for replacement of those that did not attend Committee meetings.

On motion of Bm. Nice, seconded by Bm. Casten and by unanimous vote, the Board adopted the 2018 EBRCSA Calendar for Committee and Board Meetings.

## **9.4 Annual Election of Board Chair and Vice Chair as required by the JPA Agreement and Bylaws**

Bm. Nice nominated Bm. Casten for the office of Vice Chair.

Bm. McQuiston nominated Bm. Ahern for the office of Chair.

On motion of Bm. McQuiston, seconded by Bm. Mulligan and by unanimous vote, the Board approved Bm. Ahern as the Chair of the Board, and Bm. Casten as Vice Chair of the Board for one year.

**10. Committee Updates:**

**10.1 Receive Informational Report on Recent Finance Committee Activities**

No update given.

**10.2 Receive Informational Report on Recent Operations Committee Activities**

They had been briefed by Director McCarthy regarding TDMA and System upgrades needed.

**11. Reports:**

**11.1 Update on Benicia**

Director McCarthy stated Benicia was now on the System and it was working well.

**11.2 Update on East Bay Regional Parks Department**

East Bay Regional Parks District has now migrated to the System as its main radio system.

**12. Board Comments: No comments.**

**13. Next Action Steps: Director McCarthy stated a lease agreement with East Bay Municipal Utility District would be one action item; and further research would be done on the vote needed for adoption of the rate increase.**

**14. Adjournment: With no further business before the Board, the meeting was adjourned at 10:54 a.m.**





**East Bay Regional  
Communications  
System Authority**



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**AGENDA ITEM NO. 9.1**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: February 23, 2018**

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

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

**SUBJECT:** Request recommendation to increase the monthly cost of East Bay Regional Communications System Authority (EBRCSA) subscriber units to ensure adequate funding for necessary future upgrade to Time Division Multiple Access (TDMA).

**RECOMMENDATIONS:**

Discuss and adopt a Resolution adopting the the recommendation of the Finance Committee concerning a rate increase, and discuss whether the Authority will utilize Capitol Reserve available to supplement the subscriber cost of the transition to Phase II Time Division Multiple Access (TDMA).

**SUMMARY/DISCUSSION:**

On December 1, 2017, the Board of Directors discussed a rate increase for each subscriber on the EBRCSA system. Unfortunately, there was not a quorum at the Board of Directors meeting, as a a quorum of 2/3rds affirmative votes was needed, which is 16 voting members. The item was brought back to the Finance Committee on February 2, 2018, for discussion and recommendation.

The Staff report from the December 1, 2017 Board of Directors Meeting is included as an attachment to this Staff Report.

The Finance Committee members recommended a rate increase for the 2018/2019 Fiscal year be \$3.00 per radio, beginning July 1, 2018. The increase for 2019/2020 Fiscal year will be an increase of \$2.00 per radio beginning July 1, 2019. The Finance Committee recommended using \$1,125,000, from the Capital Reserve, towards the Fiscal Year (FY) 2018/2019, and again in the FY 2019/2020, the cost of the TDMA upgrade. Based on an estimate of 17,500 subscriber radios, they agreed to recommend a rate increase of \$3 per radio per month for the first fiscal year starting July 1, 2018, and an additional \$2 increase per radio, per month, for the following fiscal year FY 2019/2020.

**FISCAL IMPACT:**

The recommendation made by the Finance Committee will change our anticipated revenue for the next two fiscal years. A spread sheet with the changes to the anticipated revenues based on the decision of the Committee is attached to this Staff Report.

**RECOMMENDED ACTION:**

It is recommended that the Board of Directors of the East Bay Regional Communications System Authority adopt a Resolution approving the following changes be implemented on July 1, 2018: (1) that the subscriber fee for the FY 2018/2019 increase by \$3.00 per unit per month and (2) the subscriber fee for the FY 2019/2020 increase by \$2.00 per unit per month. In addition, for FY 2018/2019 and FY 2019/2020, use \$1,125,000 from the Capital Reserve toward the payment of the TDMA upgrade, and authorize the Chair and the Executive Director to take such further action as may be necessary to implement the recommendation.

Attachments:

“A” – 10 Year Cash Flow Projection FY 2016 through FY 2027

“B” – 10 Year Cash Flow Projection FY 2017 through FY 2028 (Includes Increase)

“C” – Original Cost Analyses

**EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**  
**10 YEAR CASH FLOW PROJECTION**

	FY 2016-17 Projected	FY 2017-18 Budget	FY 2018-19 Forecast	FY 2019-20 Forecast	FY 2020-21 Forecast	FY 2021-22 Forecast	FY 2022-23 Forecast	FY 2023-24 Forecast	FY 2024-25 Forecast	FY 2025-26 Forecast	FY 2026-27 Forecast
<b>Operating Reserve</b>											
Balance - beginning	1,687,000	1,674,500	1,785,500	1,866,787	1,911,922	1,958,415	2,006,304	2,055,628	2,106,426	2,169,619	2,234,707
Operating payments	5,000,000	5,000,000	5,032,585	5,042,853	5,053,140	5,063,449	5,073,778	5,084,128	5,094,498	5,104,889	5,115,301
Initial payments	800,000	-	6,831	6,845	6,859	6,872	6,886	6,900	6,914	6,927	6,941
Interest	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Administration	(225,000)	(279,000)	(287,370)	(295,991)	(304,871)	(314,017)	(323,437)	(333,141)	(343,135)	(353,429)	(364,032)
Audit fees	(18,000)	(20,000)	(20,600)	(21,218)	(21,855)	(23,185)	(23,881)	(24,597)	(25,335)	(26,095)	(26,881)
Insurance	(20,000)	(30,000)	(30,900)	(31,827)	(32,782)	(33,765)	(34,778)	(35,822)	(36,896)	(38,003)	(39,143)
Legal	(6,000)	(20,000)	(20,600)	(21,218)	(21,855)	(22,510)	(23,185)	(23,881)	(24,597)	(25,335)	(26,095)
Lease	-	(5,000)	(5,150)	(5,305)	(5,464)	(5,628)	(5,796)	(5,970)	(6,149)	(6,334)	(6,524)
Licenses and permits	(5,000)	(30,000)	(30,900)	(31,827)	(32,782)	(33,765)	(34,778)	(35,822)	(36,896)	(38,003)	(39,143)
Membership fees	(10,000)	(10,000)	(10,300)	(10,609)	(10,927)	(11,255)	(11,593)	(11,941)	(12,299)	(12,668)	(13,048)
Landscaping	(10,000)	(10,000)	(10,300)	(10,609)	(10,927)	(11,255)	(11,593)	(11,941)	(12,299)	(12,668)	(13,048)
Maintenance											
Customer svc. agmt.	(930,000)	(931,000)	(958,930)	(987,698)	(1,017,329)	(1,047,849)	(1,079,284)	(1,111,663)	(1,145,013)	(1,179,363)	(1,214,744)
SUA II	(826,000)	(832,000)	(912,404)	(918,040)	(923,851)	(929,839)	(936,003)	(942,343)	(970,613)	(999,732)	(1,029,724)
System management	(250,000)	(250,000)	(257,500)	(265,225)	(273,182)	(281,377)	(289,819)	(298,513)	(307,468)	(316,693)	(326,193)
HVAC	(10,000)	(15,000)	(15,450)	(15,914)	(16,391)	(16,883)	(17,389)	(17,911)	(18,448)	(19,002)	(19,572)
Generators	(55,000)	(55,000)	(56,650)	(58,350)	(60,100)	(61,903)	(63,760)	(65,673)	(67,643)	(69,672)	(71,763)
ALCO maintenance	(600,000)	(600,000)	(618,000)	(636,540)	(655,636)	(675,305)	(695,564)	(716,431)	(737,924)	(760,062)	(782,864)
COCO maintenance	(140,000)	(220,000)	(226,600)	(233,398)	(240,400)	(247,612)	(255,040)	(262,692)	(270,572)	(278,689)	(287,050)
Microwave maintenance	(110,000)	(110,000)	(113,300)	(116,699)	(120,200)	(123,806)	(127,520)	(131,346)	(135,286)	(139,345)	(143,525)
Security	(10,000)	(10,000)	(10,300)	(10,609)	(10,927)	(11,255)	(11,593)	(11,941)	(12,299)	(12,668)	(13,048)
Utilities	(120,000)	(140,000)	(144,200)	(148,526)	(152,982)	(157,571)	(162,298)	(167,167)	(172,182)	(177,348)	(182,668)
Web site hosting	(4,000)	(4,000)	(4,120)	(4,244)	(4,371)	(4,502)	(4,637)	(4,776)	(4,919)	(5,067)	(5,219)
Transfer to Capital Reserve	(2,483,500)	(1,338,000)	(1,244,555)	(1,200,717)	(1,116,676)	(1,029,824)	(940,086)	(847,377)	(718,981)	(597,313)	(471,704)
<b>Balance - ending</b>	<b>1,674,500</b>	<b>1,785,500</b>	<b>1,866,787</b>	<b>1,911,922</b>	<b>1,958,415</b>	<b>2,006,304</b>	<b>2,055,628</b>	<b>2,106,426</b>	<b>2,169,619</b>	<b>2,234,707</b>	<b>2,301,748</b>

**Debt Service Reserve**

Balance - beginning	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Service payment	1,200,000	1,200,000	1,214,115	1,216,813	1,219,516	1,222,225	1,224,939	1,227,659	1,230,383	1,233,114	1,235,850
Principal	(370,000)	(437,000)	(454,000)	(473,000)	(492,000)	(512,000)	(532,000)	(553,000)	(576,000)	(600,000)	(623,000)
Bond interest	(280,000)	(213,000)	(196,000)	(177,000)	(158,000)	(138,000)	(118,000)	(97,000)	(74,000)	(50,000)	(27,000)
Transfer to Capital Reserve	(550,000)	(500,000)	(564,115)	(586,814)	(569,516)	(572,225)	(574,939)	(577,659)	(580,383)	(583,114)	(585,849)
<b>Balance - ending</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>

**Capital Reserve**

Balance - beginning	2,246,914	5,440,414	7,238,414	7,797,084	8,314,615	8,750,807	9,102,856	9,367,881	9,542,917	9,592,281	9,522,708
Grants	360,000	630,000	-	-	-	-	-	-	-	-	-
Transfer in	3,033,500	1,888,000	1,808,670	1,767,531	1,686,192	1,602,049	1,515,025	1,425,036	1,299,364	1,180,427	1,057,553
Capital	(200,000)	(720,000)	(1,250,000)	(1,250,000)	(1,250,000)	(1,250,000)	(1,250,000)	(1,250,000)	(1,250,000)	(1,250,000)	(1,250,000)
<b>Balance - ending</b>	<b>5,440,414</b>	<b>7,238,414</b>	<b>7,797,084</b>	<b>8,314,615</b>	<b>8,750,807</b>	<b>9,102,856</b>	<b>9,367,881</b>	<b>9,542,917</b>	<b>9,592,281</b>	<b>9,522,708</b>	<b>9,330,261</b>

**TOTAL RESERVE BALANCE**

<b>Balance - beginning</b>	<b>8,114,914</b>	<b>10,023,914</b>	<b>10,663,872</b>	<b>11,226,537</b>	<b>11,709,222</b>	<b>12,109,160</b>	<b>12,423,509</b>	<b>12,649,343</b>	<b>12,761,900</b>	<b>12,757,415</b>	<b>12,632,010</b>
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**EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**  
**10 YEAR CASH FLOW PROJECTION**

	<b>FY 2017-18 Budget</b>	<b>FY 2018-19 Forecast</b>	<b>FY 2019-20 Forecast</b>	<b>FY 2020-21 Forecast</b>	<b>FY 2021-22 Forecast</b>	<b>FY 2022-23 Forecast</b>	<b>FY 2023-24 Forecast</b>	<b>FY 2024-25 Forecast</b>	<b>FY 2025-26 Forecast</b>	<b>FY 2026-27 Forecast</b>	<b>FY 2027-28 Forecast</b>
<b>Operating Reserve</b>											
Balance - beginning	1,674,500	1,989,962	1,982,748	2,083,002	2,075,352	2,181,711	2,173,590	2,297,291	2,299,871	2,431,106	2,433,844
Operating payments	5,000,000	5,637,150	6,047,024	6,047,024	6,047,024	6,047,024	6,047,024	6,047,024	6,047,024	6,047,024	6,047,024
Initial payments	-	-	-	-	-	-	-	-	-	-	-
Interest	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Administration	(279,000)	(287,370)	(295,991)	(304,871)	(314,017)	(323,437)	(333,141)	(343,135)	(353,429)	(364,032)	(374,953)
Audit fees	(20,000)	(20,600)	(21,218)	(21,855)	(22,510)	(23,185)	(23,881)	(24,597)	(25,335)	(26,095)	(26,878)
Insurance	(30,000)	(30,900)	(31,827)	(32,782)	(33,765)	(34,778)	(35,822)	(36,896)	(38,003)	(39,143)	(40,317)
Legal	(20,000)	(20,600)	(21,218)	(21,855)	(22,510)	(23,185)	(23,881)	(24,597)	(25,335)	(26,095)	(26,878)
Lease	(95,000)	(51,500)	53,045	(54,636)	56,275	(57,964)	59,703	(61,494)	63,339	(65,239)	67,196
Licenses and permits	(30,000)	(30,900)	(31,827)	(32,782)	(33,765)	(34,778)	(35,822)	(36,896)	(38,003)	(39,143)	(40,317)
Membership fees	(10,000)	(10,300)	(10,609)	(10,927)	(11,255)	(11,593)	(11,941)	(12,299)	(12,668)	(13,048)	(13,439)
Landscaping	(10,000)	(10,300)	(10,609)	(10,927)	(11,255)	(11,593)	(11,941)	(12,299)	(12,668)	(13,048)	(13,439)
Maintenance	(3,213,000)	(3,358,834)	(3,431,863)	(3,507,089)	(3,584,574)	(3,664,380)	(3,746,571)	(3,852,968)	(3,962,557)	(4,075,434)	(4,191,697)
Security	(10,000)	(10,300)	(10,609)	(10,927)	(11,255)	(11,593)	(11,941)	(12,299)	(12,668)	(13,048)	(13,439)
Utilities	(140,000)	(144,200)	(148,526)	(152,982)	(157,571)	(162,298)	(167,167)	(172,182)	(177,348)	(182,668)	(188,148)
Web site hosting	(4,000)	(4,120)	(4,244)	(4,371)	(4,502)	(4,637)	(4,776)	(4,919)	(5,067)	(5,219)	(5,376)
Transfer to Capital Reserve	(843,538)	(1,684,439)	(2,001,274)	(1,908,670)	(1,809,960)	(1,711,723)	(1,596,143)	(1,469,861)	(1,336,046)	(1,202,074)	(1,060,110)
<b>Balance - ending</b>	<b>1,989,962</b>	<b>1,982,748</b>	<b>2,083,002</b>	<b>2,075,352</b>	<b>2,181,711</b>	<b>2,173,590</b>	<b>2,297,291</b>	<b>2,299,871</b>	<b>2,431,106</b>	<b>2,433,844</b>	<b>2,573,071</b>
<b>Debt Service Reserve</b>											
Balance - beginning	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Service payment	1,200,000	1,211,423	1,211,423	1,211,423	1,211,423	1,211,423	1,211,423	1,211,423	1,211,423	1,211,423	1,211,423
Principal	(437,000)	(454,000)	(473,000)	(492,000)	(512,000)	(532,000)	(553,000)	(576,000)	(600,000)	(623,000)	(623,000)
Bond interest	(213,000)	(196,000)	(177,000)	(158,000)	(138,000)	(118,000)	(97,000)	(74,000)	(50,000)	(27,000)	(27,000)
Transfer to Capital Reserve	(550,000)	(561,423)	(561,423)	(561,423)	(561,423)	(561,423)	(561,423)	(561,423)	(561,423)	(561,423)	(561,423)
<b>Balance - ending</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>
<b>Capital Reserve</b>											
Balance - beginning	5,440,414	6,743,952	7,039,814	7,652,512	8,172,604	8,593,987	8,917,133	10,824,699	12,605,983	14,253,453	15,766,950
Grants	630,000	-	-	-	-	-	-	-	-	-	-
Transfer In	1,393,538	2,245,862	2,562,697	2,470,093	2,371,383	2,273,146	2,157,566	2,031,284	1,897,469	1,763,497	1,621,533
Capital	(720,000)	(1,950,000)	(1,950,000)	(1,950,000)	(1,950,000)	(1,950,000)	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)
<b>Balance - ending</b>	<b>6,743,952</b>	<b>7,039,814</b>	<b>7,652,512</b>	<b>8,172,604</b>	<b>8,593,987</b>	<b>8,917,133</b>	<b>10,824,699</b>	<b>12,605,983</b>	<b>14,253,453</b>	<b>15,766,950</b>	<b>17,138,482</b>
<b>TOTAL RESERVE BALANCE</b>	<b>9,733,914</b>	<b>10,022,562</b>	<b>10,735,513</b>	<b>11,247,957</b>	<b>11,775,698</b>	<b>12,090,723</b>	<b>14,121,990</b>	<b>15,905,855</b>	<b>17,684,559</b>	<b>19,200,793</b>	<b>20,711,553</b>

\*RATE INCREASE - \$3.00 PER RADIO PER MONTH OPERATING PAYMENT INCREASE FOR FY18-19 AND AN ADDITIONAL \$2.00 INCREASE BEGINNING IN FY19-20

\*\*CAPITAL - \$1.7M FOR THE TDMA INCREASE FOR FISCAL YEARS 2019-2023 AND \$250K EVERY YEAR FOR DC POWER UPGRADES

**EBRCSA FINANCING OPTIONS (assume 17,500 Units)**

<b>Phase II TDMA Upgrade</b>											
	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>
<b>Principal</b>											
<b>TDMA (5 Yrs)</b>	1,664,879	1,664,879	1,664,879	1,664,879	1,664,879				8,324,395		
mo. per unit	7.93	7.93	7.93	7.93	7.93						
<b>TDMA (7 Yrs)</b>	1,213,616	1,213,616	1,213,616	1,213,616	1,213,616	1,213,616	1,213,616		8,495,312	170,917	difference
mo. per unit	5.78	5.78	5.78	5.78	5.78	5.78	5.78				
<b>Phase II TDMA Upgrade + Microwave Upgrade + DC Power (Battery Replacement) + Ongoing Cap Replacement</b>											
	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>
<b>Principal</b>											
<b>TDMA</b>	1,664,879	1,664,879	1,664,879	1,664,879	1,664,879						
mo. per unit	7.93	7.93	7.93	7.93	7.93						
<b>MW Upgrade</b>			1,812,400	1,812,400	1,812,400	1,812,400	1,812,400				
mo. per unit			8.63	8.63	8.63	8.63	8.63				
<b>DC Power/</b>	250,000	250,000	250,000	250,000	250,000	250,000	250,000	250,000	250,000	250,000	250,000
<b>Battery</b>	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19	1.19
<b>Ongoing Cap</b>						2,000,000	2,000,000	4,000,000	4,000,000	4,000,000	4,000,000
<b>Replacement</b>						9.52	9.52	19.05	19.05	19.05	19.05
<b>Additional Per Unit</b>	<b>9.12</b>	<b>9.12</b>	<b>17.75</b>	<b>17.75</b>	<b>17.75</b>	<b>19.34</b>	<b>19.34</b>	<b>20.24</b>	<b>20.24</b>	<b>20.24</b>	<b>20.24</b>
<b>Overall Rate</b>	<b>34.12</b>	<b>34.12</b>	<b>42.75</b>	<b>42.75</b>	<b>42.75</b>	<b>44.34</b>	<b>44.34</b>	<b>45.24</b>	<b>45.24</b>	<b>45.24</b>	<b>45.24</b>
<b>Assumed Rate</b>	<b>33.00</b>	<b>36.00</b>	<b>39.00</b>	<b>42.00</b>	<b>45.00</b>	<b>45.00</b>	<b>45.00</b>	<b>45.00</b>	<b>45.00</b>	<b>45.00</b>	<b>45.00</b>
Difference	-1.12	1.88	-3.75	-0.75	2.25	0.66	0.66	-0.24	-0.24	-0.24	-0.24
@ 17,500 units	-19,573	32,927	-65,607	-13,107	39,393	11,467	11,467	-4,167	-4,167	-4,167	-4,167





**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 9.2**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: December 1, 2017**

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

**FROM:** Sheriff G. Ahern, Board Chair  
East Bay Regional Communications System Authority

**SUBJECT:** Determine appropriate Rate Increases to the East Bay Regional Communication System Authority for Capital Improvements to the Master Site and Operating System.

**RECOMMENDATIONS:**

Adopt a Resolution to approve Rate Increases to the Operating Charge which is currently \$25.00 per month/per radio. Authorize the Chair to sign a resolution outlining the increases, related documents as may be necessary, and the Executive Director to implement the Resolution.

**SUMMARY/DISCUSSION:**

EBRCSA began providing service to subscribers in 2012 and has been adding additional subscribers and infrastructure to maintain the system, keep the technology current, and be prepared for the future whether it be growth or changing technology. EBRCSA has to make three changes to its capital infrastructure over the next 2 - 4 years. The first is the transition to Phase II TDMA and Dynamic Dual Mode Upgrade, the second is to upgrade the Microwave Backhaul Upgrade system to Ethernet, and the third replacement of the DC Power System Upgrade of the emergency power supply. The three upgrades are listed in the order of importance and necessity.

The cost of the TDMA is \$7,900,000, the cost of the Microwave/Ethernet upgrade is \$8,900,000 and the DC Power Upgrade is \$2,500,000. The costs provided all have conditions associated with when we agree to purchase the equipment and have it installed. The Microwave and DC Power Pricing is valid through March 2018. The TDMA pricing is valid through December 2017. The TDMA will be sole sourced as we do not have anyone who can perform this work as the engineering is proprietary and only Motorola can provide the equipment and services to tie it into our network. The Microwave must be competitively bid and the DC Power Upgrade should be done by the respective radio shop for each county. The work would be determined by the condition and age of the equipment. We do not want to replace the DC Power at every site at once and then have to do that again when the equipment reached its end of life. We prefer to establish a replacement schedule and include the cost in our annual maintenance budget.

The original cost per radio was set to maintain the system and as available we used various grants to expand the system. The upgrades which we are going to need to perform are not grant eligible and there is not enough available grant money to cover these expenses.

We have maintained the operating cost since the system began operation in 2012 and this will be the first time we have increased the cost.

The recommended increase for the first year is \$8.00 per radio/per month. The next four years would then increase \$3.00 per radio/per month. The cost increases are based on what we know will be the approximate cost of these three upgrades. The goal is to develop a plan which will provide a list of what needs replacement and when to that we can plan our increases and ensure that the system is properly maintained and the technology refreshed as necessary.

### **FISCAL IMPACT:**

The Finance Committee has prepared a spread sheet outlining the costs over several years (see attachment). We must ensure that we have adequate funding to complete the projects as necessary. The cost to build the original system was \$72,000,000 and we have spent several millions of dollars in upgrades and consoles over the years since the system was turned on. We want to continue to maintain and refresh the system rather than replace the system. The rate increase of \$8.00 per month will not begin until July 1, 2018.

### **COMMITTEE RECOMMENDATIONS:**

The Finance Committee has reviewed this project and made the recommendation of how much to increase the cost over the next five years. The Finance Committee did not have a quorum, however, we felt it was necessary to present this to the full Board of Directors.

### **RECOMMENDED ACTION:**

It is recommended that the Board of Directors of the East Bay Regional Communications System Authority approve the recommendation concerning increase to the rate per radio/per month and determine the increase based on information provided. If the Board concurs and agrees with the



rate increase authorize its Chair to execute the change and authorize its Executive Director to take such further action as may be necessary and appropriate to implement such rate increase.



**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 9.2**

**AGENDA STATEMENT  
BOARD OF DIRECTORS  
MEETING DATE: February 23, 2018**

**TO:** Board of Directors  
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:**

Adopt a resolution to enter into a non-revocable lease agreement between the East Bay Regional Communications System Authority (EBRCSA) and East Bay Municipal Utilities District (EBMUD) for East Bay Regional Communications System Authority equipment located at the EBMUD Reservoir sites at Pearl, and Carter (Alta Mesa), and Skyline.

**SUMMARY/DISCUSSION:**

The East Bay Regional Communications System Authority (EBRCSA) built the system utilizing existing towers and shelters, where they could, on the existing sites in Alameda and Contra Costa Counties. The sites which had existing equipment also had lease agreements between the originating agency and East Bay Municipal Utilities District (EBMUD). Pearl Reservoir, in San Pablo, was one of the sites with an existing agreement between Contra Costa County and EBMUD. Carter Reservoir, in Moraga, was a site where a one-year temporary agreement was granted. Skyline is built on a Federal Aviation Administration (FAA) tower in which the FAA has an existing lease agreement with EBMUD. Seneca, in Oakland, is not part of this lease agreement negotiations at this time. EBMUD has been reviewing the three sites and would like

to form a non-revocable lease for the three sites so that in the future, all three sites are on the same terms of the lease between EBRCSA and EBMUD.

A Lease agreement between EBMUD and EBRCSA has been completed and reviewed by EBRCSA's Attorney and EBMUD. A synopsis of the terms and conditions of the lease agreement are as follows, for more detail refer to the attached proposed Lease Agreement (Attachment "A").

The term of the lease of the premises begins January 1, 2017, and ends on December 31, 2023. The base rent starting with the Commencement Date, EBRCSA agrees to pay EBMUD, in advance, as Base Rent, the annual sum of fifteen thousand dollars (\$15,000.00) payable within the first 30 days of the start of each yearly anniversary of the Commencement Date. The first Base Rent shall consist of \$30,000.00 due January 1, 2018, which consists of retroactive Base Rent payment for 2017, and Rent payment for 2018. The Base Rent Adjustment payable hereunder shall be adjusted by 3% annually starting January 1, 2019, and every year thereafter. The annual adjustment will be calculated by increasing previous year's rent by 3%. The funding for this Agreement will require a budget change and an increase to the line item for funding which will be used to pay all leases of property used by EBRCSA.

### **FISCAL IMPACT**

EBRCSA has a line item in our budget for lease payments. However, it will be necessary to increase the amount of money to cover the EBMUD lease. EBRCSA will need to identify where the money will come from in existing funds and if approved by the Board, a budget change will be needed. EBRCSA has adequate funding to cover this increase and will not impact user fees in any way.

### **RECOMMENDED ACTION:**

It is recommended that the Board of Directors adopt a resolution approving the Lease Agreement with the East Bay Municipal Utilities District for the East Bay Regional Communications System Authority equipment located at Pearl, Carter (Alta Mesa) Reservoirs, and Skyline. It is requested that the Board authorize the Chair to execute the agreements and the Executive Director take necessary action to complete the agreements as described.

Attachments:

"A" - Pearl

"B" - Carter (Alta Mesa)

"C" - Skyline

## 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.”

### 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”), located at Pearl Reservoir, Monte Cresta Ave, Richmond, CA, delineated and described on **Exhibit A** consisting of the use of Lessor’s existing telecommunication tower along with appurtenances of 10,000 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 as shown, and being a portion of the real property described as Assessor’s Parcel Number 419-180-005-3 consisting of approximately 1.76 Acres as shown in **Exhibit B** (the “Property”) attached hereto and incorporated by reference.

#### 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 agreement as **Exhibit C**.

#### 3. TERM

The lease Term commences on January 1, 2017 (“Commencement Date”) and ends on December 31, 2023 (“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 fifteen thousand dollars (\$15,000) payable within the first 30 days of the start of each yearly anniversary of the Commencement Date. The first Base Rent payment shall consist of \$30,000 due January 1, 2018 which consists of retroactive Base Rent payment for 2017, and Rent payment for 2018.

- B. Base Rent Adjustment. The amount of Base Rent payable hereunder shall be adjusted by 3% annually starting January 1, 2019 and every year thereafter. The annual adjustment be calculated by increasing previous year's 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 agreement and by law.
- D. All Rent Payment to Lessor shall be sent to: P.O. Box 24055, Oakland, CA 94623, MS#903.

## 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, including 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 Agreement, 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 agreement 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 Agreement, 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 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.

## 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 attorney's fees, arising out of Lessee's operation or performance under this Agreement, including all costs, claims, and damages (including property and personal injury) arising out of any Hazardous Materials as defined in section 16.C within the Property to the extent caused and/or released by Lessee's construction, reconstruction, maintenance, operation, use or removal of its facilities.
- 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 Agreement, 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 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 in which the Premises are located; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively “hazardous substance laws”).

## 17. INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Lease, 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. Lessee shall submit Certificates of Insurance (attached as Exhibit “D”), utilizing Lessor provided forms, for Lessor’s review and acceptance.

Acceptance of the Certificates of Insurance by Lessor shall not relieve Lessee of any of the insurance requirements set forth herein, nor decrease liability of Lessee. Liability coverage provided by Lessee shall be primary and any insurance or self-insurance procured or maintained by Lessor shall not be required to contribute with it. Lessor reserves the right to require Lessee to provide confidential copies of actual insurance policies and endorsements for review by Lessor. The Lessor may provide copies of the confidential policies to Lessor’s legal counsel and/or Insurance Broker, as needed.

The Insurance Requirements under this Lease shall be the greater of (1) the minimum coverage and limits specified in this Lease; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. 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 here. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the Lessee under this Lease.

Lessee shall provide a written request for authorization and the Lessor will consider self-insurance in lieu of the insurance requirements listed below.

## Claims-Made Coverage

For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified in this Lease):

- (i) The retroactive date must be shown, and must be before the commencement of this Lease, and before the beginning of any Services related to this Lease.
- (ii) Insurance must be maintained and Certificates of Insurance must be provided to Lessor for at least three (3) years after expiration of this Lease.
- (iii) 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 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.
- (iv) If requested by Lessor, a copy of the policy's claims reporting requirement must be submitted to the Lessor for review.

Workers' Compensation Insurance: Lessee shall take out and maintain during the life of the Lease *Workers Compensation* insurance for all of its employees on the Property. In lieu of evidence of Workers Compensation insurance, Lessor will accept a Self-Insured Certificate issued from the State of California. Lessee shall require any agent and/or consultant to provide it with evidence of Workers Compensation Insurance coverage.

Lessee and its Workers' Compensation insurance must waive any rights of subrogation against Lessor and its directors, officers, officials, agents, volunteers, and employees, and Lessee shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

Commercial General, Automobile and Pollution Liability Insurance: Lessee shall take out and maintain during the life of the Lease *Commercial General and Automobile, and Pollution Liability* Insurance policies that provide protection from claims that may arise from operations or performance under this Lease. If Lessee elects to self-insure (self-fund) any liability exposure during the Lease period above \$50,000, Lessee is required to notify the Lessor immediately. Any request to self-insure must first be approved by the Lessor before the changed terms are accepted. Lessee shall require any agent and/or consultant to provide evidence of Automobile, Commercial General Liability Insurance Coverage, and Pollution Liability Insurance coverages for any work involving construction, excavation and/or the use or storage of any hazardous materials.

The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage – General Liability.  
\$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile Liability.  
\$2,000,000/Occurrence/Claims Made, Bodily Injury, Property Damage – Pollution Liability

The following coverages or endorsements must be included in the policy(ies):

- A. Lessor and its directors, officers, and employees are additional insureds in the policy(ies) as to the work being performed under this Lease;

- B. The coverage is primary and non-contributory to any other insurance carried by Lessor;
- C. The policy(ies) cover(s) contractual liability;
- D. The policy(ies) is (are) written on an occurrence basis, except for the pollution liability policy, which may be written on a claims made basis;
- E. The policy(ies) cover(s) Lessor's property in the Lessee's care, custody and control;
- F. The policy(ies) cover(s) personal injury (libel, slander, unlawful entry and eviction) liability;
- G. The policy covers explosion, collapse and underground hazards;
- H. The policy(ies) cover(s) products and completed operations;
- I. The policy to cover use of owned, non-owned, and hired automobiles;
- J. The policy shall cover pollution liability for claims related to the release or threatened release of pollutants into the environment arising out of or resulting from Lessee's performance under this Lease.
- K. Lessee and its Commercial General, Automobile and Pollution Liability Insurance must waive any rights of subrogation against Lessor and its directors, officers, officials, agents, volunteers, and employees, and Lessee shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).
- L. The policy(ies) shall maintain the minimum coverage, terms and conditions as referenced in this Section, and pursuant to any and all requirements outlined in this Agreement/Lease. Without waiving any of the requirements of the Lease, Lessee shall not make any reductions in scope or limits of coverage that may affect Lessor's protection without the Lessor's prior written consent.

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

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 Agreement, 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 Agreement 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 Agreement 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 Agreement or any part. Violation of this Section shall be deemed to be in material breach of this Lease.

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 CERTIFICATES  
(ATTACHED)



# CERTIFICATE OF COMMERCIAL GENERAL, and AUTO LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 11<sup>th</sup> Street  
 Mailing Address: P O Box 24055, MS 903  
 City, State, Zip: Oakland, CA 94623-1055

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

**TYPE OF INSURANCE:** Commercial General and Automobile Liability Coverage/Endorsements as required by agreement.

**LIMITS OF LIABILITY:**

(MINIMUM) \$2,000,000/Occurrence, Bodily Injury, Property Damage-General Liability  
 \$2,000,000/Occurrence, Bodily Injury, Property Damage-Auto Liability

**SELF INSURED RETENTION (\$):** (Auto) (GL) (if applicable)  
 Aggregate Limits (AUTO) (GL) (if applicable)

**INSURANCE COMPANY(IES):** (Auto) (GL)

**POLICY NUMBER(S):** (Auto) (GL)

**POLICY TERM:** From: (Auto) (GL) To: (Auto) (GL)

**THE FOLLOWING COVERAGES OR ENDORSEMENTS ARE INCLUDED IN THE POLICY(IES):**

1.  The District, its Directors, Officers and Employees are *Additional Insureds* in the policy(ies) as to work being performed under this agreement. ENDORSEMENT NO. \_\_\_\_\_
2.  The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3.  The policy(ies) covers *contractual liability*.
4.  The policy(ies) is written on an *occurrence* basis.
5.  The policy(ies) covers District's Property in Lessee's care, custody and control.
6.  The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7.  The policy(ies) covers *explosion, collapse, and underground hazards*.
8.  The policy(ies) covers *products and completed operations*.
9.  The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
10.  The policy(ies) and/or a separate pollution liability policy shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11.  The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED that the above policies provide liability insurance as required by the agreement between the East Bay Municipal Utility District and the insured.**

Signed \_\_\_\_\_  
 Address \_\_\_\_\_

Firm \_\_\_\_\_  
 Date \_\_\_\_\_  
 Phone \_\_\_\_\_



# CERTIFICATE OF POLLUTION LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 11<sup>th</sup> Street  
 Mailing Address: P O Box 24055, MS #903  
 City, State, Zip: Oakland, CA 94623-1055

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

\_\_\_\_\_

**TYPE OF INSURANCE:** Pollution Liability (Claims Made Basis)

**MINIMUM LIMITS OF LIABILITY:** \$2,000,000 each claim and in the aggregate.

**INSURANCE COMPANY:** \_\_\_\_\_

**POLICY NUMBER:** \_\_\_\_\_

**POLICY TERM:** From: \_\_\_\_\_ To: \_\_\_\_\_

**POLICY TAIL:** From: \_\_\_\_\_ To: \_\_\_\_\_

The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District and the Insured.**

Signed: \_\_\_\_\_  
 Authorized Signature of Broker, Agent, or Underwriter

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

Address: \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_

"This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of the policies."



# CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

**THIS IS TO CERTIFY TO:** East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 – 11<sup>th</sup> Street  
 Mailing Address: P.O. Box 24055  
 City, State, Zip: Oakland, CA 94623-1055

Attn:

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

\_\_\_\_\_

**TYPE OF INSURANCE:** Workers' Compensation Insurance as required by California State Law.

**INSURANCE COMPANY:** \_\_\_\_\_

**POLICY NUMBER:** \_\_\_\_\_

**POLICY TERM:** From: \_\_\_\_\_ To: \_\_\_\_\_

The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District at the Insured.**

Signed: \_\_\_\_\_  
 Authorized Signature of Broker, Agent, or Underwriter

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

Address: \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_

## 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.”

### 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”), located at Carter Reservoir, Alta Mesa Dr, Moraga, CA, delineated and described on **Exhibit A** consisting of approximately one thousand five hundred (1,500) square feet of ground space for the placement of Lessee’s equipment, including utility and access routes to the Premises as shown, and being a portion of the real property described as Assessor’s Parcel Number 258-160-056-2 consisting of approximately .74 Acres (the “Property”) as shown in Exhibit “B” attached hereto and incorporated by reference.

#### 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 agreement as **Exhibit C**.

#### 3. TERM

The lease Term commences on January 1, 2017 (“Commencement Date”) and ends on December 31, 2023 (“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 fifteen thousand dollars (\$15,000) payable within the first 30 days of the start of each yearly anniversary of the Commencement Date. The first Base Rent payment shall consist of \$30,000 due January 1, 2018 which consists of retroactive Base Rent payment for 2017, and Rent payment for 2018.



- B. Base Rent Adjustment. The amount of Base Rent payable hereunder shall be adjusted by 3% annually starting January 1, 2019 and every year thereafter. The annual adjustment be calculated by increasing previous year's 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 agreement and by law.
- D. All Rent Payment to Lessor shall be sent to: P.O. Box 24055, Oakland, CA 94623, MS#903.

## 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, including 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 Agreement, 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 agreement 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 Agreement, 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 City of Moraga, 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.

## 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 attorney's fees, arising out of Lessee's operation or performance under this Agreement, including all costs, claims, and damages (including property and personal injury) arising out of any Hazardous Materials as defined in section 16.C within the Property to the extent caused and/or released by Lessee's construction, reconstruction, maintenance, operation, use or removal of its facilities.
- 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 Agreement, 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 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 in which the Premises are located; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively “hazardous substance laws”).

## 17. INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Lease, 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. Lessee shall submit Certificates of Insurance (attached as Exhibit “D”), utilizing Lessor provided forms, for Lessor’s review and acceptance.

Acceptance of the Certificates of Insurance by Lessor shall not relieve Lessee of any of the insurance requirements set forth herein, nor decrease liability of Lessee. Liability coverage provided by Lessee shall be primary and any insurance or self-insurance procured or maintained by Lessor shall not be required to contribute with it. Lessor reserves the right to require Lessee to provide confidential copies of actual insurance policies and endorsements for review by Lessor. The Lessor may provide copies of the confidential policies to Lessor’s legal counsel and/or Insurance Broker, as needed.

The Insurance Requirements under this Lease shall be the greater of (1) the minimum coverage and limits specified in this Lease; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. 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 here. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the Lessee under this Lease.

Lessee shall provide a written request for authorization and the Lessor will consider self-insurance in lieu of the insurance requirements listed below.

## Claims-Made Coverage

For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified in this Lease):

- (i) The retroactive date must be shown, and must be before the commencement of this Lease, and before the beginning of any Services related to this Lease.
- (ii) Insurance must be maintained and Certificates of Insurance must be provided to Lessor for at least three (3) years after expiration of this Lease.
- (iii) 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 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.
- (iv) If requested by Lessor, a copy of the policy's claims reporting requirement must be submitted to the Lessor for review.

Workers' Compensation Insurance: Lessee shall take out and maintain during the life of the Lease *Workers Compensation* insurance for all of its employees on the Property. In lieu of evidence of Workers Compensation insurance, Lessor will accept a Self-Insured Certificate issued from the State of California. Lessee shall require any agent and/or consultant to provide it with evidence of Workers Compensation Insurance coverage.

Lessee and its Workers' Compensation insurance must waive any rights of subrogation against Lessor and its directors, officers, officials, agents, volunteers, and employees, and Lessee shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

Commercial General, Automobile and Pollution Liability Insurance: Lessee shall take out and maintain during the life of the Lease *Commercial General and Automobile, and Pollution Liability* Insurance policies that provide protection from claims that may arise from operations or performance under this Lease. If Lessee elects to self-insure (self-fund) any liability exposure during the Lease period above \$50,000, Lessee is required to notify the Lessor immediately. Any request to self-insure must first be approved by the Lessor before the changed terms are accepted. Lessee shall require any agent and/or consultant to provide evidence of Automobile, Commercial General Liability Insurance Coverage, and Pollution Liability Insurance coverages for any work involving construction, excavation and/or the use or storage of any hazardous materials.

The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage – General Liability.  
\$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile Liability.  
\$2,000,000/Occurrence/Claims Made, Bodily Injury, Property Damage – Pollution Liability

The following coverages or endorsements must be included in the policy(ies):

- A. Lessor and its directors, officers, and employees are additional insureds in the policy(ies) as to the work being performed under this Lease;

- B. The coverage is primary and non-contributory to any other insurance carried by Lessor;
- C. The policy(ies) cover(s) contractual liability;
- D. The policy(ies) is (are) written on an occurrence basis, except for the pollution liability policy, which may be written on a claims made basis;
- E. The policy(ies) cover(s) Lessor's property in the Lessee's care, custody and control;
- F. The policy(ies) cover(s) personal injury (libel, slander, unlawful entry and eviction) liability;
- G. The policy covers explosion, collapse and underground hazards;
- H. The policy(ies) cover(s) products and completed operations;
- I. The policy to cover use of owned, non-owned, and hired automobiles;
- J. The policy shall cover pollution liability for claims related to the release or threatened release of pollutants into the environment arising out of or resulting from Lessee's performance under this Lease.
- K. Lessee and its Commercial General, Automobile and Pollution Liability Insurance must waive any rights of subrogation against Lessor and its directors, officers, officials, agents, volunteers, and employees, and Lessee shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).
- L. The policy(ies) shall maintain the minimum coverage, terms and conditions as referenced in this Section, and pursuant to any and all requirements outlined in this Agreement/Lease. Without waiving any of the requirements of the Lease, Lessee shall not make any reductions in scope or limits of coverage that may affect Lessor's protection without the Lessor's prior written consent.

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

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 Agreement, 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 Agreement 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 Agreement 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 Agreement or any part. Violation of this Section shall be deemed to be in material breach of this Lease.

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 CERTIFICATES  
(ATTACHED)





# CERTIFICATE OF COMMERCIAL GENERAL, and AUTO LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 11<sup>th</sup> Street  
 Mailing Address: P O Box 24055, MS 903  
 City, State, Zip: Oakland, CA 94623-1055

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

**TYPE OF INSURANCE: Commercial General and Automobile Liability Coverage/Endorsements as required by agreement.**

**LIMITS OF LIABILITY:**

(MINIMUM) \$2,000,000/Occurrence, Bodily Injury, Property Damage-General Liability  
 \$2,000,000/Occurrence, Bodily Injury, Property Damage-Auto Liability

**SELF INSURED RETENTION (\$):** (Auto) (GL) (if applicable)  
 Aggregate Limits (AUTO) (GL) (if applicable)

**INSURANCE COMPANY(IES):** (Auto) (GL)

**POLICY NUMBER(S):** (Auto) (GL)

**POLICY TERM:** From: (Auto) (GL) To: (Auto) (GL)

**THE FOLLOWING COVERAGES OR ENDORSEMENTS ARE INCLUDED IN THE POLICY(IES):**

1.  The District, its Directors, Officers and Employees are *Additional Insureds* in the policy(ies) as to work being performed under this agreement. ENDORSEMENT NO. \_\_\_\_\_
2.  The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3.  The policy(ies) covers *contractual liability*.
4.  The policy(ies) is written on an *occurrence* basis.
5.  The policy(ies) covers District's Property in Lessee's care, custody and control.
6.  The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7.  The policy(ies) covers *explosion, collapse, and underground hazards*.
8.  The policy(ies) covers *products and completed operations*.
9.  The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
10.  The policy(ies) and/or a separate pollution liability policy shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11.  The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED that the above policies provide liability insurance as required by the agreement between the East Bay Municipal Utility District and the insured.**

Signed \_\_\_\_\_  
 Address \_\_\_\_\_

Firm \_\_\_\_\_  
 Date \_\_\_\_\_  
 Phone \_\_\_\_\_



# CERTIFICATE OF POLLUTION LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 11<sup>th</sup> Street  
 Mailing Address: P O Box 24055, MS #903  
 City, State, Zip: Oakland, CA 94623-1055

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

\_\_\_\_\_

**TYPE OF INSURANCE:** Pollution Liability (Claims Made Basis)

**MINIMUM LIMITS OF LIABILITY:** \$2,000,000 each claim and in the aggregate.

**INSURANCE COMPANY:** \_\_\_\_\_

**POLICY NUMBER:** \_\_\_\_\_

**POLICY TERM:** From: \_\_\_\_\_ To: \_\_\_\_\_

**POLICY TAIL:** From: \_\_\_\_\_ To: \_\_\_\_\_

The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District and the Insured.**

Signed: \_\_\_\_\_  
 Authorized Signature of Broker, Agent, or Underwriter

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

Address: \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_

"This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of the policies."



# CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

**THIS IS TO CERTIFY TO:** East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 – 11<sup>th</sup> Street  
 Mailing Address: P.O. Box 24055  
 City, State, Zip: Oakland, CA 94623-1055

Attn:

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

\_\_\_\_\_

**TYPE OF INSURANCE:** Workers' Compensation Insurance as required by California State Law.

**INSURANCE COMPANY:** \_\_\_\_\_

**POLICY NUMBER:** \_\_\_\_\_

**POLICY TERM:** From: \_\_\_\_\_ To: \_\_\_\_\_

The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District at the Insured.**

Signed: \_\_\_\_\_  
 Authorized Signature of Broker, Agent, or Underwriter

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

Address: \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_

## 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.”

### 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”), located at Skyline Reservoir, Skyline Blvd, located in Contra Costa County delineated and described on **Exhibit A**, for the placement of Lessee’s equipment, including utility and access routes to the Premises as shown, and being a portion of the real property described as Assessor’s Parcel Number 257-060-002-9 consisting of approximately 1.38 acres as shown on **Exhibit B** (the “Property”) attached hereto and incorporated by reference.

#### 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 agreement as **Exhibit C**.

#### 3. TERM

The lease Term commences on January 1, 2017 (“Commencement Date”) and ends on December 31, 2023 (“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 fifteen thousand dollars (\$15,000) payable within the first 30 days of the start of each yearly anniversary of the Commencement Date. The first Base Rent payment shall consist of \$30,000 due January 1, 2018 which consists of retroactive Base Rent payment for 2017, and Rent payment for 2018.

B. Base Rent Adjustment. The amount of Base Rent payable hereunder shall be adjusted by 3% annually starting January 1, 2019 and every year thereafter. The annual adjustment be calculated by increasing previous year’s 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 agreement and by law.
- D. All Rent Payment to Lessor shall be sent to: P.O. Box 24055, Oakland, CA 94623, MS#903.

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, including 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 Agreement, 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 agreement 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 Agreement, 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 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.

## 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 attorney's fees, arising out of Lessee's operation or performance under this Agreement, including all costs, claims, and damages (including property and personal injury) arising out of any Hazardous Materials as defined in section 16.C within the Property to the extent caused and/or released by Lessee's construction, reconstruction, maintenance, operation, use or removal of its facilities.
- 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 Agreement, 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 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 in which the Premises are located; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively “hazardous substance laws”).

## 17. INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Lease, 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. Lessee shall submit Certificates of Insurance (attached as Exhibit “D”), utilizing Lessor provided forms, for Lessor’s review and acceptance.

Acceptance of the Certificates of Insurance by Lessor shall not relieve Lessee of any of the insurance requirements set forth herein, nor decrease liability of Lessee. Liability coverage provided by Lessee shall be primary and any insurance or self-insurance procured or maintained by Lessor shall not be required to contribute with it. Lessor reserves the right to require Lessee to provide confidential copies of actual insurance policies and endorsements for review by Lessor. The Lessor may provide copies of the confidential policies to Lessor’s legal counsel and/or Insurance Broker, as needed.

The Insurance Requirements under this Lease shall be the greater of (1) the minimum coverage and limits specified in this Lease; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. 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 here. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the Lessee under this Lease.

Lessee shall provide a written request for authorization and the Lessor will consider self-insurance in lieu of the insurance requirements listed below.

### **Claims-Made Coverage**

For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified in this Lease):

- (i) The retroactive date must be shown, and must be before the commencement of this Lease, and before the beginning of any Services related to this Lease.
- (ii) Insurance must be maintained and Certificates of Insurance must be provided to Lessor for at least three (3) years after expiration of this Lease.
- (iii) 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 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.
- (iv) If requested by Lessor, a copy of the policy's claims reporting requirement must be submitted to the Lessor for review.

Workers' Compensation Insurance: Lessee shall take out and maintain during the life of the Lease *Workers Compensation* insurance for all of its employees on the Property. In lieu of evidence of Workers Compensation insurance, Lessor will accept a Self-Insured Certificate issued from the State of California. Lessee shall require any agent and/or consultant to provide it with evidence of Workers Compensation Insurance coverage.

Lessee and its Workers' Compensation insurance must waive any rights of subrogation against Lessor and its directors, officers, officials, agents, volunteers, and employees, and Lessee shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

Commercial General, Automobile and Pollution Liability Insurance: Lessee shall take out and maintain during the life of the Lease *Commercial General and Automobile, and Pollution Liability* Insurance policies that provide protection from claims that may arise from operations or performance under this Lease. If Lessee elects to self-insure (self-fund) any liability exposure during the Lease period above \$50,000, Lessee is required to notify the Lessor immediately. Any request to self-insure must first be approved by the Lessor before the changed terms are accepted. Lessee shall require any agent and/or consultant to provide evidence of Automobile, Commercial General Liability Insurance Coverage, and Pollution Liability Insurance coverages for any work involving construction, excavation and/or the use or storage of any hazardous materials.

The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage – General Liability.  
\$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile Liability.  
\$2,000,000/Occurrence/Claims Made, Bodily Injury, Property Damage – Pollution Liability

The following coverages or endorsements must be included in the policy(ies):

- A. Lessor and its directors, officers, and employees are additional insureds in the policy(ies) as to the work being performed under this Lease;

- B. The coverage is primary and non-contributory to any other insurance carried by Lessor;
- C. The policy(ies) cover(s) contractual liability;
- D. The policy(ies) is (are) written on an occurrence basis, except for the pollution liability policy, which may be written on a claims made basis;
- E. The policy(ies) cover(s) Lessor's property in the Lessee's care, custody and control;
- F. The policy(ies) cover(s) personal injury (libel, slander, unlawful entry and eviction) liability;
- G. The policy covers explosion, collapse and underground hazards;
- H. The policy(ies) cover(s) products and completed operations;
- I. The policy to cover use of owned, non-owned, and hired automobiles;
- J. The policy shall cover pollution liability for claims related to the release or threatened release of pollutants into the environment arising out of or resulting from Lessee's performance under this Lease.
- K. Lessee and its Commercial General, Automobile and Pollution Liability Insurance must waive any rights of subrogation against Lessor and its directors, officers, officials, agents, volunteers, and employees, and Lessee shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).
- L. The policy(ies) shall maintain the minimum coverage, terms and conditions as referenced in this Section, and pursuant to any and all requirements outlined in this Agreement/Lease. Without waiving any of the requirements of the Lease, Lessee shall not make any reductions in scope or limits of coverage that may affect Lessor's protection without the Lessor's prior written consent.

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

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 Agreement, 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 Agreement 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 Agreement 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 Agreement or any part. Violation of this Section shall be deemed to be in material breach of this Lease.

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 CERTIFICATES  
(ATTACHED)



# CERTIFICATE OF COMMERCIAL GENERAL, and AUTO LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 11<sup>th</sup> Street  
 Mailing Address: P O Box 24055, MS 903  
 City, State, Zip: Oakland, CA 94623-1055

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

**TYPE OF INSURANCE: Commercial General and Automobile Liability Coverage/Endorsements as required by agreement.**

**LIMITS OF LIABILITY:**

(MINIMUM) \$2,000,000/Occurrence, Bodily Injury, Property Damage-General Liability  
 \$2,000,000/Occurrence, Bodily Injury, Property Damage-Auto Liability

**SELF INSURED RETENTION (\$):** (Auto) (GL) (if applicable)  
 Aggregate Limits (AUTO) (GL) (if applicable)

**INSURANCE COMPANY(IES):** (Auto) (GL)

**POLICY NUMBER(S):** (Auto) (GL)

**POLICY TERM:** From: (Auto) (GL) To: (Auto) (GL)

**THE FOLLOWING COVERAGES OR ENDORSEMENTS ARE INCLUDED IN THE POLICY(IES):**

1.  The District, its Directors, Officers and Employees are *Additional Insureds* in the policy(ies) as to work being performed under this agreement. ENDORSEMENT NO. \_\_\_\_\_
2.  The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3.  The policy(ies) covers *contractual liability*.
4.  The policy(ies) is written on an *occurrence* basis.
5.  The policy(ies) covers District's Property in Lessee's care, custody and control.
6.  The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7.  The policy(ies) covers *explosion, collapse, and underground* hazards.
8.  The policy(ies) covers *products and completed operations*.
9.  The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
10.  The policy(ies) and/or a separate pollution liability policy shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11.  The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED that the above policies provide liability insurance as required by the agreement between the East Bay Municipal Utility District and the insured.**

Signed \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_

Firm \_\_\_\_\_  
 Date \_\_\_\_\_  
 Phone \_\_\_\_\_



# CERTIFICATE OF POLLUTION LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 11<sup>th</sup> Street  
 Mailing Address: P O Box 24055, MS #903  
 City, State, Zip: Oakland, CA 94623-1055

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

\_\_\_\_\_

**TYPE OF INSURANCE:** Pollution Liability (Claims Made Basis)

**MINIMUM LIMITS OF LIABILITY:** \$2,000,000 each claim and in the aggregate.

**INSURANCE COMPANY:** \_\_\_\_\_

**POLICY NUMBER:** \_\_\_\_\_

**POLICY TERM:** From: \_\_\_\_\_ To: \_\_\_\_\_

**POLICY TAIL:** From: \_\_\_\_\_ To: \_\_\_\_\_

The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District and the Insured.**

Signed: \_\_\_\_\_  
 Authorized Signature of Broker, Agent, or Underwriter

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

Address: \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_

"This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of the policies."



# CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

**THIS IS TO CERTIFY TO:** East Bay Municipal Utility District (EBMUD)  
 Department: Real Estate Services  
 Street Address: 375 – 11<sup>th</sup> Street  
 Mailing Address: P.O. Box 24055  
 City, State, Zip: Oakland, CA 94623-1055

Attn:

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

\_\_\_\_\_

**TYPE OF INSURANCE:** Workers' Compensation Insurance as required by California State Law.

**INSURANCE COMPANY:** \_\_\_\_\_

**POLICY NUMBER:** \_\_\_\_\_

**POLICY TERM:** From: \_\_\_\_\_ To: \_\_\_\_\_

The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District at the Insured.**

Signed: \_\_\_\_\_  
 Authorized Signature of Broker, Agent, or Underwriter

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

Address: \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_



**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. 9.3**

**AGENDA STATEMENT  
BOARD OF DIRECTORS  
MEETING DATE: February 23, 2018**

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

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

**SUBJECT:** Consider approval concerning a contract with CSI Telecommunications for Radio Frequency Engineering assistance and Project Consulting

**RECOMMENDATIONS:**

Adopt a Resolution approving a contract with CSI Telecommunications. CSI has been providing East Bay Regional Communications System Authority (EBRCSA) technological and engineering recommendations for FCC Radio Frequency through Contra Costa County Department of Information Technology for several years. Contra Costa County Department of IT currently has the contract and allowed EBRCSA to use CSI as necessary.

**SUMMARY/DISCUSSION:**

East Bay Regional Communications System Authority (EBRCSA), representatives from the Alameda County Radio Shop and Contra Costa Department of Information Technology have been working with CSI Telecommunications, Inc. for several years. CSI is a team of Consulting Engineers who are subject matter experts who have assisted in securing Radio Frequencies from the FCC for East Bay Regional Communication System Authority for several years. EBRCSA has utilized a contract which the Contra Costa County Department of Information Technology has with CSI. However, EBRCSA will have an increased need for their expertise as it moves forward with the TDMA conversion and future Microwave upgrade.



The contract with CSI Telecommunications is a time and materials contract which would be set not to exceed \$200,000 per year and would be a year-to-year contract. The hourly charge is \$215/hour. As an example, Contra Costa County Department of IT spent \$116,258 between January 2017 and October 2017. The amount of the contract use will depend on the extent of services utilized, and with the TDMA upgrade having them available to review work and test the system as EBRCSA moves along would be beneficial. It is important to have a baseline test for the system as to capacity and functionality. The base line test would be performed as EBRCSA builds out sections to ensure there is no degradation to the system it is expanding.

**FISCAL IMPACT:**

The Finance Committee recommended entering into a contract with CSI, and budget change will be necessary and we will identify the funding source. Based on the budget adopted in June of 2017, a rate increase to pay for this contract is not anticipated. A budget change staff report, 9.4, with the changes is included in the staff reports presented to the Board of Directors.

**RECOMMENDED ACTION:**

It is recommended that the Board of Directors of the EBRCSA adopt a Resolution approving a Contract for Time and Materials with CSI Communications, not to exceed \$200,000 based on Time and Materials, on a year to year basis and authorize the Chair to execute the contract and authorize the Executive Director to take such further action as may be necessary to implement the contract.

Attachments:

Attachment "A" – Copy of Contra Costa County Department of IT Contract

**STANDARD CONTRACT**  
**(Purchase of Services – Long Form)**

Number: 47525  
Fund/Org: 4295  
Account: 2310  
Other:

**ORIGINAL**

1. **Contract Identification.**

Department: Department of Information Technology

Subject: Telecommunications Engineering, Analysis and Frequency Services

2. **Parties.** The County of Contra Costa, California (County), for its Department named above, and the following named Contractor mutually agree and promise as follows:

Contractor: CSI Telecommunications, Inc.

Capacity: Corporation

Address: 750 Battery Street, Suite 350 San Francisco, CA 94111

3. **Term.** The effective date of this Contract is February 1, 2015. It terminates on January 31, 2016 unless sooner terminated as provided herein.

4. **Payment Limit.** County's total payments to Contractor under this Contract shall not exceed \$ 200,000.00.

5. **County's Obligations.** County shall make to the Contractor those payments described in the Payment Provisions attached hereto which are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

6. **Contractor's Obligations.** Contractor shall provide those services and carry out that work described in the Service Plan attached hereto which is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

7. **General and Special Conditions.** This Contract is subject to the General Conditions and Special Conditions (if any) attached hereto, which are incorporated herein by reference.

8. **Project.** This Contract implements in whole or in part the following described Project, the application and approval documents of which are incorporated herein by reference.

N/A

**STANDARD CONTRACT**  
**(Purchase of Services – Long Form)**



Number:  
Fund/Org:  
Account:  
Other:

9. **Legal Authority.** This Contract is entered into under and subject to the following legal authorities:

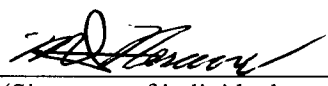
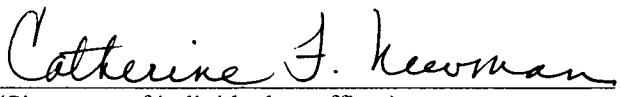
Government Code Section 31000

10. **Signatures.** These signatures attest the parties' agreement hereto:

**COUNTY OF CONTRA COSTA, CALIFORNIA**

BOARD OF SUPERVISORS	ATTEST: Clerk of the Board of Supervisors
By:  Chair/Designee	By:  Deputy C. 80 2/3/15

**CONTRACTOR**

Signature A Name of business entity: CSI Telecommunications, Inc.	Signature B Name of business entity: CSI Telecommunications, Inc.
By:  (Signature of individual or officer)	By:  (Signature of individual or officer)
<u>M. S. Newman, President</u> (Print name and title A, if applicable)	<u>Catherine F. Newman, Secretary</u> (Print name and title B, if applicable.)

**Note to Contractor:** For corporations (profit or nonprofit) and limited liability companies, the contract must be signed by two officers. Signature A must be that of the chairman of the board, president, or vice-president; and Signature B must be that of the secretary, any assistant secretary, chief financial officer or any assistant treasurer (Civil Code Section 1190 and Corporations Code Section 313). All signatures must be acknowledged as set forth on Form L-2.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF CONTRA COSTA )

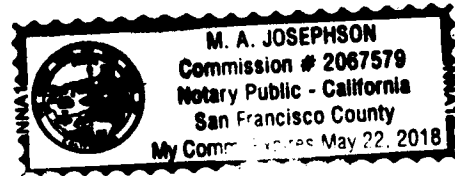
On February 17, 2015 (Date)  
before me, M.A. Josephson, Notary (Name and Title of the Officer),  
personally appeared, Michael Stephen Thomas and Catherine Jaduska Thomas,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL.

M.A. Josephson  
Signature of Notary Public



Place Seal Above

ACKNOWLEDGMENT (by Corporation, Partnership, or Individual)  
(Civil Code §1189)

APPROVALS

RECOMMENDED BY DEPARTMENT

By: [Signature]  
Designee

FORM APPROVED BY COUNTY COUNSEL

By: [Signature]  
Deputy County Counsel  
Eric Gelston

APPROVED: COUNTY ADMINISTRATOR

By: [Signature]  
Designee

**PAYMENT PROVISIONS**  
**(Fee Basis Contracts - Long and Short Form)**

1. **Payment Amounts.** Subject to the **Payment Limit** of this Contract and subject to the following Payment Provisions, County will pay Contractor the following fee as full compensation for all services, work, expenses or costs provided or incurred by Contractor:

[Check one alternative only.]

- a. \$            monthly, or
- b. \$            per unit, as defined in the Service Plan, or
- c. \$            after completion of all obligations and conditions herein.
- d. Other: As set forth in Section C (Payment Provisions) of the attached Service Plan.

2. **Payment Demands.** Contractor shall submit written demands for payment on County Demand Form D-15 in the manner and form prescribed by County. Contractor shall submit said demands for payment no later than 30 days from the end of the month in which the contract services upon which such demand is based were actually rendered. Upon approval of payment demands by the head of the County Department for which this Contract is made, or his designee, County will make payments as specified in Paragraph 1. (Payment Amounts) above.

3. **Penalty for Late Submission.** If County is unable to obtain reimbursement from the State of California as a result of Contractor's failure to submit to County a timely demand for payment as specified in Paragraph 2. (Payment Demands) above, County shall not pay Contractor for such services to the extent County's recovery of funding is prejudiced by the delay even though such services were fully provided.

4. **Right to Withhold.** County has the right to withhold payment to Contractor when, in the opinion of County expressed in writing to Contractor, (a) Contractor's performance, in whole or in part, either has not been carried out or is insufficiently documented, (b) Contractor has neglected, failed or refused to furnish information or to cooperate with any inspection, review or audit of its program, work or records, or (c) Contractor has failed to sufficiently itemize or document its demand(s) for payment.

5. **Audit Exceptions.** Contractor agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate county, state or federal audit agencies resulting from its performance of this Contract. Within 30 days of demand, Contractor shall pay County the full amount of County's obligation, if any, to the state and/or federal government resulting from any audit exceptions, to the extent such are attributable to Contractor's failure to perform properly any of its obligations under this Contract.

Initials:                                                                 
Contractor                                      County Dept.

SERVICE PLAN

- A. **Contractor's Obligations:** During the term of this Contract, Contractor will work with County employees, under the direction of the Chief Information Officer of the Department of Information Technology (the "CIO), to provide telecommunications permitting assistance, Federal Communications Commission ("FCC") license application engineering/frequency coordination, and preparation of specifications for the County's Microwave and Public Safety Radio Systems.
- B. **Scope of Work:** Under the terms of this Service Plan, Contractor will perform the following professional services, which include but are not limited to the following:
1. Radio frequency coordination, permitting, application, selection, radio site construction period filing, monitoring of all County microwave and land mobile radio frequency licensing;
  2. Resolution of radio frequency interference reports or complaints against County;
  3. Creation and or filing of radio frequency interference reports with the FCC on the County's behalf;
  4. Radio frequency coordination for application of new frequencies or changes to existing frequencies;
  5. Monitor, locate, coordinate and resolve radio frequency interference;
  6. Provide radio frequency and system performance or usage analysis;
  7. Provide radio or microwave infrastructure engineering;
  8. FCC Part 90 radio frequency license monitoring, protection, and licensing services;
  9. FCC Part 101 Microwave frequency protection services;
  10. Attend County and East Bay Regional Communications System Authority meetings, National Public Safety Planning Advisory Committee Region 6 Meetings, and other appropriate meetings and or conferences at the request of the CIO;
  11. Preparation and electronic filing of FCC applications;

Initials:                       
Contractor

                                      
County Dept.

12. Preparation of other FCC documents and filings as directed by the CIO.

13. Radio systems engineering;

C. Payment Provisions: Contractor shall submit said invoices no later than 30 days after the end of the month in which the services upon which such demand is based were rendered. Subject to the payment limit set forth in Section 4 (Payment Limit) of this Contract, County will pay Contractor for services rendered under this Contract at the rate of \$205.00 per hour. Subject to the Payment Limit, the Department may revise the foregoing payment provisions through an Administrative Amendment to this contract as provided by Section 8(b) of the attached General Conditions. Contractor may pay fees on behalf of the County for registration, permits, and licenses related to the County's radio frequency rights after receiving written approval from the County. County will reimburse Contractor for the payment of these fees in the amount of the payment, without mark-up. Contractor will not be reimbursed for incidental expenses such as mileage, copying costs, meals, etc.

Initials:                       
Contractor

                                      
County Dept.

**GENERAL CONDITIONS**  
**(Purchase of Services - Long Form)**

1. **Compliance with Law.** Contractor is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Contract, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination.
2. **Inspection.** Contractor's performance, place of business, and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the County, the State of California, and the United States Government.
3. **Records.** Contractor must keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the County.
  - a. **Retention of Records.** Contractor must retain all documents pertaining to this Contract for five years from the date of submission of Contractor's final payment demand or final Cost Report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this Contract's funding period. Upon request, Contractor must make these records available to authorized representatives of the County, the State of California, and the United States Government.
  - b. **Access to Books and Records of Contractor, Subcontractor.** Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Contract, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor.

4. **Reporting Requirements.** Pursuant to Government Code Section 7550, Contractor must include in all documents and written reports completed and submitted to County in accordance with this Contract, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section applies only if the Payment Limit of this Contract exceeds \$5,000.

  
\_\_\_\_\_  
Contractor

  
\_\_\_\_\_  
County Dept.



**GENERAL CONDITIONS**  
**(Purchase of Services - Long Form)**

5. **Termination and Cancellation.**

- a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon thirty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.
- b. **Failure to Perform.** County, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, County may proceed with the work in any reasonable manner it chooses. The cost to County of completing Contractor's performance will be deducted from any sum due Contractor under this Contract, without prejudice to County's rights to recover damages.
- c. **Cessation of Funding.** Notwithstanding any contrary language in Paragraphs 5 and 11, in the event that federal, state, or other non-County funding for this Contract ceases, this Contract is terminated without notice.

6. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties hereto.

7. **Further Specifications for Operating Procedures.** Detailed specifications of operating procedures and budgets required by this Contract, including but not limited to, monitoring, evaluating, auditing, billing, or regulatory changes, may be clarified in a written letter signed by Contractor and the department head, or designee, of the county department on whose behalf this Contract is made. No written clarification prepared pursuant to this Section will operate as an amendment to, or be considered to be a part of, this Contract.

8. **Modifications and Amendments.**

- a. **General Amendments.** In the event that the total Payment Limit of this Contract is less than \$100,000 and this Contract was executed by the County's Purchasing Agent, this Contract may be modified or amended by a written document executed by Contractor and the County's Purchasing Agent or the Contra Costa County Board of Supervisors, subject to any required state or federal approval. In the event that the total Payment Limit of this Contract exceeds \$100,000 or this Contract was initially approved by the Board of Supervisors, this Contract may be modified or amended only by a written document executed by Contractor and the Contra Costa County Board of Supervisors or, after Board approval, by its designee, subject to any required state or federal approval.
- b. **Minor Amendments.** The Payment Provisions and the Service Plan may be amended by a written administrative amendment executed by Contractor and the County Administrator (or designee), subject to any required state or federal approval, provided that such administrative amendment may not increase the Payment Limit of this Contract or reduce the services Contractor is obligated to provide pursuant to this Contract.

9. **Disputes.** Disagreements between County and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final written determination by the head of the county department for which this Contract is made, or his designee, or in accordance with the applicable procedures (if any) required by the state or federal government.

  
\_\_\_\_\_  
Contractor

  
\_\_\_\_\_  
County Dept.

**GENERAL CONDITIONS**  
**(Purchase of Services - Long Form)**

10. **Choice of Law and Personal Jurisdiction.**

- a. This Contract is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- b. Any action relating to this Contract must be instituted and prosecuted in the courts of Contra Costa County, State of California.

11. **Conformance with Federal and State Regulations and Laws.** Should federal or state regulations or laws touching upon the subject of this Contract be adopted or revised during the term hereof, this Contract will be deemed amended to assure conformance with such federal or state requirements.

12. **No Waiver by County.** Subject to Paragraph 9. (Disputes) of these General Conditions, inspections or approvals, or statements by any officer, agent or employee of County indicating Contractor's performance or any part thereof complies with the requirements of this Contract, or acceptance of the whole or any part of said performance, or payments therefor, or any combination of these acts, do not relieve Contractor's obligation to fulfill this Contract as prescribed; nor is the County thereby prevented from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.

13. **Subcontract and Assignment.** This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the County Administrator or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.

14. **Independent Contractor Status.** The parties intend that Contractor, in performing the services specified herein, is acting as an independent contractor and that Contractor will control the work and the manner in which it is performed. This Contract is not to be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association. Contractor is not a County employee. This Contract does not give Contractor any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees. In the event that County exercises its right to terminate this Contract, Contractor expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances, or laws applicable to employees.

15. **Conflicts of Interest.** Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interests will be employed by Contractor. If requested to do so by County, Contractor will complete a "Statement of Economic Interest" form and file it with County and will require any other person doing work under this Contract to complete a "Statement of Economic Interest" form and file it with County. Contractor covenants that Contractor, its employees and officials, are not now employed by County and have not been so employed by County within twelve months immediately preceding this Contract; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government

  
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Contractor

  
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County Dept.

**GENERAL CONDITIONS**  
**(Purchase of Services - Long Form)**

Code section 1090. In addition to any indemnity provided by Contractor in this Contract, Contractor will indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Contract.

16. **Confidentiality**. To the extent allowed under the California Public Records Act, Contractor agrees to comply and to require its officers, partners, associates, agents and employees to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that no person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
17. **Nondiscriminatory Services**. Contractor agrees that all goods and services under this Contract will be available to all qualified persons regardless of age, gender, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none will be used, in whole or in part, for religious worship.
18. **Indemnification**. Contractor will defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided hereunder that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor will defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor will reimburse County for any expenditures, including reasonable attorney's fees and costs. Contractor's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Contract.
19. **Insurance**. During the entire term of this Contract and any extension or modification thereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions:
- a. **Commercial General Liability Insurance**. For all contracts where the total payment limit of the contract is \$500,000 or less, Contractor will provide commercial general liability insurance, including coverage for business losses and for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Such insurance must be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this Contract. Said policies must constitute primary insurance as to


  
Contractor


  
County Dept.

**GENERAL CONDITIONS**  
**(Purchase of Services - Long Form)**

County, the state and federal governments, and their officers, agents, and employees, so that other insurance policies held by them or their self-insurance program(s) will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor must provide County with a copy of the endorsement making the County an additional insured on all commercial general liability policies as required herein no later than the effective date of this Contract. For all contracts where the total payment limit is greater than \$500,000, the aforementioned insurance coverage to be provided by Contractor must have a minimum combined single limit coverage of \$1,000,000.

- b. **Workers' Compensation.** Contractor must provide workers' compensation insurance coverage for its employees.
  - c. **Certificate of Insurance.** The Contractor must provide County with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, then Contractor must provide (a) current certificate(s) of insurance.
  - d. **Additional Insurance Provisions.** No later than five days after Contractor's receipt of: (i) a notice of cancellation, a notice of an intention to cancel, or a notice of a lapse in any of Contractor's insurance coverage required by this Contract; or (ii) a notice of a material change to Contractor's insurance coverage required by this Contract, Contractor will provide Department a copy of such notice of cancellation, notice of intention to cancel, notice of lapse of coverage, or notice of material change. Contractor's failure to provide Department the notice as required by the preceding sentence is a default under this Contract
20. **Notices.** All notices provided for by this Contract must be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County must be addressed to the head of the county department for which this Contract is made. Notices to Contractor must be addressed to the Contractor's address designated herein. The effective date of notice is the date of deposit in the mails or of other delivery, except that the effective date of notice to County is the date of receipt by the head of the county department for which this Contract is made.
21. **Primacy of General Conditions.** In the event of a conflict between the General Conditions and the Special Conditions, the General Conditions govern unless the Special Conditions or Service Plan expressly provide otherwise.
22. **Nonrenewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased by County under a new contract following expiration or termination of this Contract, and Contractor waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.
23. **Possessory Interest.** If this Contract results in Contractor having possession of, claim or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue & Taxation Code Section 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest. Contractor agrees that this provision complies with the notice

  
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Contractor

  
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County Dept.

**GENERAL CONDITIONS**  
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requirements of Revenue & Taxation Code Section 107.6, and waives all rights to further notice or to damages under that or any comparable statute.

24. **No Third-Party Beneficiaries.** Nothing in this Contract may be construed to create, and the parties do not intend to create, any rights in third parties.
25. **Copyrights, Rights in Data, and Works Made for Hire.** Contractor will not publish or transfer any materials produced or resulting from activities supported by this Contract without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Contract are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for County, and Contractor unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without County's prior express written consent. If any of the works made for hire is subject to copyright protection, County reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, County reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.
26. **Endorsements.** In its capacity as a contractor with Contra Costa County, Contractor will not publicly endorse or oppose the use of any particular brand name or commercial product without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.
27. **Required Audit.** (A) If Contractor is funded by \$500,000 or more in federal grant funds in any fiscal year from any source, Contractor must provide to County, at Contractor's expense, an audit conforming to the requirements set forth in the most current version of Office of Management and Budget Circular A-133. (B) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, but such grant imposes specific audit requirements, Contractor must provide County with an audit conforming to those requirements. (C) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year; however, Contractor's records must be available for and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office (GAO), the pass-through entity and/or the County. If any such audit is required, Contractor must provide County with such audit. With respect to the audits specified in (A), (B) and (C) above, Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the

  
Contractor

  
County Dept.

**GENERAL CONDITIONS**  
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contract amount, whichever is greater, or the final payment, from Contractor until County receives the audit from Contractor.

28. **Authorization**. Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and to perform the obligations set forth herein.
29. **No Implied Waiver**. The waiver by County of any breach of any term or provision of this Contract will not be deemed to be a waiver of such term or provision or of any subsequent breach of the same or any other term or provision contained herein.

  
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Contractor

  
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County Dept.



**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 9.4**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: February 23, 2018**

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

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

**SUBJECT:** Impact of Subscriber Rate Increase for the cost of TDMA, Battery Replacement, and Lease Agreement with EBMUD, and contract with CSI to EBRCSA Budget

**RECOMMENDATION:**

Adopt a resolution to adopt the increase per subscriber into the 2017/2018 Administrative Budget. Utilize existing funding in the FY 2017/2018 budget to pay for the Lease agreement with East Bay Municipal District (EBMUD), East Bay Regional Communications System Authority (EBRCSA) Battery Replacement, and contract with CSI Communications.

**SUMMARY/DISCUSSION:**

The East Bay Regional Communications System Authority (“EBRCSA”) operates on an annual budget which was approved by the Board of Directors for FY 2017/2018. The Finance Committee and the Operations Committee had identified the need for the following items to be funded via a budget change to the FY 2017/2018.

**FISCAL IMPACT:**

The Time Division Multiple Access (TDMA) is not included in this budget change as the first payment will not be until Fiscal Year (FY) 2018/2019 and will be part of the FY 2018-2019 Budget.

The Finance Committee has recommended that \$255,000 be added to the Operating Maintenance budget to allow for replacement of 10% of the batteries on an annual basis to ensure system functionality and resilience. There is adequate funding in the budget and will not require an increase to the per user cost.

The Finance Committee has recommended a change in the budget for leases and currently the 2017/2018 budget has \$95,000 for the Leases with Alameda County Waste Management and EBMUD. The EBMUD Lease will be for Calendar Year 2017 and 2018 and is \$30,000 per site for a total of \$90,000. The Waste Management Lease is approximately \$2,000 per year so there is adequate funding in the budget to pay for lease agreements without requiring an increase to the per user cost.

The Finance Committee has recommended a contract with CSI Telecommunications on a Time and Materials contract not to exceed \$200,000 per year. The contract will be added to EBRCSA's Operating Expenses and there is adequate funding for this contract. The contract will ensure that as EBRCSA moves forward with TDMA system, it validates each change and ensures that it continues to operate in the designated receive and transmit functionality that EBRCSA has been able to provide since its inception. The Contract will provide checks and balance as it performs the transition. In addition, CSI will provide technical support for future changes such as Microwave Transition.

#### **COMMITTEE RECOMMENDATION:**

The Finance Committee has reviewed these projects and recommended that the Executive Director present this to the full Board of Directors with a recommendation by the Finance Committee to proceed with the increase necessary for these projects.

The Operations Committee also reviewed these projects and recommended EBRCSA move forward with these projects.

#### **RECOMMENDED ACTION:**

It is recommended that the Board of Directors of the East Bay Regional Communications System Authority adopt the Resolution approving the following changes to the FY 2017/2018 Budget: (1) \$255,000 for the replacement of 10% of system batteries, (2) include \$95,000 for the additional leases with EBMUD; and, (3) not to exceed \$200,000 Contract with CSI Telecommunications for Time and Materials. The Board hereby authorizes the Chair to direct the Executive Director to implement the changes.





**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 9.5**

**AGENDA STATEMENT  
BOARD OF DIRECTORS MEETING  
MEETING DATE: October 27, 2017**

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

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

**SUBJECT:** Consider approval of a Communications System Agreement #3 with Motorola Solutions, Inc.

**RECOMMENDATIONS:**

Adopt a Resolution to approve the Communications System Agreement #3 with Motorola Solutions, Inc. which outlines pricing for East Bay Regional Communications System Authority (EBRCSA) member agencies who are interested in purchasing equipment and services which are Time-division multiple access (TDMA) ready or flash upgrades for radios which are TDMA ready. Authorize the Chair to sign the Communications System Agreement and the Executive Director to implement the Resolution.

**SUMMARY/DISCUSSION:**

Alameda and Contra Costa Counties and EBRCSA have Communications System Agreements with Motorola for the purchase of equipment from Motorola Solutions, Inc. Motorola has proposed pricing for equipment, which is attached to this Staff Report, which will be effective February 9, 2018 through September 30, 2018.

Motorola agrees to the following amendment of the Communications System Agreement, full agreement attached:

*To the extent permitted by applicable law and regulations, other state or local governmental agencies who use the East Bay Regional Communications System for some or all of their communications needs may purchase Equipment, Software, or other Work under provisions and prices substantially the same as specified in this Agreement. Each Such government agency may execute an individual contract with Motorola or issue a purchase order referencing the CSA for receiving and accepting the subject Equipment, Software or Work, and for directly paying Motorola. Customer assumes no responsibility or liability for any such contracts entered into by other governmental agencies pursuant to this provision.*

*For purchases made under 3.4 for certain Equipment identified in Exhibit A to this Amendment No. 3, if Customer agrees to take delivery by September 20, 2018, Motorola agrees to provide the special promotional pricing for such Equipment as set forth in Exhibit A. Exhibit A dated February 9, 2018 is attached to this Amendment No. 3 and incorporated herein by this reference. The purpose of the promotional pricing is to provide assistance with migration for radios from FDMA to TDMA.*

**FISCAL IMPACT:**

EBRCSA has no fiscal impact based on the Communication System Agreement.

**COMMITTEE RECOMMENDATIONS:**

The Finance Committee and Operations Committee discussed the concept of a Communications Service Agreement, originally referred to as a Master Services Agreement, and asked the Executive Director to speak with Motorola Solutions, Inc. concerning this. The agreement was not available for either committee to review prior to the Board of Directors meeting.

**RECOMMENDED ACTION:**

It is recommended that your Board of Directors of the East Bay Regional Communications System Authority discuss and make a recommendation to the Board Chair concerning the concept of the Communication System Agreement. The Chair then take the recommendations from the Board and direct the Executive Director to execute the Board recommendations.

- Attachment "A" - Communications System Agreement
- Attachment "B" – APX 6000 Portable Radio
- Attachment "C" – APX 6500 Mobile Radio
- Attachment "D" – APX 8000XE Portable Radio Multi Band
- Attachment "E" – APX 8500 Mobile Radio Multi Band
- Attachment "F" – APX 8500 Motorcycle Radio
- Attachment "G" – TDMA Flash Upgrade



**Amendment No. 3  
to Communications System Agreement**

This Amendment No. 3 to Communications System Agreement (this "Amendment") is made by and between **East Bay Regional Communications System Authority** (the "Customer") and **Motorola Solutions, Inc.**, formerly Motorola, Inc. ("Motorola"). The Customer and Motorola previously entered into a Communications System Agreement with an Effective Date of July 7, 2009 (the "CSA"). The Customer and Motorola previously entered into Amendment No. 1 to the CSA, effective July 6, 2012, whereby Sections 3.3 and 3.4 of the original CSA were extended through July 6, 2017. Section 3.4 of the CSA permits the Customer to make additional purchases of Equipment, Software and services off of the CSA for a stated time period from the Effective Date.

The Customer and Motorola also previously entered into Amendment No. 2 to the CSA, effective July 6, 2017, whereby the date in Section 3.4 was changed to July 6, 2020 and the Term of the Agreement in Section 3.3 was extended to July 6, 2020.

For the mutual benefit of the Customer and Motorola, the Customer and Motorola desire and intend by this Amendment No. 3 to provide the right for certain other agencies to purchase equipment and software from Motorola using the terms and pricing of the CSA and to provide a limited offer of reduced pricing on certain equipment.

Therefore, the Customer and Motorola hereby agree to amend the CSA as follows:

1. To the extent permitted by applicable law and regulations, other state or local governmental agencies who use the East Bay Regional Communications System for some or all of their communications needs may purchase Equipment, Software, or other Work under provisions and prices substantially the same as specified in this Agreement. Each such government agency may execute an individual contract with Motorola or issue a purchase order referencing the CSA for receiving and accepting the subject Equipment, Software or Work, and for directly paying Motorola. Customer assumes no responsibility or liability for any such contracts entered into by other governmental agencies pursuant to this provision.
2. For purchases made under Section 3.4 for certain Equipment identified in Exhibit A to this Amendment No. 3, if Customer agrees to take delivery by September 30, 2018, Motorola agrees to provide the special promotional pricing for such Equipment as set forth in Exhibit A. Exhibit A dated February 9, 2018 is attached to this Amendment No. 3 and incorporated herein by this reference. The purpose of the promotional pricing is to provide assistance with migration of radios from FDMA to TDMA.
3. This Amendment is effective as of February 9, 2018.

Except as amended by this Amendment, the CSA remains unmodified and in full force and effect.

**Motorola Solutions, Inc.**

**East Bay Regional Communications System Authority**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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



# MOTOROLA

## MOTOROLA SOLUTIONS CONFIDENTIAL INFORMATION

APX6000 - PROFORMA QUOTE FOR EBRCSA USERS TDMA UPGRADE

Qty.	Model	Description	List	Contract	Extended
1	H98UCD9PW5N	APX6000 700/800 MODEL 1.5 PORTABLE	\$2,705.00	\$2,028.75	\$2,028.75
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1					
1	QA09006	ADD: ADAPTIVE NOISE SUPPRESSION	\$150.00	\$112.50	\$112.50
1	QA001837	ALT: LIION IMPRES 2900 MAH IP67 (NNTN70	\$100.00	\$75.00	\$75.00
1	NNTN7038	BAT IMP STD IP67 LIION 2900M 3100T BLACI	\$140.00	\$105.00	\$105.00
1	PMMN4065A	MICROPHONE, IMPRES RSM, IP57	\$107.00	\$80.25	\$80.25
1	WPLN7080	APX IMPRES CG SINGLE UNIT CHARGER US/N	\$125.00	\$93.75	\$93.75
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$360.00	\$360.00

LIST PRICE	\$6,552.00
CONTRACT PRICE	\$5,004.00
<b>2018 AGGREGATED UPGRADE INCENTIVE**</b>	<b>-\$1,139.00</b>
Sub-total	\$3,865.00
Sales Tax - 9.25%-rate depends on ship-to location	\$357.51
<b>Total</b>	<b>\$4,222.51</b>

**TERMS:** Reference Contra Costa County or EBRCSA contract.

**VALIDITY:** Ship by 9/21/2018

**SHIPPING:** ***FOB Ship Point - N/C***

**DELIVERY:** By 9/30/2018

*\*SFS not discounted*

*\*\*Aggregated orders among EBRCSA user agencies by 9/21/18*

**MOTOROLA CONFIDENTIAL INFORMATION**



# MOTOROLA

Rick Blanchard, Alameda County ITD  
1401 Lakeside Drive, 7th floor, Oakland, CA 94612

Customer #: 1036726224

### QUOTE #061917GDP - PORTABLE RADIO

<u>Qty.</u>	<u>Model</u>	<u>Description</u>	<u>List</u>	<u>Contract</u>	<u>Extended</u>
1	H98UCD9PW5N	APX6000 700/800 MODEL 1.5 PORTABLE	\$2,705.00	\$2,028.75	\$2,028.75
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
1	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1	QA09006	ADD: ADAPTIVE NOISE SUPPRESSION	\$150.00	\$112.50	\$112.50
1	QA001837	ALT: LIION IMPRES 2900 MAH IP67 (NNTN70	\$100.00	\$75.00	\$75.00
1	NNTN7038	BAT IMP STD IP67 LIION 2900M 3100T BLACI	\$140.00	\$105.00	\$105.00
1	PMMN4065A	MICROPHONE, IMPRES RSM, IP57	\$107.00	\$80.25	\$80.25
1	WPLN7080	APX IMPRES CG SINGLE UNIT CHARGER US/N	\$125.00	\$93.75	\$93.75
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$288.00	\$288.00

LIST PRICE		\$6,552.00
CONTRACT PRICE	25% discount	\$4,932.00
2017 SHIP INCENTIVE		-\$1,000.00
Sub-total	40% discount	\$3,932.00
Sales Tax - 9.25%		\$363.71

Total
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\$4,295.71

**TERMS:** Reference Contra Costa County contract.

**VALIDITY:** TBD

**SHIPPING:** *FOB Ship Point - N/C*

**DELIVERY:** TBD





# MOTOROLA

## MOTOROLA SOLUTIONS CONFIDENTIAL INFORMATION

### APX6500 - PROFORMA QUOTE FOR EBRCSA USERS TDMA UPGRADE

1	M25URS9PW1 N	APX6500 700/800 MID POWER MOBILE	\$2,438.00	\$1,828.50	\$1,828.50
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	G442	ADD: 05 CONTROL HEAD	\$432.00	\$324.00	\$324.00
1	G67	ADD: REMOTE MOUNT MID POWER	\$297.00	\$222.75	\$222.75
1	G444	ADD: APX CONTROL HEAD SOFTWARE	\$0.00	\$0.00	\$0.00
1	G89	ADD: NO RF ANTENNA NEEDED	\$0.00	\$0.00	\$0.00
1	G142	ADD: NO SPEAKER NEEDED	\$0.00	\$0.00	\$0.00
1	W22	ADD: STD PALM MICROPHONE APX	\$72.00	\$54.00	\$54.00
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$360.00	\$360.00

LIST PRICE	\$6,164.00
CONTRACT PRICE	\$4,713.00
<b>2018 QUANTITY SHIP INCENTIVE</b>	<b>-\$1,100.00</b>
Sub-total	\$3,613.00
Sales Tax - 9.25%-rate depends on ship-to location	\$334.20
<b>Total</b>	<b>\$3,947.20</b>

**TERMS:** Reference Contra Costa County or EBRCSA contract.

**VALIDITY:** Ship BY 9/21/18

**SHIPPING:** *FOB Ship Point - N/C*  
**DELIVERY:** By 9/30/2018

*\*SFS not discounted*

*\*\*Aggregated orders among EBRCSA user agencies by 9/21/18*

**MOTOROLA CONFIDENTIAL INFORMATION**



# MOTOROLA

Rick Blanchard, Alameda County ITD  
1401 Lakeside Drive, 7th floor, Oakland, CA 94612

Customer #: 1036726224

### QUOTE #061917GDP - PORTABLE RADIO

<u>Qty.</u>	<u>Model</u>	<u>Description</u>	<u>List</u>	<u>Contract</u>	<u>Extended</u>
1	H98UCD9PW5N	APX6000 700/800 MODEL 1.5 PORTABLE	\$2,705.00	\$2,028.75	\$2,028.75
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
1	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1	QA09006	ADD: ADAPTIVE NOISE SUPPRESSION	\$150.00	\$112.50	\$112.50
1	QA001837	ALT: LIION IMPRES 2900 MAH IP67 (NNTN70	\$100.00	\$75.00	\$75.00
1	NNTN7038	BAT IMP STD IP67 LIION 2900M 3100T BLACI	\$140.00	\$105.00	\$105.00
1	PMMN4065A	MICROPHONE, IMPRES RSM, IP57	\$107.00	\$80.25	\$80.25
1	WPLN7080	APX IMPRES CG SINGLE UNIT CHARGER US/N	\$125.00	\$93.75	\$93.75
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$288.00	\$288.00

LIST PRICE		\$6,552.00
CONTRACT PRICE	25% discount	\$4,932.00
2017 SHIP INCENTIVE		-\$1,000.00
Sub-total	40% discount	\$3,932.00
Sales Tax - 9.25%		\$363.71

Total
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\$4,295.71

**TERMS:** Reference Contra Costa County contract.

**VALIDITY:** TBD

**SHIPPING:** *FOB Ship Point - N/C*

**DELIVERY:** TBD



# MOTOROLA

## MOTOROLA SOLUTIONS CONFIDENTIAL INFORMATION.

APX8000XE - PROFORMA QUOTE FOR EBRCSA USERS TDMA UPGRADE

Qty.	Model	Description	List	Contract	Extended
1	H91TGD9W5 N	APX 8000 PORTABLE MODEL 3.5 7/800 & VHF (DELETE UHF QA5509)	\$5,777.00	\$4,332.75	\$4,332.75
1	QA2006	ENH: APX8000XE RUGGED RADIO	\$800.00	\$600.00	\$600.00
1	H64	ALT: APX 8000 HOUSING YELLOW	\$25.00	\$18.75	\$18.75
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
1	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1	QA09006	ADD: ADAPTIVE NOISE SUPPRESSION	\$150.00	\$112.50	\$112.50
1	PMNN4504	BATT IMPRES 2 LIION UL2054 DIV2 R IP68 3400T	\$150.00	\$112.50	\$112.50
1	PMMN4099	REMOTE SPEAKER MIC, IMPRES, IP55, JACK, EMGY BUTTON	\$132.00	\$99.00	\$99.00
1	NNTN8860	CHARGER, SINGLE UNIT IMPRES 2	\$150.00	\$112.50	\$112.50
1	HA00025AK	ENH: SFS COMPREHENSIVE 5 YR	\$480.00	\$480.00	\$480.00

LIST PRICE	\$10,529.00
CONTRACT PRICE	\$8,016.75
<b>2018 AGGREGATED UPGRADE INCENTIVE**</b>	<b>-\$1,805.00</b>
Sub-total	\$6,211.75
Sales Tax - 9.25%-rate depends on ship-to location	\$574.59
<b>Total</b>	<b>\$6,786.34</b>

**TERMS:** Reference Contra Costa County or EBRCSA contract.

**VALIDITY:** Ship BY 9/21/18

**SHIPPING:** *FOB Ship Point - N/C*

**DELIVERY:** By 9/30/2018

*\*SFS not discounted*

*\*\*Aggregated orders among EBRCSA user agencies by 9/21/18*

**MOTOROLA CONFIDENTIAL INFORMATION**



# MOTOROLA

Rick Blanchard, Alameda County ITD  
1401 Lakeside Drive, 7th floor, Oakland, CA 94612

Customer #: 1036726224

### QUOTE #061917GDP - PORTABLE RADIO

<u>Qty.</u>	<u>Model</u>	<u>Description</u>	<u>List</u>	<u>Contract</u>	<u>Extended</u>
1	H98UCD9PW5N	APX6000 700/800 MODEL 1.5 PORTABLE	\$2,705.00	\$2,028.75	\$2,028.75
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
1	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1	QA09006	ADD: ADAPTIVE NOISE SUPPRESSION	\$150.00	\$112.50	\$112.50
1	QA001837	ALT: LIION IMPRES 2900 MAH IP67 (NNTN70	\$100.00	\$75.00	\$75.00
1	NNTN7038	BAT IMP STD IP67 LIION 2900M 3100T BLACI	\$140.00	\$105.00	\$105.00
1	PMMN4065A	MICROPHONE, IMPRES RSM, IP57	\$107.00	\$80.25	\$80.25
1	WPLN7080	APX IMPRES CG SINGLE UNIT CHARGER US/N	\$125.00	\$93.75	\$93.75
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$288.00	\$288.00

LIST PRICE		\$6,552.00
CONTRACT PRICE	25% discount	\$4,932.00
2017 SHIP INCENTIVE		-\$1,000.00
Sub-total	40% discount	\$3,932.00
Sales Tax - 9.25%		\$363.71

Total
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\$4,295.71

**TERMS:** Reference Contra Costa County contract.

**VALIDITY:** TBD

**SHIPPING:** *FOB Ship Point - N/C*

**DELIVERY:** TBD





# MOTOROLA

## MOTOROLA SOLUTIONS CONFIDENTIAL INFORMATION

### APX8500 - PROFORMA QUOTE FOR EBRCSA USERS TDMA UPGRADE

Qty.	Model	Description	List	Contract	Extended
1	M37TSS9PW1 N	APX8500 MOBILE 7/800 & VHF (DELETE UHF GA5509)	\$2,777.50	\$2,083.13	\$2,083.13
1	G67	ADD: REMOTE MOUNT MID POWER	\$297.00	\$222.75	\$222.75
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	G51	SMARTZONE SYSTEM SOFTWARE	\$1,500.00	\$1,125.00	\$1,125.00
1	G806	ADD: ASTRO DIGITAL CAI	\$515.00	\$386.25	\$386.25
1	W22	ADD: PALM MICORPHONE	\$72.00	\$54.00	\$54.00
1	GA00580	ADD: TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	B18	ADD: AUXILLARY SPEAKER	\$60.00	\$45.00	\$45.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
1	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$360.00	\$360.00

LIST PRICE	\$6,731.50
CONTRACT PRICE	\$5,138.63
<b>2018 AGGREGATED UPGRADE INCENTIVE**</b>	<b>-\$1,149.00</b>
Sub-total	\$3,989.63
Sales Tax - 9.25%-rate depends on ship-to location.	\$369.04
<b>Total</b>	<b>\$4,358.67</b>

**TERMS:** Reference Contra Costa County or EBRCSA contract.  
**VALIDITY:** Ship by 9/21/18  
**SHIPPING:** *FOB Ship Point - N/C*

**DELIVERY:** By 9/30/2018

*\*SFS not discounted*

**\*\*Aggregated orders among EBRCSA user agencies by 9/21/18**

**MOTOROLA CONFIDENTIAL INFORMATION**



# MOTOROLA

Rick Blanchard, Alameda County ITD  
1401 Lakeside Drive, 7th floor, Oakland, CA 94612

Customer #: 1036726224

### QUOTE #061917GDP - PORTABLE RADIO

<u>Qty.</u>	<u>Model</u>	<u>Description</u>	<u>List</u>	<u>Contract</u>	<u>Extended</u>
1	H98UCD9PW5N	APX6000 700/800 MODEL 1.5 PORTABLE	\$2,705.00	\$2,028.75	\$2,028.75
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
1	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1	QA09006	ADD: ADAPTIVE NOISE SUPPRESSION	\$150.00	\$112.50	\$112.50
1	QA001837	ALT: LIION IMPRES 2900 MAH IP67 (NNTN70	\$100.00	\$75.00	\$75.00
1	NNTN7038	BAT IMP STD IP67 LIION 2900M 3100T BLACI	\$140.00	\$105.00	\$105.00
1	PMMN4065A	MICROPHONE, IMPRES RSM, IP57	\$107.00	\$80.25	\$80.25
1	WPLN7080	APX IMPRES CG SINGLE UNIT CHARGER US/N	\$125.00	\$93.75	\$93.75
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$288.00	\$288.00

LIST PRICE		\$6,552.00
CONTRACT PRICE	25% discount	\$4,932.00
2017 SHIP INCENTIVE		-\$1,000.00
Sub-total	40% discount	\$3,932.00
Sales Tax - 9.25%		\$363.71

Total
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\$4,295.71

**TERMS:** Reference Contra Costa County contract.  
**VALIDITY:** TBD  
**SHIPPING:** *FOB Ship Point - N/C*  
**DELIVERY:** TBD



# MOTOROLA

## MOTOROLA SOLUTIONS CONFIDENTIAL INFORMATION

APX8500 Motorcycle - PROFORMA QUOTE FOR EBRCSA USERS TDMA UPGRADE

<u>Qty.</u>	<u>Model</u>	<u>Description</u>	<u>List</u>	<u>Contract</u>	<u>Extended</u>
1	M37TSS9PW1 N	APX8500 ALL BAND MP MOBILE	\$4,770.00	\$3,577.50	\$3,577.50
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	G442	ADD: 05 CONTROL HEAD	\$432.00	\$324.00	\$324.00
1	G67	ADD: REMOTE MOUNT MID POWER	\$297.00	\$222.75	\$222.75
1	G444	ADD: APX CONTROL HEAD SOFTWARE	\$0.00	\$0.00	\$0.00
1	G138	ADD: APX MOTORCYCLE CH SFWR	\$0.00	\$0.00	\$0.00
1	G89	ADD: NO RF ANTENNA NEEDED	\$0.00	\$0.00	\$0.00
1	G142	ADD: NO SPEAKER NEEDED	\$0.00	\$0.00	\$0.00
1	W22	ADD: STD PALM MICROPHONE APX	\$72.00	\$54.00	\$54.00
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$360.00	\$360.00
1	W620	ADD: NO MTRCYCLE ENCL NEEDED APEX	\$0.00	\$0.00	\$0.00

LIST PRICE	\$8,496.00
CONTRACT PRICE	\$6,462.00
<b>2018 AGGREGATED UPGRADE INCENTIVE**</b>	<b>-\$1,449.00</b>
Sub-total	\$5,013.00
Sales Tax - 9.25% -rate depends on ship-to location	\$463.70
<b>Total</b>	<b>\$5,476.70</b>

**TERMS:** Reference Contra Costa County or EBRCSA contract.

**VALIDITY:** Ship by 9/21/2018

**SHIPPING:** ***FOB Ship Point - N/C***

**DELIVERY:** By 9/30/2018

*\*SFS not discounted*

*\*\*Aggregated orders among EBRCSA user agencies by 9/21/18*

**MOTOROLA CONFIDENTIAL INFORMATION**



# MOTOROLA

Rick Blanchard, Alameda County ITD  
1401 Lakeside Drive, 7th floor, Oakland, CA 94612

Customer #: 1036726224

### QUOTE #061917GDP - PORTABLE RADIO

<u>Qty.</u>	<u>Model</u>	<u>Description</u>	<u>List</u>	<u>Contract</u>	<u>Extended</u>
1	H98UCD9PW5N	APX6000 700/800 MODEL 1.5 PORTABLE	\$2,705.00	\$2,028.75	\$2,028.75
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
1	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1	QA09006	ADD: ADAPTIVE NOISE SUPPRESSION	\$150.00	\$112.50	\$112.50
1	QA001837	ALT: LIION IMPRES 2900 MAH IP67 (NNTN70	\$100.00	\$75.00	\$75.00
1	NNTN7038	BAT IMP STD IP67 LIION 2900M 3100T BLACI	\$140.00	\$105.00	\$105.00
1	PMMN4065A	MICROPHONE, IMPRES RSM, IP57	\$107.00	\$80.25	\$80.25
1	WPLN7080	APX IMPRES CG SINGLE UNIT CHARGER US/N	\$125.00	\$93.75	\$93.75
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$288.00	\$288.00

LIST PRICE		\$6,552.00
CONTRACT PRICE	25% discount	\$4,932.00
2017 SHIP INCENTIVE		-\$1,000.00
Sub-total	40% discount	\$3,932.00
Sales Tax - 9.25%		\$363.71

Total
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\$4,295.71

**TERMS:** Reference Contra Costa County contract.

**VALIDITY:** TBD

**SHIPPING:** *FOB Ship Point - N/C*

**DELIVERY:** TBD





# MOTOROLA

## MOTOROLA SOLUTIONS CONFIDENTIAL INFORMATION

TDMA FLASHES - PROFORMA QUOTE FOR EBRCSA USERS TDMA UPGRADE

<u>Qty.</u>	<u>Model</u>	<u>Description</u>	<u>List</u>	<u>Contract</u>	<u>Extended</u>
1 (always QTY 1)	T7664	DIGITAL SMARTZONE	\$0.00	\$0.00	\$0.00
1	QA00580AE	ENH: TDMA OPERATION	\$518.00	\$388.50	\$388.50
1 (always QTY 1)	UA00083AA	ADD: SOFTWARE LICENSE ONLINE DELIVERY	\$0.00	\$0.00	\$0.00

LIST PRICE	\$518.00
CONTRACT PRICE	\$388.50
2018 AGGREGATED UPGRADE INCENTIVE**	\$140.50
Sub-total	\$248.00
Sales Tax - 9.25%	\$22.94
<b>Total</b>	<b>\$270.94</b>

**TERMS:** Reference Contra Costa County or EBRCSA contract.

**VALIDITY:** Ship by 9/21/2018

**SHIPPING:** *FOB Ship Point - N/C*

**DELIVERY:** By 9/30/2018

*\*SFS not discounted*

*\*\*Aggregated orders among EBRCSA user agencies by 9/21/18*

**MOTOROLA CONFIDENTIAL INFORMATION**



# MOTOROLA

Rick Blanchard, Alameda County ITD  
1401 Lakeside Drive, 7th floor, Oakland, CA 94612

Customer #: 1036726224

### QUOTE #061917GDP - PORTABLE RADIO

<u>Qty.</u>	<u>Model</u>	<u>Description</u>	<u>List</u>	<u>Contract</u>	<u>Extended</u>
1	H98UCD9PW5N	APX6000 700/800 MODEL 1.5 PORTABLE	\$2,705.00	\$2,028.75	\$2,028.75
1	Q806	ADD: ASTRO DIGITAL CAI OPERATION	\$515.00	\$386.25	\$386.25
1	QA00580	TDMA OPERATION	\$450.00	\$337.50	\$337.50
1	Q361	ADD: P25 9600 BAUD TRUNKING	\$300.00	\$225.00	\$225.00
1	H38	SMARTZONE SYSTEM SOFTWARE	\$1,200.00	\$900.00	\$900.00
1	G996	ADD: PROGRAMMING OVER P25 (OTAP)	\$100.00	\$75.00	\$75.00
1	QA09001	ADD: WIFI CAPABILITY	\$300.00	\$225.00	\$225.00
1	QA09007	ADD: OUT OF THE BOX WIFI PROVISIONING	\$0.00	\$0.00	\$0.00
1	QA09006	ADD: ADAPTIVE NOISE SUPPRESSION	\$150.00	\$112.50	\$112.50
1	QA001837	ALT: LIION IMPRES 2900 MAH IP67 (NNTN70	\$100.00	\$75.00	\$75.00
1	NNTN7038	BAT IMP STD IP67 LIION 2900M 3100T BLACI	\$140.00	\$105.00	\$105.00
1	PMMN4065A	MICROPHONE, IMPRES RSM, IP57	\$107.00	\$80.25	\$80.25
1	WPLN7080	APX IMPRES CG SINGLE UNIT CHARGER US/N	\$125.00	\$93.75	\$93.75
1	HA00025AG	ENH: SFS COMPREHENSIVE 5 YR	\$360.00	\$288.00	\$288.00

LIST PRICE		\$6,552.00
CONTRACT PRICE	25% discount	\$4,932.00
2017 SHIP INCENTIVE		-\$1,000.00
Sub-total	40% discount	\$3,932.00
Sales Tax - 9.25%		\$363.71

Total
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\$4,295.71

**TERMS:** Reference Contra Costa County contract.

**VALIDITY:** TBD

**SHIPPING:** *FOB Ship Point - N/C*

**DELIVERY:** TBD