



East Bay Regional Communications System Authority



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

FINANCE COMMITTEE MEETING

NOTICE OF REGULAR MEETING

DATE: February 2, 2018

TIME: 11:00 a.m.

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

AGENDA

1. Call to Order/Roll Call
2. Public Comments (Meeting Open to the Public):
At this time, the public is permitted to address the Committee on items within the Committee's subject matter jurisdiction that do not appear on the agenda. Please limit comments to a maximum of three (3) minutes. If you wish to comment on an item that is on the agenda, please wait until the item is read for consideration.
3. Approval of Minutes of the October 13, 2017, and November 17, 2017, Regular Finance Committee Meetings
4. 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
5. Consider recommendations to increase the monthly cost of EBRCSA to ensure adequate reserve for necessary future upgrades
6. East Bay Municipal Utility District Lease of the Carter (Alta Mesa), Pearl, and Skyline sites
7. Discuss contract with CSI Communications which is currently with Contra Costa County Department of Information Technology
8. Receive an update concerning an RFP regarding the Multi-Year Plan of System Equipment Replacement and Upgrade

**Alameda County Office of Homeland Security and Emergency Services
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9. Discuss recommendation made to enter into a Master Contract between Motorola Solutions, Inc. and EBRCSA for member agencies to purchase radios through
10. Provide an update on upgrade 7.17 to Dispatch Centers and the Master Site
11. Agenda Items for Next Meeting
12. Adjournment

This AGENDA is posted in accordance with Government Code Section 54954.2(a)

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

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



Tom McCarthy, Executive Director

January 28, 2018



**East Bay Regional
Communications
System Authority**



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AGENDA ITEM NO. 3

**AGENDA STATEMENT
FINANCE COMMITTEE MEETING
MEETING DATE: February 2, 2018**

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

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

SUBJECT: Approval of October 13, 2017 and November 17, 2017 Regular Finance Committee Meetings Minutes

RECOMMENDATIONS:

Approve the minutes of the October 13, 2017 and November 17, 2017 Regular Finance Committee Meetings.

SUMMARY/DISCUSSION:

The Finance Committee will consider approval of the minutes of the October 13, 2017 and November 17, 2017 Regular Finance Committee Meetings.

RECOMMENDED ACTION:

It is recommended that the Committee approve the minutes of the October 13, 2017 and November 17, 2017 Regular Finance Committee Meetings.



East Bay Regional Communications System Authority



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FINANCE COMMITTEE MEETING

REGULAR MEETING

DATE: October 13, 2017

TIME: 11:00 a.m.

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

MINUTES

1. Call to Order/Roll Call: 11:04 a.m.

Committee Members:

T. Anderson, Police Chief, East Bay Regional Parks District
T. Acosta, City Manager, City of Union City
J. Calabrigo, Town Manager, Town of Danville
S. Perkins, Councilmember, City of San Ramon
C. Silva, Councilmember, City of Walnut Creek
W. Tilly, Telecommunication Manager, Contra Costa County

Staff:

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

Public:

G. Poole, Motorola

2. Public Comments: None.

3. Approval of Minutes of the June 2, 2017 Regular Finance Committee Meeting

On motion of Bm. Silva, seconded by Bm. Perkins and by unanimous vote, the Finance Committee approved the minutes of the June 2, 2017 Finance Committee meeting.

4. Discussion of Lease with East Bay Municipal District for Two EBRCSA Sites

Director McCarthy presented the Staff Report and advised that he would like approval to have a closed session item at the October 27, 2017, Board meeting, regarding negotiating leases with the East Bay Municipal Utility District (EBMUD). He, and Bm. Calabrigo, had met with Alex Coate, General Manager of EBMUD and Matt Elawady, Manager of Real Estate Services for EBMUD, and had reached a point where they needed authorization and terms from the full Board, to negotiate the two leases, Pearl and Alta Mesa. The Authority's attorney would be at the meeting on October 27 to conduct the closed session, and he was asking to have one or two Boardmembers appointed, decide on price and terms in order to continue the negotiations. EBMUD had asked the Authority to put the Seneca site on the back burner, to discuss it in 12-18 months. Bishop O'Dowd would be interested in purchasing the site, if available, and according to code, a JPA was not one of the entities first offered surplus property, but a school was one of the eligible entities. The closed session would include discussion of the Pearl and Alta Mesa sites. EBMUD has said there is a third site, the FAA tower on Skyline Boulevard in Oakland. He has asked EBMUD to confirm if that site was on FAA land. EBMUD has not responded yet.

Bm. Calabrigo stated although the Authority had EBMUD's attention, they were still viewing it as a commercial transaction. They have had two productive meetings, only to have them back away from what was discussed, the next day.

Bm. Perkins asked if they were absolutely convinced that there was not a site, or combination of sites that were comparable to the Seneca site.

Director McCarthy stated with the Pearl site, it could probably be done. In Moraga, it would be difficult. In Oakland, it was nearly impossible.

Bm. Anderson asked, in regard to the FAA site in Oakland, was it literally surrounded by East Bay Regional Park District (EBRPD) land. He advised Director McCarthy to approach EBRPD about an encroachment permit.

Director McCarthy stated he was currently speaking to the FAA to establish if it was their land or did they lease it from EBMUD.

Bm. Silva thanked Director McCarthy for clarification that a JPA was not allowed first offering of surplus property.

Bm. Perkins stated it was not that difficult for State Senator Steve Glazer or someone, to get an exception to the code.

Bm. Calabrigo stated they were very willing to help with that, if that was what the Authority wanted.

Director McCarthy stated EBMUD went into detail about their cost to move and maintain lines, the property that they have to purchase and maintain, capital projects that they have to build. They come up with their defensible reasoning. Every time they walked away from the negotiations conversation, they lost traction.

Bm. Calabrigo stated on two separate occasions, EBMUD had offered solutions which they had expressed a willingness to support with the Board, only to have them back away from those solutions.

Bm. Silva asked if Mr. Coate was in the room when this happened.

Director McCarthy stated yes, Mr. Coate and Mr. Elawady were the two that were in the room meeting with the himself and Bm. Calabrigo.

Bm. Anderson stated, ultimately, Mr. Coate would have to take an offer to his Board.

Bm. Calabrigo stated this was part of the conversation that needed to be with the full Board.

Bm. Silva asked if there could be some financial analysis regarding payment of radios, what was paid to get on the System, what is the yearly fee.

Bm. Calabrigo stated they had been very proprietary with the System, and as a matter of policy, did the Authority want to be swapping radios and membership for anything else, because then they ran into an issue with the other Authority members.

5. Change Order #26 with Motorola Systems, Inc.

Director McCarthy presented the staff report and advised that a new Service Upgrade Agreement (SUA) was needed to cover all the newly acquired consoles and other equipment. The SUA has an additional five years under the contract. This would be a change order of \$101,963, per year, over the next five years, for a total of \$582,904. The current annual cost was \$831,348.

Bm. Silva asked if the Time Division Multiple Access (TDMA) would impact this agreement.

Director McCarthy stated the TDMA would take three years to implement, it would be phased in over time and there could be components that could affect this SUA. He was not asking to fund the TDMA today, he was asking permission to do the full investigation and to make the Committee aware of it.

Bm. Silva asked why they were being asked to recommend increasing the value of the contract from \$37,000,000 to \$38,000,000, which looked like 5 years at \$600,000. Why were they doing that as opposed to approving an increase in the annual SUA cost, which seemed more relevant because this was an operating budget item, not a capital amount.

Director McCarthy stated the contract was for an amount not to exceed, so they had to increase the cost of the contract. The next major software update would be Version 7.17, and if these new consoles and equipment were not included in this new contract, Motorola would not do the work.

Bm. Calabrigo asked if this would require a funding appropriation or just a contract amendment.

Director McCarthy stated it required a contract amendment and an increase to the budget under the Maintenance line item. It would require a change order that would be taken to the Board for approval.

Bm. Perkins asked Director McCarthy to include the information related to the budget in the Fiscal Impact portion of the staff report for the full Board, to recognize that not only were they updating the contract, but were also increasing the budget.

On motion of Bm. Perkins, seconded by Bm. Silva and by unanimous vote, the Committee members recommended a System Upgrade Agreement (SUA II), between the East Bay Regional Communications System Authority (EBRCSA) and Motorola Solutions Inc. via Change Order #26, be forwarded to the full Board for approval.

6. Discussion of 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 this was Phase II, transition from Frequency Division Multiple Access (FDMA) to Time Division Multiple Access (TDMA). Currently, System radios operated on FDMA, one radio on the bandwidth at 12.5 megahertz, at a time. This was originally called Phase II by the previous Executive Director, whereby January 2017, the FCC was going to require everyone go to Phase II. TDMA doubled the bandwidth. There were three items included in the \$19,000,000 cost. The TDMA was to be purchased by the end of the year. He was asking for permission to go out and investigate this more. This is something they needed to consider in the future. It had been avoided by expanding some areas where there had been minimum number of channels, and paid for that through grants. Police and Fire had been asking for this because it allowed them to have the GPS function on their radios. If they hit an assigned button on their radios, it gives a geographic location as to where they were exactly located. The System was built for who was on the System then, but there were other issues that come into play with this. The FCC provides licensing for the channels, but they were basically running out of bandwidth to have enough for the System to operate. It was becoming more difficult to get channels from the FCC. The recommendation was to go to TDMA to be able to optimize the number of channels the System has through the FCC. It is not only expensive for the Authority, but the \$7,900,000 million did not include the replacement cost of radios. Contra Costa County was in good shape because when they did the FCC rebanding, they purchased a majority of TDMA radios. Alameda County was in a different situation. Nextel gave them a one-for-one exchange on radios. Their radios would be at end of life in January 2018. Those radios were not able to be upgraded. For the past two years, he had been telling agencies that were purchasing or replacing radios to buy them TDMA ready or buy a TDMA radio because he knew the System would eventually be going to TDMA. Radios have a seven- to 10-year life span. Alameda County IT was working with Motorola to make a large purchase, and extend that to the cities within Alameda County. The larger the purchase, the more influence on the cost of the radio. They would then lease those radios to the agencies over a fixed period of time. He was not part of that conversation. His focus was on the TDMA aspect and moving to the next phase. This had other impacts. Santa Clara and San Francisco Counties were building their systems on a TDMA platform. Marin County would be a TDMA platform, also. If you have an FDMA radio and you roam or go into an TDMA area, it pulls their System back from TDMA to FDMA.

Bm. Perkins asked what the TDMA upgrade entail.

Director McCarthy stated it was replacing hardware and software. It is replacing components of the System's Master Site, a software update at this site. It was also equipment at each one of the System's site. The Authority would pay for that, but agencies would be replacing their car radios. This would also upgrade the consoles.

Bm. Silva asked how many users the System had.

Director McCarthy stated 18,500.

Bm. Silva stated that this \$19,000,000 was about \$1,000 a user, not including the radios.

Bm. Anderson asked if it was a federal mandate.

Director McCarthy stated it was not a mandate at this point because they had not set a new date. It had been 2016, then 2017. It would take three years to complete the work. TDMA uses the same 12.6 bandwidth, but splits it so you can have two radios operating in that same bandwidth.

Bm. Silva stated they did not have an option of not going forward and not being compliant with federal government standards, and when not compliant, the Authority would be ineligible for grants. So, the Authority needed to decide how to finance this and pass the costs along. If they were to do this at \$3 to \$4 million a year, the budget would not absorb the costs. This was where they needed to discuss raising the rates. The Authority needed to start marketing the rate increase.

Director McCarthy stated he wanted the whole Board to know that this was here.

Bm. Perkins stated when this was taken to the Board, they needed to mention the impacts on the user - what was covered and what was not covered. Consoles were covered, but handhelds and car radios were not. Distinguish between the two groups, that if you have one kind of radio, you upgrade, but if you had a different radio, you would have to replace it.

Director McCarthy stated this was the start of that process. He would be meeting with all the Chiefs of Police, Fire, and Sheriffs. He had met with some and they were inventorying what they have and what they would have to replace. This was to inform the Board he was working on this, and they needed to calculate what the costs would be. Motorola would bill the Authority one year after the contract was signed. He was bringing this forward not because most agencies had two-year budgets and would need to time to work this into those budgets.

Bm. Perkins stated it appeared that in the next FY budget, there would need to be an increase because the first payment would be due at the end of the calendar year. This could be phased in for two years.

Director McCarthy stated they had done their best to hold firm with costs, but the technology was causing the Authority to examine costs. Bm. Muranishi was assisting him with working on a contract to determine System replacement costs.

Bm. Perkins stated this accomplished some replacement over a three-year period, but did not solve the problem of what did the capital replacement budget look like in the distant future.

Director McCarthy stated that was correct. These had been in the AECOM report since the beginning. The ethernet was a change in how the radio system worked. The microwave equipment was first purchased in 2004, installed later and not turned on until 2013. The batteries in the master site were one of the first things to go in. They are gel batteries at 350 lbs. a piece. The equipment life timelines had been running.

Bm. Calabrigo stated the presumption was that this would be another ongoing cost. While they had discussed this in the past, this was the first time they had put numbers to it. These numbers

represented 25% of the System cost, exclusive of the radios, and now they were discussing 25% of the System cost and a significant number of users having to change their radios.

Cm Perkins asked if this would replace nearly all the capital. This was \$20,000,000, was there another \$20,000,000 or \$30,000,000 that would need to be replaced in 2, 3 5 years.

Director McCarthy stated the microwave portion replaced quite a bit of the expensive components, there were radios that went along with this. The microwaves radios that did the transmitting were at their end of life; transmitter receiver systems. Do we do the TDMA by end of year; in regard to the microwave, did they look at other options? This was going through Motorola. Did they contact Aviat who is the manufacturer, Alcatel, do we go through a bid process to purchase the microwave to tie the installations together. The batteries did not have a drop dead purchase date, but they were included because of their longevity.

Bm. Silva stated they were looking at the fiscal impact as a single sourced, multi-pronged project where some of this could be put out to bid.

Bm. Calabrigo stated they had been trying to understand the capital costs associated with the System. Since they did not know that answer, they needed to know how much of this was going to overlap with that. Was this 20, 30, 60 percent of the capital system. They knew based on the current rate structure, that they would be able to cover operating costs and maintain an operating reserve, the rest of the money would go into capital replacement. How much of this was able to be covered by that. He needed to redefine what was capital replacement. They discussed it a little in the previous item, and they might not look at software and technology as hardware, but yet they had to plan and budget for it, as if it were. It was not unreasonable to assume that they would be dealing with this every five to seven years.

Director McCarthy stated the recent Northern California fires were a good example of replacement costs. There were 70 cell towers that were damaged during the fires. Forty-eight were back online, but the analysis was that the majority of those cell towers would have to be replaced because the heat stressed the tower itself.

Bm. Silva stated that is where you start at a baseline, you say, how many do we have and how much would it cost to replace them.

Bm. Anderson stated the previous Executive Director had discussed barcoding equipment.

Director McCarthy stated that was done. The delay was meeting the purchasing requirements of Alameda County and he was working with Bm. Muranishi to get her GSA Director to get the RFP regarding capital replacement costs out.

Bm. Silva asked what was the current cost per radio, to be on the System, and how many radios were on the System.

Director McCarthy stated it was \$25 per month, and there were 18,500 radios on the System.

Bm. Silva stated if you took the \$19,000,000 and divided by it 18,500 radios, it was about \$1,000 per year, per radio, additional cost per agency, for the System cost. She was trying to understand how to explain the financial consequence of this in clear terms to public safety. If you took the seven-year

lease, \$3,000,000 divided by 18,500, it was \$162 per year for seven years. It was basically a 50% increase in the per-user cost.

Bm. Perkins stated he was reluctant to draw down the capital reserve. It could be phased in over a couple of years. The Authority had a net income of \$2,000,000, and this was on top of that, and the Authority was \$1,000,000 short to balance the budget. It gave the Authority an opportunity to phase in a rate increase.

Bm. Silva stated this was not a technical question. The question was, how does the Authority finance and fund this, and communicate the alternatives to the Board.

Bm. Perkins stated the staff report needed to focus on the financial options as opposed to the technical justifications.

Director McCarthy stated the technical side would be how soon the Authority would require System agencies to be TDMA compliant. Financially, there was an increase in user fees, but then there was the cost of radios. Because of the increase in fees, that worked into the technical aspect as to what did the Authority have to do immediately. How did the ethernet microwave update tie to the TDMA? Was it required for TDMA? What was the lifespan of the batteries?

Bm. Calabrigo stated they needed to present a scenario to the full Board on how to pay for the project, rather than have a technical discussion. The Board was not equipped to have a technical discussion. What the Board needed to know was what did they need to buy, and when. Then they needed to discuss how to pay for it. Some agencies might need more than a year to figure out how to pay for a subscriber rate fee increase from \$25 to \$40, or \$25 to \$50 per subscriber unit.

Bm. Perkins stated it could be raised by \$5 per month, per radio, per year, over three years.

Bm. Silva stated this was a finance discussion without understanding how much money was needed over what time frame in order to achieve the objective, and which of these were single-sourced and which needed to go out to bid.

Bm. Anderson stated they needed to present it to the Board, that this was coming.

Bm. Perkins stated this needed to come before the Board in December.

Bm. Calabrigo stated they would need both Board meetings, October 27 and December 1, because many Boardmembers had not been on the Board five years ago. He would break it into more than one piece. The first question that needed to be answered, was did the Authority want to commit to \$7,900,000 by the end of the year, or look at having to pay \$9,500,000 if they waited. Some of the questions that needed to be answered with some level of certainty were, how long was this going to be good for, because in order to make a decision about a five- or seven-year lease, he would pick the seven year lease. But if he knew that they were going to run the risk of the technology changing in year six, and he still had two more years to pay the \$3,000,000 and they were already into the next lease for \$3,000,000 more, now he was looking at \$6,000,000 a year instead of three. They needed to make some reasonable assumptions. For the October meeting with the Board, they should inform and educate, before the need for the Board to make some hard decisions at the December Board meeting. This would give Boardmembers a chance to speak to their public safety people, look at number of

subscriber units they have, how would it affect their budgets, and what did they need to do in order to absorb that.

Bm. Silva stated they were not talking to the Board in two weeks about the financial strategies. They were talking about the reality of a major technology upgrade.

G. Poole stated when they looked at the different pieces, with the TDMA piece, they were getting the GPS capability, and double the capacity.

Bm. Perkins stated on Page 38 of the staff report, it showed the financing of the \$7,900,000, at a 1.85% rate, was \$1,200,000 per year, which the Authority could absorb in its existing budget, but it did not account for the microwave or battery upgrade. They could absorb without a rate increase, but the Committee was convinced that there would have to be a rate increase sooner or later.

Bm. Calabrigo stated this put a rate increase into a different context because, there was \$8,000,000 they did not anticipate, but the other \$11,100,000 was part of the bigger discussion that the Committee had been having for the last two years. How much more on top of the \$11,100,00 was there. One strategy was to go to the Board and say they needed to deal with the \$7,900,000 issue by December, and they could see their way clear to pay out of reserves, but having said that, they now know there is at least another \$11,100,000 coming down the road and they needed to know what the balance of the capital replacement cost was going to be. They needed to tell the Boardmembers this was the recommendation, here is the financing option, and they were putting them on notice now, and they were looking at an increase in 2019, and that rate increase might take the \$25 to a minimum of \$30 and a maximum of \$40 and they could start building their budget around that now.

Bm. Anderson asked how much of that should be discussed at the October Board meeting and how much would be discussed at the December Board meeting.

Bm. Calabrigo stated he would discuss all of it in October. The question he would ask them in December was regarding the \$7,900,000.

Cm. Anderson asked if the Committee was going to tell the Board, this is what you have to do.

G. Poole stated in terms of the System replacement, the Authority was already investing in it with the SUA, it was a System upgrade every two years, getting new pieces.

Bm. Calabrigo stated the Committee wanted to know what the life of the System was and the capital replacement costs. If they knew they had a 50-year capital replacement cost and a 20-year life, they could build that into the budget and plan for it moving forward. The only decision that was critical and needed to be made by the end of the year was the \$7,900,000. They were going to have 6 to 12 months to get their arms around the whole picture. They were going to have to make a recommendation to the Board of where to set the rates in order to make sure they had sufficient funds to deal with capital replacements. They needed to have that built into the rate structure, to smooth those rates so they did not ramp up suddenly.

Director McCarthy stated capital replacement was replacement item-for-item. It did not take into account future technology replacement.

Bm. Calabrigo stated after five years, you could make certain assumptions. It appeared that assumption would be about a \$1,500,000 assumption. You could put it in as a plug number as long as you had something in there.

Bm. Silva stated when she looked at the 10-year projection, there would not be enough. The question was, did the Authority buy now at \$7,900,000 or wait 30 days and buy at \$9,500,000. Then the Finance Committee could make a recommendation on the structure of the financing.

Bm. Anderson stated for the upcoming Board meeting, the project needed to be simplified – this is where we are, this is where we need to be, and this is how much it is going to cost.

Bm. Perkins stated the seven-year option came out to \$5.40 per radio, per year. If you wanted to raise rates immediately, preliminary analysis was a \$5 increase per radio, per month.

Bm. Calabrigo stated from a policy perspective, \$25 per subscriber unit had been the rate that everyone had been paying since 2013. So, if this was the first increase and they were going to go from \$25 to \$30 for 2018 to begin to cover the cost, then they were setting the stage for doing more than that and in the meantime, they knew they were going to cover the cost of the \$7,900,000.

Bm. Perkins stated that should be put in the staff report at preliminary analysis of Option 2, at 18,500 radios was about \$5.40 per radio per month, and round to \$5.00.

Bm. Silva stated that it also needed to be mentioned that this would affect the radios and there were one-time costs associated with the radio.

Bm. Anderson stated they needed to impress upon the Board that they needed to go back to their constituents to see how many radio they have.

Bm. Perkins stated this not only needed to be provided to Boardmembers, but also to the City Managers, District Managers, general managers, etc.

Bm. Calabrigo stated they should start the discussion at the Board meeting, and tell the Boardmembers that they were going to print off a list and provide it to all member agencies so they could determine what, if any, upgrades they were going to need to make, from nothing up to potentially having to replace their radios. The Authority would communicate that to them between the October 27 Board meeting and the December Board meeting.

G. Poole stated the System had the ability, at the Master Site, to pull a report regarding each member agency's radios.

Bm. Silva stated this was not a technology decision, this was a how-do-we-finance-this question.

Bm. Perkins stated the other two pieces of the upgrade needed to be discussed early in the calendar year, and was the Authority going to put them out to bid, the microwave and the batteries.

Bm. Anderson asked if each agency not only had to buy radios, but they would also have to program them at their cost.

7. Increase NICE Logger Capacity

Director McCarthy advised that the NICE logger had reached its capacity on what it could hold in recordings. Motorola had come up with a 12 TB expansion that could help solve the problem. This would also provide two-days training for six technicians to give them a basic understanding of the logger and keep it up and running. The Logger was critical; it recorded pursuits, all calls, evidence, items that went to the District Attorney's Office for charging. The cost was \$82,645, a one-time maintenance cost. That information would be put in the staff report, and well as a budget change.

On motion of Bm. Perkins, seconded by Bm. Acosta and by unanimous vote, the Finance Committee agreed to recommend to the Board of Directors that the Authority add an additional Logging Storage Center to the EBRCSA Master Site, and include training for up to 6 (six) Technicians.

8. Walton Lane Simulcast Site Add-On

Director McCarthy presented the staff report and advised that this item was not supported by the Operations Committee. Antioch had an area called Walton Lane which had a water tower at the top of a hill where Antioch and several cell towers were around it. The Authority had two antennas on the hill, which face the water tank, but there was a community called James Donlon that was shadowed. Whenever Police or Fire had to go there on calls, they had to switch back to their old radio channel. They had worked with Motorola on solutions. It would need an additional site and it was expensive. Contra Costa County had put into its budget to pay for the shelter because they would be using it for some of their equipment, also. The Authority would be responsible for the equipment that would go into the shelter, at a cost of \$697,762. This would also cause an SUA increase for that equipment.

Bm. Calabrigo asked who this benefited.

Director McCarthy stated it benefited Antioch and a small part of Pittsburg. The Operations Committee acknowledged that Antioch came on the System later and the Authority thought they had adequate coverage for this. Now that the System was operating there, this problem had been brought to his attention. He was looking into remedies, costs and financial responsibilities.

Bm. Anderson stated the coverage was what it was.

Director McCarthy stated he would be working with Antioch to find solutions to the problem. He was not looking for approval.

9. Receive an update concerning Expansion of Alameda County East Cell to 12 Channels

Director McCarthy stated the work on the expansion had been completed. It was working well.

10. Receive an update concerning the Motorola Inter Sub-System Interface ISSI 8000

Director McCarthy stated the ISSA had been installed and he was working with BART to optimize it and get it completed. He was working to get reimbursements from grants.

11. The EBRCSA will be seeking nominations for the Board of Directors Vice Chair at the October Board of Directors Meeting to fill the vacancy as Vice Chair Tim Anderson is retiring and will no longer be a Board Member as of November 2017

Bm. Anderson stated he was retiring and October 27, 2017 would be his last meeting. The Committee would need a new Chair and the Board would need a new Vice Chair.

Bm. Calabrigo asked if the Chair position was due to rotate to Contra Costa County.

Director McCarthy stated the Chair did not rotate, but it would be open for nominations, not necessarily to a different county.

Bm. Silva asked what the Bylaws said regarding the election of Chair and Vice Chair, and could it be any position, City Manager, elected, etc.

Director McCarthy stated the Bylaws only stated that the Chair and Vice Chair could not be from the same County.

Bm. Calabrigo stated because Bm. Anderson was appointed by the Special Districts, EBRPD would appoint a new Chief, the Special Districts would appoint a new Special District Boardmember. The Board would need to make a decision about a new Vice Chair.

12. Agenda Items for Next Meeting: None.

13. With no further business before the Finance Committee, the meeting was adjourned at 12:32 p.m.



East Bay Regional Communications System Authority



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

FINANCE COMMITTEE MEETING

REGULAR MEETING

DATE: November 17, 2017

TIME: 11:00 a.m.

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

MINUTES

1. Call to Order/Roll Call: 11:09 a.m.

Committee Members:

J. Calabrigo, Town Manager, Town of Danville
S. Perkins, Councilmember, City of San Ramon
C. Silva, Councilmember, City of Walnut Creek

Staff:

T. McCarthy, Executive Director
A. Tyrvanen, Auditor, County of Alameda
C. Soto, Administrative Assistant

Public:

G. Poole, Motorola

Bm. Calabrigo chaired the meeting and stated due to a lack of a quorum, agenda items would be reviewed and forwarded to the full Board.

2. Public Comments: None.

3. Approval of Minutes of the October 13, 2017 Regular Finance Committee Meetings

Due to a lack of a quorum, this item was forwarded to the next Regular Finance Committee meetings.

4. East Bay Regional Communications System Authority (EBRCSA) Transition to Phase II, from Frequency Division Multiple Access (FDMA) to Time Division Multiple Access (TDMA)

Bm. Calabrigo and Bm. Perkins provided the Committee members spreadsheets relating to Phase II finance options regarding this item.

Director McCarthy presented the Staff Report and advised the Operations Committee had agreed to recommend the Time Division Multiple Access (TDMA) transition to the full Board and was asking the Finance Committee for assistance in setting rates for radios. TDMA was required as Phase II to double channel capacity and also, as to not impact other counties that already had in place, or were installing, TDMA. Not having TDMA would impact the ability to work with the other counties as a team. This would also expand what the System could do in the future, such as GPS capability. That function could not previously be put on the System radios because there was not enough bandwidth. Motorola would include the GPS function in this transition. This was important for the safety of first responders that were using the System, to pinpoint where they were. There were two parts to this transition, one was upgrading the System Master Site, and two, was how this was going to impact agencies in terms of their radios. He was working on the inventory of all System radios and what was needed for the transition to TDMA. This discussion would be how to fund the \$7,900,000 needed for the transition to TDMA.

The Committee and Executive Director discussed the need for technology and equipment upgrades to keep the System current, and the need for a capital replacement plan. In addition to the TDMA upgrade, there was a need for upgrades to the microwaves and batteries, within two to three years, so that additional cost of \$11,100,000 should also be covered in any radio rate increase. An increase would also provide for continuing capital replacement costs, beyond the \$7,900,000 and \$11,100,000, which would be determined once the capital replacement plan was completed.

The Committee members agreed to recommend to the Board, the five-year financing option of the \$7,900,000 needed for the upgrade, a fee increase to cover the cost of the \$7,900,000, and increases to cover the subsequent \$11,100,000 needed for upgrades of microwaves and batteries. Based on an estimate of 17,500 System radios, they agreed to recommend a rate increase of \$8 per radio per month for the first fiscal year starting July 1, 2018, and an additional \$3 increase per radio per month, for the following four fiscal years. Bm. Calabrigo would revise his spreadsheet to reflect these figures and provide it to the Executive Director and Auditor for their use.

5. 2018 EBRCSA Calendar Committee and Board Meetings

Bm. Calabrigo suggested that Board meetings be on the first Friday of March, June, September, and December.

Director McCarthy stated he had scheduled the Operations and Finance Committee meetings three weeks prior to a Board meeting.

6. The EBRCSA is seeking nominations for the Board of Directors Chair and Vice Chair to be voted on and take effect at the close of the meeting on December 1, 2017

Bm. Perkins asked how a Boardmember could put their name in for nomination of the Chair or Vice Chair.

Director McCarthy stated they should send an email to him. He would be sending out an email asking if anyone was interested in a serving as Chair or Vice Chair.

7. Agenda Items for Next Meeting: None.

8. Adjournment

With no further business before the Finance Committee, the meeting was adjourned at 12:32 p.m.

DRAFT



**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. 4

**AGENDA STATEMENT
FINANCE COMMITTEE
MEETING DATE: February 2, 2018**

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

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

SUBJECT: Discussion of Transition to Phase II Transition from Frequency Division Multiple Access (FDMA) to Time Division Multiple Access (TDMA) initial Project Schedule

RECOMMENDATIONS:

Request Committee discuss an initial plan for TDMA deployment based on discussion with the Technical Advisory Committee (TAC) and make a recommendation to the Board of Directors concerning the transition plan to Phase II.

SUMMARY/DISCUSSION:

The TAC Committee has recommended that we begin the installation of the TDMA equipment in the following manner:

Location	Start	Finish
ALCO South West Cell	June 6, 2018	July 27, 2018
ALCO East Cell & Crane	July 30, 2018	August 31, 2018
ALCO Nor4th West Cell	September 10, 2018	October 5, 2018
Contra Costa Co Central Cell and March Creek	October 15, 2018	November 30, 2018
Contra Costa Co West Cell	December 3, 2018	January 11, 2019

Contra Costa Co East Cell

January 14, 2019

February 8, 2019

We anticipate that once the equipment is installed and optimized, we will then operate in Dual Dynamic Mode until June 30, 2020, when we will no longer support FDMA Radios. Decisions to bring certain areas onto TDMA ahead of others will be brought to the Committees and Board of Directors for approval. Agencies have requested the June 30, 2020 date, to allow them adequate time to purchase and upgrade their equipment to TDMA. The project schedule will be formalized and distributed in the near future.

FISCAL IMPACT:

The installation of the equipment does not have any fiscal impact apart from the Lease agreement between Motorola Solutions, Inc. and EBRCSA which has already been entered into.

RECOMMENDED ACTION:

It is recommended that the Committee provide its recommendation to the Board of Directors for this initial project schedule bringing EBRCSA to Phase II TDMA.



**East Bay Regional
Communications
System Authority**



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AGENDA ITEM NO. 5

**AGENDA STATEMENT
FINANCE COMMITTEE
MEETING DATE: February 2, 2018**

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

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

SUBJECT: Request direction concerning rate increase to subscriber fees in order to insure adequate funds to pay for the Transition to Phase II Transition from Frequency Division Multiple Access (FDMA) to Time Division Multiple Access (TDMA)

RECOMMENDATIONS:

Request Committee discuss and make a recommendation to the Board of Directors concerning rate increases and whether we will utilize any existing funds available to set the subscriber cost to cover the cost of the transition to Phase II Time Division Multiple Access (TDMA).

SUMMARY/DISCUSSION:

The Finance Committee discussed a rate increase for each subscriber on the EBRCSA system. We unfortunately did not have a quorum at the Finance Committee and at the Board of Directors meeting, as we need a quorum of 2/3rds, 16 voting members. It was recommended by Counsel to take this back to the Finance Committee and then to the next Board of Directors meeting.

The Finance Committee members recommended that five-year financing option of the \$7,900,000 needed for the upgrade, a fee increase to cover the cost of the \$7,900,000, and increases to cover the subsequent \$11,100,000 needed for upgrades of microwaves and batteries. Based on an estimate of 17,500 subscriber radios, they agreed to recommend a rate increase of

\$8 per radio per month for the first fiscal year starting July 1, 2018, and an additional \$3 increase per radio, per month, for the following four fiscal years.

FISCAL IMPACT:

The recommendation made by the Finance Committee will change our anticipated revenue for the next five fiscal years. A spread sheet with the changes to the anticipated revenues based on the decision of the Committee will be prepared and presented with the recommendation of this Committee to the full Board of Directors.

RECOMMENDED ACTION:

It is recommended that the Committee provide its recommendation to the Board of Directors as to what the rate increase will be per subscriber, and if the cost of future upgrades will be via rate increases or a combination of current funding within our accounts and an increased rate.

Attachments:

“A” – 10 year

“B” - Finance Committee spread sheet

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
Operating Reserve											
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)	(26,878)
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)
Balance - ending	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	2,301,748

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)	(550,000)	(564,115)	(586,814)	(569,516)	(572,225)	(574,939)	(577,659)	(580,383)	(583,114)	(585,849)
Balance - ending	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

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)
Balance - ending	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	9,330,261

TOTAL RESERVE BALANCE

	8,114,914	10,023,914	10,663,872	11,226,537	11,709,222	12,109,160	12,423,509	12,649,343	12,761,900	12,757,415	12,632,010
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<u>Assumptions</u>												
			Phase II TDMA Upgrade financed over 5 years									
			Microwave Upgrade financed over 5 years									
			Battery Replacement assumes replacement of 10% of batteries per year - ongoing.									
			General Capital Replacement assumes \$80 million in capital assets (pending Cap Replacement Study to be done in 2018))									



**East Bay Regional
Communications
System Authority**



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AGENDA ITEM 6

**AGENDA STATEMENT
FINANCE COMMITTEE MEETING
MEETING DATE: February 2, 2018**

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

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

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

RECOMMENDATIONS:

Review, and if Committee agrees, make a recommendation to the Board of Directors to enter into a non-revocable lease agreement with 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 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 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 and EBRCSA a revocable lease with EBMUD for the Seneca Site. 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 and the lease is between EBRCSA and EBMUD.

A Lease agreement between East Bay Municipal Utilities District and the East Bay Regional Communications System Authority 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 creation of a new 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, we will have to increase the amount of money to cover the EBMUD lease. We will identify where the money will come from in existing funds and if this is approved by the Committee, a budget change will be presented to the Board of Directors with this item. We have adequate funding to cover this increase and will not impact user fees in any way.

RECOMMENDED ACTION:

It is requested that the Committee recommend to the Board of Directors to enter into the Lease agreement with East Bay Municipal Utilities District for the East Bay Regional Communications System Authority equipment located at Pearl, Carter (Alta Mesa) Reservoirs, and Skyline.

Attachments: "A"

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.”

W I T N E S S E T H :

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 11th 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 11th 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 – 11th 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: _____

EXHIBIT "B"

APN: 419-180-005-3
[+ More Results](#) (View results for all visible layers)

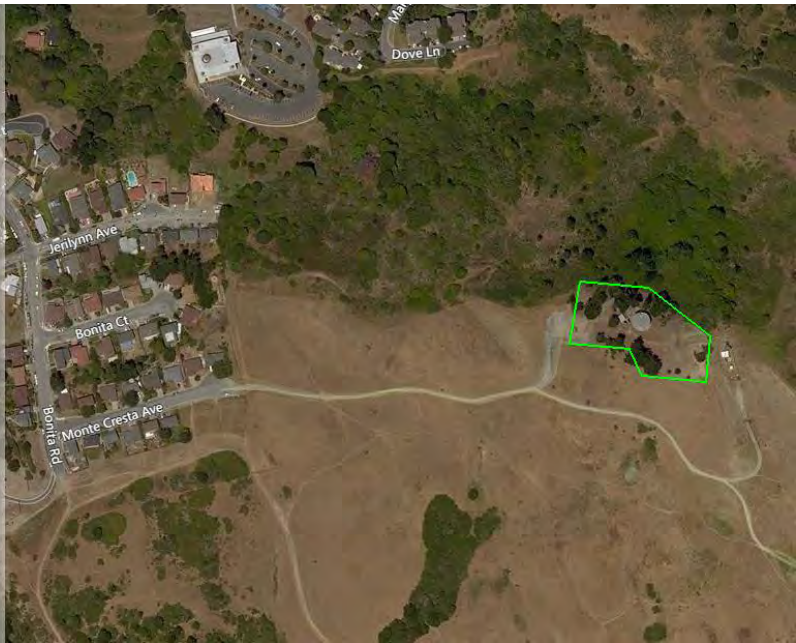
APN: 419-180-005-3

Site Address	
Parcel No. (APN)	419-180-005-3
Land Use Cat.	MISCELLANEOUS
Land Use Desc.	GOVERNMENTAL, PUBLIC
Building Area	
Lot Area	76,491 SF (1.76 ACRES)
Building/Lot Ratio	
No. of Units	
Year Built	
Total Assd. Value	\$190,706
Owner 1	EAST BAY MUNICIPAL UTILITY, DIS
Owner 2	
Owner Address	PO BOX 24055 OAKLAND, CA 94623
Last Transfer	
Last Market Sale	12/29/58

[Add to List](#) [Full Property Detail](#) [More](#)

Location

Site Address	
Parcel No. (APN)	419-180-005-3





**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. 7

**AGENDA STATEMENT
FINANCE COMMITTEE
MEETING DATE: February 2, 2018**

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

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

SUBJECT: Request direction concerning entering into a contract with CSI
Telecommunications for Radio Frequency Engineering assistance

RECOMMENDATIONS:

Request Committee discuss and make a recommendation to the Board of Directors concerning a contract with CSI Telecommunications. CSI has been providing 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 allow us to use CSI as necessary.

SUMMARY/DISCUSSION:

CSI Telecommunications, Inc. 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 had with CSI. However, the contract expired in December of 2017. CSI Engineers have also provided subject matter expertise in the transition to TDMA and other changes to the EBRCSA system.

The contract with CSI Telecommunications is a time and materials contract which would be set not to exceed \$200,000 for the year and would be a year-to-year contract. Contra Costa County

Department of IT has extended the contract twice and the current extension expires January 31, 2018. The hourly charge is \$215/hr and 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 we move 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 we build out sections to ensure there is no degradation to the system we are expanding.

FISCAL IMPACT:

If the Finance Committee recommends entering into a contract with CSI, a Budget Change will be necessary and we will identify the best funding source. Based on the budget adopted in June of 2017, a rate increase to pay for this contract is not anticipated. A spread sheet with the changes to the anticipated revenues based on the decision of the Committee will be prepared and presented with the recommendation of this Committee to the full Board of Directors.

RECOMMENDED ACTION:

It is recommended that the Committee provide its recommendation to the Board of Directors as to whether or not enter into a contract with CSI Telecommunications for specialized Engineering services.

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)


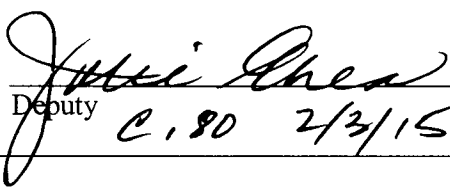
Number:
Fund/Org:
Account:
Other:

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

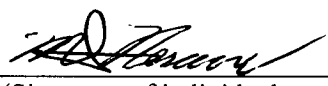
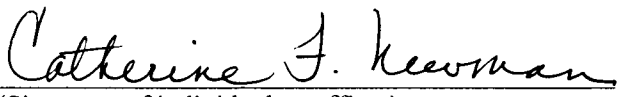
Government Code Section 31000

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)

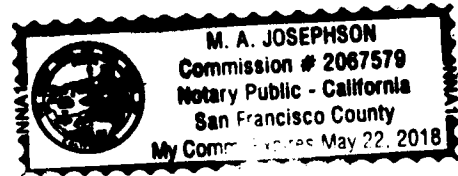
On February 17, 2015 (Date)
before me, M.A. Josephson, Notary (Name and Title of the Officer),
personally appeared, Michael Stephen Thomas and Catherine Jaduska Thomas,

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: *MSW*
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



Contractor



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


Contractor


County Dept.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

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
(Purchase of Services - Long Form)

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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