



## **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: August 30, 2024**

**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/Introductions
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 April 19, 2024, Finance Committee Meeting
4. Presentation of 2023 Audited Financial Statements and Proposed Financial Statement Reporting Policy
5. Review Proposed Accounts Receivable Policy
6. Recommendation for write-off of certain invoices
7. Review Proposed Subscriber MOU
8. East Bay Regional Communication System Updates
  - Capital Improvement/Replacement Project
  - The City of Antioch Site on Walton Lane
  - Radio Purchase Agreement
9. Agenda Items for Next Meeting
10. 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.



David Swing, Executive Director

August 26, 2024



# **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**

**AGENDA ITEM NO. 3**

### **REGULAR MEETING**

**DATE: April 19, 2024**

**TIME:** 11:00 a.m.

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

### **DRAFT MINUTES**

1. **Call to Order/Roll Call:** A regular meeting of the Finance Committee was held on Friday, April 19, 2024. The meeting was called to order at 11:01 a.m.

#### **Committee Members Present:**

P. Meyer, Chief, San Ramon Valley Fire Protection District  
J. Calabrigo, Town Manager, Town of Danville  
T. Dupuis, Chief Information Officer/Registrar of Voters, Alameda County  
M. Nino, County Administrator, County of Contra Costa  
S. Perkins, Councilmember, City of San Ramon  
L. Smith, City Manager, City of Dublin

#### **Staff Present:**

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

2. **Public Comments:** None.
3. **Approval of Minutes of February 16, 2024 Finance Committee Meeting**

On motion of Bm. Perkins, seconded by Bm. Calabrigo and by unanimous vote, the Finance Committee approved the minutes of the February 16, 2024 Finance Committee meeting.

4. **FY 24/25 EBRCSA Budget**

Craig Boyer, Auditor, stated generally speaking, FY 24/25 budget is fairly consistent with the FY 23/24 budget. They were higher on revenues because they were assuming

higher interest rates given better rates of return on investments over the past year, radio count and dues per month are the same as the prior year. On the expense side, expenses are fairly consistent with the prior year. The bottom line is they are budgeting a net loss of approximately \$2.7 million. The majority of that is due to the Walton Lane capital item. Even if you back that out, there is still a structural deficit of the budget based on the current fee structure. The next page is the expenditure detail, most of the expenditures are fairly consistent with the prior year. The most notable changes are that in the prior year, they had budgeted \$161,000 for the Capital Improvement Plan; it was a separate line item called Planning. This year that item has been moved to the CSI Telecommunications budget. Most other changes are being driven by changes in contract terms with Motorola as well as Aviat.

Bm. Nino joined the meeting at 11:06 a.m.

In regard to the third schedule which is the reserve balances, the Authority has three different reserve balances. The first being the operating reserve. The policy requires EBRCSA to budget at 50% of expenditures. The second reserve is the debt service reserve; by policy it is to be budgeted at \$1 million, and the third reserve is the capital reserve. Any remaining fund balance that is not reserved to either operating or debt service gets reserved to the capital reserve. Total reserves are being projected at the end of FY 23/24 to be \$15 million, with approximately \$12 million going to capital reserves. With the FY 24/25 budget, they are projecting that total reserves will end at \$12 million with approximately \$9 million in capital reserves. This is the effect of the deficit they are budgeting. The last three pages give a series of cash flow projections. Normally, there is one, the first one that shows based on the budget schedule prior how that is affecting cash flow for this year as well as 10 -year period going forward. Provided were also a couple different scenarios. One is if EBRCSA were to implement an annualized 3% increase in rates, that would affect cash flow projections. The third schedule is if EBRCSA were to implement a 5% annualize rate increase. With the first cash flow schedule, they are projected to end with \$15 million of total reserves. If you look at the schedule over the 10-year projection, they end with about \$15 million. This assumes with the capital expenditures they are only budgeting for known capital expenditures. Right now, they have several capital expenditure items. Those are known for about the next five years. After that, capital expenditures drop quite a bit. Given that the reserve balances are maintained, they dip down in the middle of the projection. If they retain dues where they are, and assuming the capital assumptions are right, they should see consistency over the period. If you move to the second cash flow schedule you are looking at total reserves of \$15 million, and end with \$25 million. Again, if the assumptions are right, a 3% annual increase should build the reserves by about \$10 million, and with the third cash flow schedule, they would go from a starting point of \$15 million of total reserves to approximately to \$35 million at the end of the ten-year period. A 5% increase would increase reserves by approximately \$20 million at the end of the 10-year period.

D. Swing stated the Operations Committee had made a motion to increase the rate by \$1 per radio per month for FY 24/25, another \$1 increase in FY 26/27, and a third \$1 increase in FY 28/29.

Finance Committee members discussed their approval of the budget numbers, and discussed the scenarios of an increase in rates of either 3% or 5% and their effect on the 10-year projections. The wild card in the 10 -year projections is the capital replacement plan. Fortunately, the Motorola contract will take a lot of capital effectively off the table.

It is like they are paying for it with operating funds as opposed to putting into the capital budget. There were questions about the legal expenses going from \$26,000 to \$108,000 and then going back down. They had a lot of bills racked up with review and double review of documents. There was a lot of self-initiated work. On the assumptions for the forecasting, what were the assumptions that were made for administration cost.

Mr. Boyer stated for Administrative costs they increase it by 4%, by CPI increase per year. If there is something contractual where they know the actual amount, they will use that. But otherwise it is generally 4% unless they get other information. Debt service payments will go away in 2027 so the debt service balance will roll into the capital reserve. When that is paid off in 26/27, debt service policy goes away so they lose that opportunity to gain the transfer of \$850,000 to \$1 million. One silver lining is in 2019 they entered into a contract with Motorola, for the MPLS upgrade. They chose to finance that over seven years and with a \$1.3 million payment which is probably why the capital expenses dropped somewhat in 28/29. They will eliminate that \$1.3 million in 2026 for long term protection. With respect to the CSI group, it will be brought back to the Board by the December meeting with a completed CIP plan.

On motion of Bm. Perkins, seconded by Bm. Smith and by unanimous vote, the Finance Committee agreed to submit the proposed budget for FY 24/25 to the full Board for approval.

## **5. EBRCSA Rate Increase Discussion**

Mr. Swing stated there had been a flat level payment to Motorola for the past 10 years, and having entered into a new agreement with Motorola for the next six years, the new agreement increased operations and capital costs. Also, there has not be a subscriber rate increase since 2017. Discussions with the Auditor and Executive Director covered what it would look like if the Authority increased the rates by a one-time increase of 3% for one year or 5% for one year. The revenue is about \$252,000 at 3% and \$376,000 at a 5% increase. Subscriber unit charge would increase by \$1 at 3% and \$3 per radio per month at 5%. He was recommending a 3% rate increase as of July 1, 2024, and discussions to be had by the Finance Committee for subsequent increases and recommendation to the full Board in December of 2024.

Bm. Smith stated she was supportive of a 3% increase at this point until they get the capital expenditure plan put into place and understand where the Authority is headed.

Bm. Perkins agreed and stated projecting rate increases beyond the immediate is not recommended until they have data on the capital program. A one-time modest increase is appropriate.

Bm. Nino stated she was also supportive of 3% increase. She wanted to confirm the timing of bringing back subsequent increases to the full Board and look at something for FY 25/26.

On motion of Bm. Nino, seconded by Perkins and by unanimous vote, the Finance committee agreed to adopt the staff recommendation of a 3.3% or \$1 per unit per month increase as of July 1, 2024, subject to reconsideration once the capital improvement plan is brought before the Finance Committee and the full Board that rate increases will be

reconsidered after that time and there may a potential for a further increase or reconsideration as of July 1, 2025.

Bm. Calabrigo left the meeting at 11:37 a.m.

**6. Redwood Public Law Contract**

Bm. Meyer stated he had spoken to Meyers Nave and they were understanding of EBRCSA moving to Redwood Law Firm representation. There is a cost savings with Redwood Law Firm.

On motion of Bm. Smith, seconded by Bm. Perkins and by majority vote (Bm. Calabrigo absent), the Finance Committee agreed to recommend to the full Board the approval of a contract with Redwood Public Law.

**7. CSI Telecommunications Contract**

Executive Director McCarthy stated this was a renewal of EBRCSA's contract with CSI. This contract is with CSI for radio engineer assistance, microwave support, and frequency deconfliction. They have been very happy with their work. They will be working with EBRCSA on the capital replacement project.

The Finance Committee asked that the Executive Director get the contract changed to a fiscal year renewal period.

On motion of Bm. Perkins, seconded by Bm. Nino and by majority vote (Bm. Calabrigo absent), the Finance Committee agreed to recommend to the full Board approval of the contract with CSI Telecommunications.

**8. Motorola Maintenance Agreement**

Executive Director McCarthy stated they have had previously had an agreement with Motorola for two people, one person was on site part-time during the week to maintain the master site, and one was on call. Motorola has changed them both to technicians on call. They do all the Microsoft security patches and everything that has to be done to the master and prime sites. EBRCSA will look to see how this item may be done differently, more efficiently in the future.

On motion of Bm. Perkins, seconded by Bm. Meyer and by majority vote (Bm. Calabrigo absent) the Finance Committee agreed to recommend to the full Board the renewal of the Services Agreement with Motorola Solutions Inc. to continue System support and training for the EBRCSA System.

**9. Radio Interoperability EBRCSA MOU**

Executive Director McCarthy stated this contract allows coverage by other agencies in other jurisdictions, use of the System. It formalizes a standing exercise amongst these agencies.

The Finance Committee heard this item as an informational item, no motion was needed.

## 10. Updates on East Bay Regional Communications System Authority Projects

- Encryption

Alameda and Contra Costa Counties have the encryption. It is now with the radios shops which are working on agencies' handheld radios and those in cars. EBRCSA has done its part in encrypting all consoles.

- Microwave/Ethernet/MPLS Project Update

This project is down to three sites: Concord, Walnut Creek and Pleasant Hill, which need fiber. Alameda County is totally done. Projected completion is within the next four weeks.

- Cyber Security Active Eye Update

Some equipment for cyber security has been delivered and installed in the back. They cannot plug it in until they finish the three sites mentioned previously. The cyber security active eye can be worked on as soon as the above sites are completed.

- SUA Update

They have started work on the SUA update. The project list is being put together and they are setting up the team. This is the brand new SUA that was just signed.

- The City of Antioch Site on Walton Lane

The City of Antioch has not renewed the lease for the land with the microwave. Executive Director McCarthy has spoken to Antioch with no luck. He is now speaking with the tower company to see if they can come to an agreement to put the EBRCSA microwave on site.

- Wiedemann Project San Ramon

This project is coming to an end. It is the project site in Norris Canyon. They are currently working on punch list items. This site will cover a dead zone currently in that area.

## 11. Agenda Items for Next Meeting

- Contra Costa County MOU: This is being worked on.

## 12. Adjournment: With no further business coming before the Finance Committee, the meeting was adjourned at 11:55 a.m.

---

Caroline P. Soto  
Authority Secretary



**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, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

**AGENDA ITEM NO. 4**

**AGENDA STATEMENT  
FINANCE COMMITTEE  
MEETING DATE: AUGUST 30, 2024**

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

**FROM:** David Swing, Executive Director  
East Bay Regional Communications System Authority

**SUBJECT:** Audited Financial Statements Presentation and Policy

**RECOMMENDATIONS:**

1. Receive the Audited Financial Statements Report for 2023
2. Discuss the proposed Audited Financial Statements Policy and recommend a final policy to the Board of Directors for approval at the September 13, 2024 meeting.

**SUMMARY/DISCUSSION:**

Each year, the Authority contracts with an independent auditor to perform a financial audit of the Authority's financial statements. The independent auditor evaluates whether the financial statements have been prepared using generally accepted accounting principles. For fiscal year 2022-2023, the independent auditor expressed an opinion that the financial statements are presented in accordance with generally accepted accounting principles. The external auditor also provided a letter that includes required communications. There were no audit findings to report in the letter.

Currently, the annual audit of the financial statements is conducted by Badawi and Associates and is presented to the County Auditor's Office and the Executive Director. The financial audit was last presented to the Finance Committee in 2020. A representative of Badawi and Associates will present the 2023 report at the Finance Committee meeting, then present the 2024 report to the Finance Committee in November 2024.

It is common for governing members to participate as a liaison to receive a copy of the audit while staff assists the auditor with the collection of necessary documents. Staff recommends the





**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, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

assignment of two members of the Finance Committee to serve as liaisons to receive the report and ensure it is presented at a Finance Committee meeting. The Executive Director is seeking the Committee's recommendation on the presentation of the audited financial statements solely to the Finance Committee or to the full Board of Directors.

**Attachments:**

1. Auditor's Communication with Governance
2. Draft Audited Financial Statements Policy

# East Bay Regional Communications System Authority

Dublin, California

*Auditor's Communication with  
Those Charged with Governance*

*For the year ended June 30, 2023*



October 27, 2023

To the Board of Directors and Management  
of the East Bay Regional Communications System Authority  
Dublin, California

We have audited the financial statements of the East Bay Regional Communications System Authority (Authority) as of and for the year ended June 30, 2023, and have issued our report thereon dated October 27, 2023. Professional standards require that we advise you of the following matters relating to our audit.

#### **Our Responsibility in Relation to the Financial Statement Audit**

As communicated in our engagement letter dated September 20, 2023, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of the Authority solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

#### **Planned Scope and Timing of the Audit**

We conducted our audit consistent with the planned scope and timing we previously communicated to you.

### **Compliance with All Ethics Requirements Regarding Independence**

The engagement team, others in our firm, as appropriate, our firm, and our network firms have complied with all relevant ethical requirements regarding independence.

### **Significant Risks Identified**

We have identified the following significant risks:

- *Risk of Management Override of Internal Controls* – A risk of management override of internal controls exists at any entity where management can change or decide not to perform that entity's internal controls.
- *Revenue Recognition Risk* – Errors in revenue recognition can affect bond covenant ratios and the net position of the Authority.

### **Qualitative Aspects of the Entity's Significant Accounting Practices**

#### *Significant Accounting Policies*

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the Authority is included in Note 1 to the financial statements. There have been no initial selection of accounting policies and no changes in significant accounting policies or their application during the year ended June 30, 2023. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

#### *Significant Accounting Estimates*

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments.

The most sensitive accounting estimates affecting the financial statements are capital asset depreciation and useful life, and allowance for doubtful accounts.

Management's estimate of capital assets depreciation and useful life, and allowance for doubtful accounts is based on historical useful lives of such assets, and historical collectability on receivables, respectively. We evaluated the key factors and assumptions used to develop the estimate of capital assets depreciation and useful life, and allowance for doubtful accounts assumptions and determined that they are reasonable in relation to the basic financial statements taken as a whole and in relation to the applicable opinion units.

To the Board of Directors and Management  
of the East Bay Regional Communications System Authority  
Dublin, California  
Page 5

### *Financial Statement Disclosures*

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting the Authority's financial statements relate to:

- Summary of Significant Accounting Policies
- Cash and Investments
- Capital Assets

### **Significant Difficulties Encountered during the Audit**

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

### **Uncorrected and Corrected Misstatements**

For purposes of this communication, professional standards also require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole and each applicable opinion unit. Uncorrected misstatements or matters underlying those uncorrected misstatements could potentially cause future-period financial statements to be materially misstated, even though the uncorrected misstatements are immaterial to the financial statements currently under audit. In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. We encountered no such misstatements.

### **Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the Authority's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

### **Representations Requested from Management**

We have requested certain written representations from management, which are included in the attached letter dated October 27, 2023.

### **Management's Consultations with Other Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

### **Other Significant Matters, Findings, or Issues**

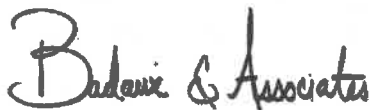
In the normal course of our professional association with the Authority, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, significant events or transactions that occurred during the year, operating and regulatory conditions affecting the entity, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the Authority's auditors.

### **Other Information Included in the Financial Statements**

Pursuant to professional standards, our responsibility as auditors for the introductory sections, whether financial or nonfinancial, included in the Authority's financial statements, does not extend beyond the information identified in the audit report, and we are not required to perform any procedures to corroborate such other information. However, in accordance with such standards, we have read the information and considered whether such information, or the manner of its presentation, was materially inconsistent with its presentation in the financial statements.

Our responsibility also includes communicating to you any information which we believe is a material misstatement of fact. Nothing came to our attention that caused us to believe that such information, or its manner of presentation, is materially inconsistent with the information, or manner of its presentation, appearing in the financial statements.

This report is intended solely for the information and use of the Board, and management of the Authority and is not intended to be and should not be used by anyone other than these specified parties.



Badawi & Associates, CPAs  
Berkeley, California  
October 27, 2023



**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, Ohlone Community College District, Contra Costa Community College District, Dublin-San Ramon Services District and University of California, Berkeley

October 27, 2023

Badawi and Associates, CPAs  
2855 Telegraph Ave, Suite 312  
Berkeley, CA 94705

This representation letter is provided in connection with your audit of the financial statements of the East Bay Regional Communication System Authority as of June 30, 2023, and for the year then ended, and the related notes to the financial statements, for the purpose of expressing opinions on whether the basic financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows, where applicable, of the various opinion units of the Department in accordance with accounting principles generally accepted for governments in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm that, to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves as of October 27, 2023:

**Financial Statements**

1. We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated September 20, 2023, for the preparation and fair presentation of the financial statements of the various opinion units referred to above in accordance with U.S. GAAP.
2. We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
3. We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
4. We acknowledge our responsibility for compliance with the laws, regulations, and provisions of contracts and grant agreements.

**Alameda County Office of Homeland Security and Emergency Services**  
4985 Broder Blvd, Dublin CA 94568 • (925) 803-7802 • [www.ebrcsa.org](http://www.ebrcsa.org)

5. We have reviewed, approved, and taken responsibility for the financial statements and related notes.
6. We have a process to track the status of audit findings and recommendations.
7. We have identified and communicated to you all previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.
8. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.
9. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
10. All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
11. We are not aware of any pending or threatened litigation, claims, or assessments, or unasserted claims or assessments that are required to be accrued or disclosed in the financial statements in accordance with GASB Statement No. 62 (GASB-62), *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements* (FASB Accounting Standards Codification™ (ASC) 450, *Contingencies*), and we have not consulted a lawyer concerning litigation, claims, or assessments.
12. All component units, as well as joint ventures with an equity interest, are included and other joint ventures and related organizations are properly disclosed.
13. All funds and activities are properly classified.
14. All funds that meet the quantitative criteria in GASB Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*, GASB Statement No. 37, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments: Omnibus* as amended, and GASB Statement No. 65, *Items Previously Reported as Assets and Liabilities*, for presentation as major are identified and presented as such and all other funds that are presented as major are considered important to financial statement users.
15. All components of net position are properly classified and, if applicable, approved.
16. Our policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position/fund balance are available is appropriately disclosed and net position/fund balance is properly recognized under the policy.
17. All revenues within the statement of activities have been properly classified as general revenues
18. All expenses have been properly classified in or allocated to functions and programs in the statement of activities, and allocations, if any, have been made on a reasonable basis.
19. All interfund and intra-entity transactions and balances have been properly classified and reported.
20. Special items and extraordinary items have been properly classified and reported.



21. Deposit and investment risks have been properly and fully disclosed.
22. Capital assets, including infrastructure assets, are properly capitalized, reported, and if applicable, depreciated.
23. With regard to investments and other instruments reported at fair value:
  - a. The underlying assumptions are reasonable and they appropriately reflect management's intent and ability to carry out its stated courses of action.
  - b. The measurement methods and related assumptions used in determining fair value are appropriate in the circumstances and have been consistently applied.
  - c. The disclosures related to fair values are complete, adequate, and in accordance with U.S. GAAP.
  - d. There are no subsequent events that require adjustments to the fair value measurements and disclosures included in the financial statements.

#### **Information Provided**

24. We have provided you with:
  - a. Access to all information, of which we are aware that is relevant to the preparation and fair presentation of the financial statements of the various opinion units referred to above, such as records, documentation, meeting minutes, and other matters;
  - b. Additional information that you have requested from us for the purpose of the audit; and
  - c. Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
  - d. All transactions have been recorded in the accounting records and are reflected in the financial statements.
25. We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
26. We have provided to you our analysis of the entity's ability to continue as a going concern, including significant conditions and events present, and if necessary, our analysis of management's plans, and our ability to achieve those plans.
27. We have no knowledge of any fraud or suspected fraud that affects the entity and involves:
  - a. Management;
  - b. Employees who have significant roles in internal control; or
  - c. Others where the fraud could have a material effect on the financial statements.
28. We have no knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, vendors, regulators, or others.

29. We are not aware of any pending or threatened litigation, claims, and assessments whose effects should be considered when preparing the financial statements and we have not consulted legal counsel concerning litigation, claims, or assessments.
30. We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.
31. There have been no communications from regulatory agencies concerning noncompliance with or deficiencies in accounting, internal control, or financial reporting practices.
32. The Department has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
33. We have disclosed to you all guarantees, whether written or oral, under which the Department is contingently liable.
34. We have disclosed to you all nonexchange financial guarantees, under which we are obligated and have declared liabilities and disclosed properly in accordance with GASB Statement No. 70, *Accounting and Financial Reporting for Nonexchange Financial Guarantees*, for those guarantees where it is more likely than not that the entity will make a payment on any guarantee.
35. For nonexchange financial guarantees where we have declared liabilities, the amount of the liability recognized is the discounted present value of the best estimate of the future outflows expected to be incurred as a result of the guarantee. Where there was no best estimate but a range of estimated future outflows has been established, we have recognized the minimum amount within the range.
36. We have disclosed to you all significant estimates and material concentrations known to management that are required to be disclosed in accordance with GASB Statement No. 62 (GASB-62), *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*. Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.
37. We have identified and disclosed to you the laws, regulations, and provisions of contracts and grant agreements that could have a direct and material effect on financial statement amounts, including legal and contractual provisions for reporting specific activities in separate funds.
38. There are no:
  - a. Violations or possible violations of laws or regulations, or provisions of contracts or grant agreements whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency, including applicable budget laws and regulations.
  - b. Unasserted claims or assessments that our lawyer has advised are probable of assertion and must be disclosed in accordance with GASB-62.
  - c. Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by GASB-62

- d. Continuing disclosure consent decree agreements or filings with the Securities and Exchange Commission and we have filed updates on a timely basis in accordance with the agreements (Rule 240, 15c2-12).
39. The Department has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset or future revenue been pledged as collateral, except as disclosed to you.
40. We have complied with all aspects of grant agreements and other contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
41. The Department has satisfactory title to all owned assets (not right to use assets that are leased), and there are no liens or encumbrances on such capital assets; nor has the Department pledged any capital assets as collateral.

DocuSigned by:  
*Tom McCarthy*  
D01D080B04E14DD

Tom McCarthy  
Executive Director  
East Bay Regional Communications System Authority

DocuSigned by:  
*Craig Boyer*  
415096C556F541E...

Craig Boyer  
General Accounting and Internal Audit Division Chief  
County of Alameda

# EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

<b>POLICIES AND PROCEDURES</b>	NUMBER: 1	Page 1 of 1
	REVISION:	SUPERCEDES
<b>SUBJECT: AUDITED FINANCIAL STATEMENTS</b>	APPROVED BY	EFFECTIVE DATE

## PURPOSE

To establish a policy for the development and reporting of the audited financial statements of the East Bay Regional Communications System Authority ("EBRCSA").

## POLICY

The EBRCSA shall ensure that the audited annual financial statements are annually reported to the Finance Committee and Board of Directors.

## PROCEDURE

### Annual Reporting of Audited Financial Statements

- 1) The Finance Committee will ensure the annual reporting of the audited financial statements.
  - The Finance Committee will assign two members as a working group to liaison with the outside auditor and Executive Director.
  - The working group will ensure the audited financial statements are presented to the Finance Committee at the first committee meeting after the report is issued
  - The Executive Director will ensure the Audited Financial Statements are presented to the Board of Directors at the December meeting for the year in which the report was issued.



**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, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

**AGENDA ITEM NO. 5**

**AGENDA STATEMENT  
FINANCE COMMITTEE  
MEETING DATE: AUGUST 30, 2024**

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

**FROM:** David Swing, Executive Director  
East Bay Regional Communications System Authority

**SUBJECT:** Accounts Receivable Policy

**RECOMMENDATIONS:**

Discuss the proposed Accounts Receivable Policy and recommend a final policy to the Board for approval at the September 13, 2024 meeting.

**SUMMARY/DISCUSSION:**

During the transition of the Executive Director, staff has learned that member agencies owed the Authority money for past due subscriber fees. The monies owed are due to a combination of factors that are more easily distilled to a lack of policy direction and oversight related to receivables. The Authority's fund balance presented during the budget presentation at the May 3, 2024 meeting does not reflect the amounts owed – meaning that the fund balance has and will increase as monies are paid, providing for more money to be allocated to Capital Infrastructure Replacement, and thereby lowering future rate increases.

In order to bring accounts to current status the Executive Director will meet with the Auditors Office to review past due accounts, and make a recommendation to the Board for write-offs of some balances and implement a plan for payment of others. In order to prevent the existing situation from reoccurring, the Executive Director recommends the development of an accounts receivable policy that includes the following three components:

1. Use of monetary penalties and collection practices to encourage timely payment
2. Annual reporting of past due accounts to the Finance Committee



**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, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

3. Authorizing the Executive Director to write-off certain debts with Board oversight

Use of Monetary Sanctions: Existing policy allows for a 10% penalty for bills not paid by September 1. Staff recommends enforcing this policy and adding that the subscriber is responsible for any legal or collection fees associated to the collection of past due monies. Since the Authority has limited Staff, the Director should have the authority to use outside resources to assist in the collection of past due accounts and those charges should be borne by the past due account holder.

Annual Reporting: It is widely known that the Pandemic disrupted the ecosystem of life world-wide in 2020 and subsequent years. EBRCSA was not immune from those impacts. It is documented in the Finance Committee minutes from September 2020 that Committee requested an update on the A/R Aging at the next meeting. Unfortunately, that information was not presented to the Committee as requested, resulting in a lack of awareness. Codifying in policy the requirement for an annual update on the A/R Aging will better ensure the information is presented and that the governing body has an awareness of the issue.

Debt Write-Off: During the investigation of the Accounts Receivable Aging, staff learned that some of the debts are uncollectable or should be forgiven based on documentation provided by the end user. In some cases, the business has ceased operations and in others the balance owed remains on the books even though the user provided documentation of a prior agreement to the contrary. The policy recommends the Executive Director have the authority to write-off the debt in limited situations and report back to the Board of Directors in those instances while the Board of Directors retaining authority for more significant amounts or situations that are outside of the norm.

In closing, while a high A/R aging balance demonstrates a need for stronger oversight, the payment of monies owed will help off-set future rate increases as the fund balance and interest earnings increase. The development and adherence of a new policy will help mitigate the risk of this situation occurring in the future. The Executive Director is seeking input and recommendation of the Finance Committee for the proposed Accounts Receivable policy.

Attachments:

1. Current Annual Bill for Services Policy
2. Draft Accounts Receivable Policy

# EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

## POLICIES AND PROCEDURES

NUMBER: 1

Page 1 of 1

REVISION

SUPERCEDES

**SUBJECT:**  
**ACCOUNTS RECEIVABLE POLICY**

APPROVED BY

EFFECTIVE DATE

### PURPOSE

To establish a policy for annual billing of the services provided by East Bay Regional Communications System Authority ("EBRCSA").

### POLICY

The EBRCSA shall ensure that invoices are paid in a timely manner through the proactive collection of monies owed for services provided.

### PROCEDURE

#### Payment of invoices

- 1) The Authority will bill each member agency for its respective operating and debt payment by July 1 of each year.
  - The bill will be issued to the attention of each member agency's executive or designee;
  - Fees are due and payable on receipt with a two-month grace period;
  - All unpaid accounts as of September 1, of the year which the bill was issued, will be billed a 10 (ten) percent late fee.
  - Members are responsible for the payment of fees associated with using additional resources. Examples include, but are not limited to, fees for legal or collection services.
- 2) The Executive Director will present the Accounts Receivable Aging to the Finance Committee prior to the December Board of Directors meeting to review the number of and value of accounts with outstanding balances.
- 3) The Executive Director shall have the authority to write-off uncollectable accounts and report to the Board of Directors at the December meeting in the following situations:
  - The member is a private business that ceased operation prior to paying the invoice;
  - The amount owed is due to a radio count dispute and a partial payment was made;
  - The amount owed is due to a billing error;
  - The amount owned is \$25,000 or less

# EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

## POLICIES AND PROCEDURES

NUMBER: 1

Page 1 of 1

REVISION

SUPERCEDES

10/03/2015

**SUBJECT:**  
**ANNUAL BILL FOR SERVICES**

**APPROVED BY**  
EBRCSA Board of  
Directors

**EFFECTIVE DATE**  
November 1, 2015

### PURPOSE

To establish a policy for annual billing of the services provided by East Bay Regional Communications System Authority ("EBRCSA").

### POLICY

The EBRCSA shall make claim annually for the cost of operating the system based on the number of mobile and portable radios.

### PROCEDURE

#### Billing for Annual Operating and Debt Payments

- 1) Members are responsible for ensuring that EBRCSA Executive Director is aware of any radios added or deleted from the system.
  - The Executive Director will utilize biannual reports which will determine if number of mobile and portable radios each agency is operating on the system has increased;
  - The Auditor will be provided the information which will be used in the preparation of the annual bill
- 2) The Authority will bill each member agency for its respective operating and debt payment by July 1 of each year.
  - The bill will be issued to the attention of each member agency's clerk;
  - Members will have 30 days from the receipt of the bill to challenge the bill as to the number of mobiles or portables which they are being billed for;
  - Fees are due and payable on receipt with a two-month grace period;
  - All unpaid accounts as of September 1, of the year which the bill was issued, will be billed a 10 (ten) percent late fee.





# 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, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

## AGENDA ITEM NO. 6

### AGENDA STATEMENT FINANCE COMMITTEE MEETING DATE: AUGUST 30, 2024

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

**FROM:** David Swing, Executive Director   
East Bay Regional Communications System Authority

**SUBJECT:** Accounts Receivable Write-offs

#### RECOMMENDATIONS:

Recommend to the Board of Directors to write-off certain invoices

#### SUMMARY/DISCUSSION:

A review of the Accounts Receivable Aging found several invoices that are either uncollectable or should be written off. The Executive Director recommends the Authority write off these uncollectable accounts which requires the approval of the Board of Directors and is seeking the recommendation of the Finance Committee.

The following invoices are from businesses that have ceased operations:

Organization	Invoice	Date	Amount
Oakland School Police Department	20180047	11/15/17	\$18,840
Paramedics Plus	20180050	11/15/17	\$106,280
United Ambulance Service	20180058	11/15/17	\$8,140
United Ambulance Service	20190162	12/03/18	\$1,884
United Ambulance Service	20190220	09/26/19	\$1,980
United Ambulance Service	20210279	07/01/20	\$7,020
United Ambulance Service	20220165	07/01/21	\$7,020
United Ambulance Service	20220165	07/01/22	\$7,020
United Ambulance Service	20230264	07/01/23	\$7,020
		<b>Total</b>	<b>\$165,294</b>



**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, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

Additionally, the Executive Director is recommending adjusting the invoice for the City of Benicia in the interest of good will as they were invoiced in March, 2021 for \$239,000 in Operating payments for years 2017-2021.

During an audit in 2021, the external auditor found the Authority's initial billing of Benicia was not accordance with a side letter authored by the Executive Director and signed by the City Manager of Benicia. Benicia was overbilled in one year and underbilled in others. The Authority issued another invoice on 07/01/21 for additional Operating payments and Service payments for 2018-2022 totaling \$165,340.00 aligned with the external auditors findings.

The City of Benicia paid their initial invoices and was never informed of the billing errors that resulted in a second round of invoicing. The omissions included an inaccurate amount charged for Operating payments and a lack of charging for Service payments. The current Executive Director is seeking the recommendation of the Finance Committee to the Board of Directors to write-off the additional City of Benicia Operating Payments of \$24,400 for fiscal years 2018-2022. Approving this recommendation would still require the City of Benicia to pay the previously unbilled Service Payment of \$140,940.

Bay Medic Transport (BMT) is billed by the Alameda County Information Technology Department (ITD). BMT has three outstanding invoices from 2017-2019 totally \$17,360. A review of the records found the monies owed were paid by BMT to ITD. ITD then transferred the money to EBRCSA; however, the invoices were never updated.

Lastly, the City of Alameda has an outstanding balance of \$61,800 from a radio count dispute. The City of Alameda provided documentation that confirms the disputed invoices and conversations with the prior Executive Director authorizing the underpayment. The Executive Director is requesting the Finance Committee to recommend the write-off of \$61,800 to the Board of Directors.

The total write-off of the recommended actions totals \$268,854.00.

There are additional outstanding invoices which require further research prior to a recommendation. The Executive Director will return to the Finance Committee at the next meeting if additional write-offs are necessary.



**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, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

**AGENDA ITEM NO. 7**

**AGENDA STATEMENT  
FINANCE COMMITTEE  
MEETING DATE: AUGUST 30, 2024**

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

**FROM:** David Swing, Executive Director   
East Bay Regional Communications System Authority

**SUBJECT:** Subscriber Memorandum of Understanding (MOU)

**RECOMMENDATIONS:**

Receive a report from the Executive Director recommending a Subscriber MOU and fee schedule that complements the Operating Agreement.

**SUMMARY/DISCUSSION:**

During a review of the operations of the Authority and in consultation with Authority Counsel, staff has learned that a need exists for a separate Subscriber MOU for entities that are joining the system as users yet do not need the complexities of the full Operating Agreement. Additionally, the current Operating Agreement and fee structure for new users requires payment of a \$200 per radio start-up fee and the combination of the monthly operating and service fees totaling \$46 per radio until the bond is paid off in 2027. As a reminder, the purpose of the \$15 service fee was to pay for the bonds which provided the capital for the initial system build.

The Board of Directors will review the long-term system infrastructure replacement costs at an upcoming meeting which will require current and future members to pay for infrastructure replacement through a new fee schedule; thereby, recovering replacement costs equally from all users.

Staff is seeking input from the Operations Committee on the proposal to have a separate Subscriber MOU for its impact on operations and is seeking input from the Finance Committee on the proposal to eliminate the \$15 Service Payment for new users and charge new users a \$200



**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, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

flat fee per radio as part of the start-up costs and the monthly Operating Payment of \$31 per radio. The reason for eliminating the Service Payment fee for new users is the bonds will be fully repaid in two years, the lower system use, and the new subscriber fee will account for future replacement costs.

**Attachment:**

1. Proposed Subscriber MOU
2. Current Operating Agreement

MEMORANDUM OF UNDERSTANDING BETWEEN EAST BAY REGIONAL  
COMMUNICATIONS SYSTEMS AUTHORITY  
AND [REDACTED] FOR SUBSCRIPTION ACCESS TO AUTHORITY INFRASTRUCTURE

This Memorandum of Understanding ("MOU") is effective as of the date of the second signature below and is entered into by and between East Bay Regional Communications Systems Authority ("EBRCSA" or "Authority") and [REDACTED] (" [REDACTED] "), collectively referred to as the "Parties".

**A. Scope of Services and Initial Term**

The scope of services provided under this MOU involve Authority providing [REDACTED] a subscription to use and access Authority communications infrastructure for a fee. The geographic scope of services shall be within Authority's jurisdictional limits as defined by Authority's joint powers agreement. The Initial Term of this MOU shall be twelve (12) months commencing from the effective date, with an automatic twelve-month renewal unless terminated in accordance with this MOU. Details of the services provided by Authority are limited to the following:

1. *Service:* Access and use of Authority infrastructure for [REDACTED] emergency communications needs or requirements.

**B. Communication**

Designated staff from both Parties shall communicate on the needs and expectations of each Party as they arise or on an "as needed" basis.

1. *Dispatch:* \_\_\_\_\_ shall provide and use its own dispatch services; Authority itself has no dispatch service.
2. *Administration:* The main points of contact for this MOU are as follows:

East Bay Regional Communications Systems Authority:

- i. Name: David L. Swing, Executive Director
- ii. Email: David.Swing@acgov.org
- iii. Phone: \_\_\_\_\_

\_\_\_\_\_  
iv. Name: \_\_\_\_\_, \_\_\_\_\_

v. Email: \_\_\_\_\_

vi. Phone: **XXX XXX XXXX**

**C. Payment and Invoicing**

Payments will be made based on actual equipment delivery and any services rendered. Payments are due thirty (30) days from the date of invoice. Authority shall issue invoices as frequently as it deems necessary, but no less than once a year. The fees below may be adjusted at Authority's discretion and become effective upon 30 days' advance written notice.

One time start up fee	\$200.00
Monthly fee (per unit)	\$31.00
Fee for late payment	1.5% per month
Fee to activate replacement unit	\$200.00

D. General Terms and Conditions

1. *Indemnity and Insurance*

The Parties to this MOU agree to indemnify, defend and hold harmless each other, including each Party's elected and appointed officials, directors, officers, employees, volunteers, and agents respectively from and against any liability, damage(s), claims, costs or causes of action resulting in any way from a breach of this MOU or any claims arising from or in any way related to each Party's performance of the scope of services under this MOU.

[REDACTED], on behalf of itself and its officials, directors, officers, employees, volunteers, and agents assume all risk of injury to persons or damage to property related to all activities required under or related to its performance of this MOU or use of Authority's system or infrastructure. The indemnification and assumption of risk requirements shall terminate automatically and without notice upon termination of this MOU.

Each Party represents that it is self-insured and has insurance coverage of sufficient breadth and coverage for the scope of services contemplated herein. Each Party shall procure, hold current during the Term of this MOU, and upon request provide evidence of commercial general liability insurance of at least \$1,000,000, workers compensation insurance commensurate with statutory requirements, automobile liability insurance for all owned, hired, and non-owned vehicles of at least \$1,000,000 and proof that each Party is added as an additional insured on the other Party's insurance policies. [REDACTED] shall require and upon request show proof that its subcontractors or subconsultants performing any or all the scope of services under this MOU, if any, have procured, hold current, and will produce upon request evidence of insurance coverage and at the amounts described herein.

2. *Early Termination*

Either party may terminate this MOU for any reason upon thirty (30) days written notice to the other party, it being understood that the respective rights and obligations of the Parties shall continue to be governed by this MOU until the effective date of such termination.

If either Party finds the other Party is acting fraudulently, or engages in willful misconduct, gross negligence, or bad faith, it may terminate this MOU immediately upon notice to the other Party.

3. *Amendment*

Either party may request a modification to this MOU by doing so in writing. All changes, other than the Early Termination provisions above, must be agreed to by both parties in writing, via an executed amendment.

4. *Independent Contractors*

The Parties agree that they are independent contractors, and not partners, or joint venturers in the provision of services under this MOU. No employee or agent of either Party shall qualify for or be considered an employee of the other Party or qualified to collect insurance or retirement benefits from the other Party. Authority is not and shall not be considered by \_\_\_\_\_ a joint or co-employer of any \_\_\_\_\_ employees, subcontractors or subconsultants. \_\_\_\_\_ shall indemnify and hold harmless Authority from all claims, causes of actions, injuries or damages related to joint employment or co-employer status.

IN WITNESS WHEREOF, the parties have entered this Memorandum of Understanding as of the date set forth above.

**EAST BAY REGIONAL COMMUNICATIONS SYSTEMS AUTHORITY**

Name: David L. Swing

Title: Executive Director

Address: 4985 Broder Boulevard, Dublin, CA 94568

\_\_\_\_\_

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

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

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

\_\_\_\_\_

EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

**PROJECT OPERATING AGREEMENT**

This PROJECT OPERATING AGREEMENT (the "Operating Agreement"), made and entered into as of \_\_\_\_\_, (the "Effective Date"), is by and between the East Bay Regional Communications System Authority, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "Authority"), and the public agency set forth on the signature page hereof (the "User").

**WITNESSETH:**

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), formed by the local agencies (the "Members") that are signatories to a Joint Exercise of Powers Agreement dated as of September 11, 2007 (the "JPA Agreement"), and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for the purpose of paying the cost of public capital improvements within the State of California, including a P25 compliant or equivalent communications system serving Alameda and Contra Costa Counties and individual political jurisdictions therein as further described in Exhibit B hereto (the "Project"); and

WHEREAS, User and the Authority propose to enter into this Operating Agreement, whereby the Authority will own and operate the Project for the benefit of the User and other users of the Project (collectively, the "Users"), which other Users will execute operating agreements similar to this one (collectively, the "Operating Agreements") and the Users will pay, pursuant to user fees, a portion of the cost of the Project, consisting of a buy-in cost based on the number of radios in use in the Project (the "Initial Payments"), the cost of the Project (the "Service Payments") and the cost of annual operation (the "Operating Payments"), (Service Payments and Operating Payments are referred to herein collectively as the "User Payments"); and

WHEREAS, the Authority will issue its revenue bonds (the "Bonds") pursuant to a trust agreement for the purpose of providing money to acquire the Project; and

WHEREAS, Users may elect to prepay the Service Payment component of the User Payments prior to issuance of the Bonds, thereby reducing the amount of Bonds required to be issued; and

WHEREAS, the Bonds are to be secured by a pledge of and first lien on the Service Payments to the extent received by the Authority from the Users pursuant to Operating Agreements executed by each of them, which Service Payments are anticipated to be sufficient in time and amount to pay the principal of and interest on the Bonds; and

WHEREAS, this Operating Agreement is intended to establish a means of providing the User Payments and ensuring the sound operation of the Project, and is not in itself an approval of the Project or the grant of any land use entitlement to develop the Project; and



WHEREAS, the Authority, through its Operations and Finance Committees, commits to use its best efforts to create, by December 1, 2011, an Operating and Maintenance Agreement ("OMA") that will further describe the terms and conditions for Operation of the Project and the Authority's service obligations to all Users, including without limitation: (i) the specific maintenance and operational requirements for the Project; (ii) the duration and scope of Authority's obligation to deliver radio service from the Project following termination of this Operating Agreement; (iii) the process used to determine operating costs of the Project; (iv) the baseline service levels for Users in their respective jurisdictions; (v) the payment schedule for and the amount of Operating Payments; (vi) the Authority's commitment of best efforts to complete repair or reconstruction of the Project within a reasonable time; (vii) the Authority's commitment of best efforts to provide continuous service to User and to minimize to the extent possible temporary interruptions of or reductions in service for necessary inspection, maintenance, repair or replacement of the Project; (viii) and the notification procedures to Users of temporary interruptions of or reductions in service.

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the undersigned User and the Authority agree that the recitals are true and correct, and as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.01. Definitions.

Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes hereof, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein, have the meanings defined herein; the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein. All capitalized terms used in this Operating Agreement and not defined herein shall have the meanings ascribed thereto in the Trust Agreement.

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

"Authority" means the East Bay Regional Communications System Authority, a joint exercise of powers authority organized and existing under the Act and any successor thereto.

"Authorized Representative" means: (a) with respect to the Authority, its Chair, Vice Chair, Executive Director, or Secretary, or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chair and filed with the Trustee; and (b) with respect to a User, any person authorized to perform any act or sign any document by or pursuant to a resolution of the governing board of such User and filed with the Authority.

"Bondholder or " Bond Owner" means any person who shall be the registered owner of any Outstanding Bond.

"Bond Law" means Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code, as amended from time to time.

"Bonds" means the revenue bonds of the Authority issued from time to time to finance the Project pursuant to the Trust Agreement.

"Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California, or in any state in which the Office of the Trustee is located, are closed.

"County" means the County of Alameda and/or the County of Contra Costa, as further specified herein.

"Debt Service" means the debt service due Alameda and Contra Costa Counties on the Bonds and set forth in the Trust Agreement and Financing Agreements, as they may be amended or supplemented from time to time.

"Due Date" means, with respect to the User Payments, August 31st of each year.

"Event of Default" means an event of default described in Section 5.01 hereof.

"Financing Agreement" means an agreement between the Authority and the respective County pursuant to which County will purchase the Bonds.

"Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period hereafter selected and designated as the official Fiscal Year period of the Authority designated in a Written Certificate of the Authority delivered to the Trustee.

"Initial Payments" means the charge of Two Hundred Dollars (\$200) per radio, established by the Authority as an up-front payment required to become a User pursuant to Section 3.01.

"JPA Agreement" means that certain Joint Exercise of Powers Agreement, dated as of September 11, 2007, establishing the Authority, as originally executed or as it may from time to time be supplemented, modified or amended as provided therein.

"Members" means the signatories to the JPA Agreement, as the same may be amended from time to time, that have executed an Operating Agreement.

"Net Proceeds" means, when used with respect to any insurance or condemnation award received by the Authority, the proceeds from such insurance or condemnation award remaining after payment of all reasonable expenses (including attorneys' fees) incurred in the collection of such proceeds.

"New User" means a local agency that has entered into or intends to enter into an Operating Agreement with the Authority and that has not paid an Initial Payment.

"Operating Agreement" means this operating agreement, dated as of April 1, 2016, including any amendments and supplements hereto.

"Operating Agreements" means, collectively, the operating agreements executed by the Authority relating to the Project.

"Operating Costs" means the costs spent or incurred by the Authority for maintaining and operating the Project, including all expenses of management, repair and operation, including but not limited to costs of electricity, outside vendor contracts, software license and upgrades, , replenishment of the Reserve and Replacement Fund, and all other expenses necessary to maintain and preserve the Project in good repair and working order, and all administrative costs of the Authority, including administrative costs attributable to the Project and to the Operating Agreement, including without limitation salaries and wages of employees, overhead, insurance, taxes (if any), expenses, reasonable compensation and indemnification of fiscal agents, paying agents and trustees with respect to the foregoing, and fees of auditors, accountants, attorneys or engineers, and all applicable federal, state and local requirements pertaining to the operation of the Project.

"Operating Payment" means the share of Operating Costs, including but not limited to funding of the Reserve and Replacement Fund and funding of new capital, annually allocated to each User, as annually determined by the Authority.

"Operating Period" means the period in each year from July 1 to and including the following June 30, during which time the Authority is operating the Project.

"Project" means that certain public safety radio system to be financed with the proceeds of the Bonds and all other sources of financing available to the Authority, as described in Exhibit B hereto, as the same may be amended from time to time.

"Project Fund" means that certain fund created pursuant to the Authority's Financing Agreements with the Counties, to be funded from the proceeds of issuance of the Authority's Bonds and the prepayment of Service Payments made prior to Bond sizing.

"Reserve and Replacement Fund means the reserve and replacement fund held by the Authority pursuant to Section 3.06 hereof.

"Reserve and Replacement Fund Requirement" means that requirement for the Authority's maintenance of a minimum of One Million Dollars (\$1,000,000) in the Reserve and Replacement Fund.

"Revenue Fund" means the special fund held by the Trustee pursuant to the Trust Agreement.

"Revenues" means (a) the Initial Payments, (b) all User Payments received by the Authority from the Users hereunder, including the proceeds of any business interruption insurance, (c) investment income with respect to any moneys held by the Trustee in the funds and accounts established under the Trust Agreement and the Financing Agreements, and (d) all other funds from any source legally available to the Authority.

"Service Payments" means the annual payments by each User for the service provided by the Project in the applicable Operating Period, in the amounts set forth in Exhibit A hereto, as revised periodically from time to time by the Authority, which amounts shall be used by the Authority to pay the principal of and interest on the Bonds or deposited in the Reserve and Replacement Fund.

"Trustee" means initially the Treasurer, Auditor or other designee of the County of Alameda or such other firm appointed by the Authority and acting as an independent Trustee with the duties and powers provided in the Trust Agreement, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in the Trust Agreement.

"Trust Agreement" means the Trust Agreement, dated as of October 1, 2010, between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented.

"User Payment" means, collectively, the Service Payment and the Operating Payment due in any year, except to the extent such amounts are rebated to a User due to abatement of such User's obligations hereunder as provided in Section 3.04 hereof.

"Users" means all signatories to an Operating Agreement that have paid an Initial Payment.

## ARTICLE II

### OPERATION OF THE FACILITIES

#### Section 2.01. Operation of the Project: Title.

The Authority has or will enter into purchase orders and contracts to supervise and provide for, or cause to be supervised and provided for, the complete planning, design, construction, acquisition, financing, improvement, repair, modification and installation of the Project (collectively, "Construction"). The Authority covenants to obtain such land use permits as are required for Construction. In the event any such permit cannot be reasonably obtained, the Authority will use its best efforts to pursue alternate sites for such component of the Project. The Authority agrees that it will cause the work under said contracts to be diligently performed and that the Project will be constructed in accordance with the specifications approved by the Authority.

The Authority shall have the right to make additions, modifications and improvements to the Project or any portion thereof. All additions, modifications and improvements to the Project shall thereafter comprise part of the Project and become subject to the provisions of this Operating Agreement. Such additions, modifications and improvements shall not in any way damage the Project, or cause the Project to be used for purposes other than those authorized under the provisions of state and federal law; and the Project, upon completion of any additions, modifications and improvements made thereto pursuant to this Section, shall be of a value which

is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The Authority will not permit any mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the Authority pursuant to this Section; provided that if any such lien is established and the Authority may in good faith contest any lien filed or established against the Project, and in such event may permit the liens so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The User will cooperate in any such contest, upon the request and at the expense of the Authority.

Notwithstanding any other provision hereof, the Authority shall be entitled to remove portions of the Project from service, upon a filing with the Trustee of evidence that adequate facilities remain to provide comparable levels of service to the Users notwithstanding any such removal.

#### Section 2.02. Modification of Project.

The Authority hereby agrees to operate the Project for the duration of this Operating Agreement.

The Project shall only be used for radio service for public safety and other governmental uses for the benefit and convenience of the Users. User shall have the right to use the Project at all times herein mentioned at rates and charges established by the Authority, except as otherwise provided pursuant to Article V hereof. In order to effectively operate the Project, the Authority hereby agrees to maintain and preserve the Project in good repair and working order at all times and to operate the Project in an efficient and economical manner, and to pay all maintenance and operation costs of the Project as they become due and payable from available revenues.

At all times during the term of this Operating Agreement the Authority shall hold title to the Project, including all additions which comprise fixtures, repairs, replacements or modifications thereto, except for such equipment as is owned by one or more Users or other governmental agencies and licensed to the Authority. Upon the termination of this Operating Agreement, all right, title and interest in and to the Project shall be retained by the Authority except as may be otherwise provided pursuant to licensing or other agreements.

The User recognizes and acknowledges that the operation, control, ownership and management of the Project is at the complete and sole discretion of the Authority. Nothing in this Operating Agreement shall be construed to limit the Authority's discretion in management and operation of the Project. In connection therewith, User hereby consents to all steps or actions Authority has taken or may take which are necessary or appropriate for the authorization, issuance, sale and delivery of the Bonds.

The Authority will make all reasonable effort to provide continuous service to the Users, but may temporarily discontinue or reduce service to one or more of the Users for the purpose of necessary investigation, inspection, maintenance, repair or replacement of any of the Project, or except as provided in Article V hereof. The Authority shall notify Users as far in advance as reasonably possible of any discontinuance or reduction of service, and the estimated duration of

such discontinuance or reduction. Recognizing that the Users will rely on the Authority for uninterrupted service, the Authority agrees to use its best efforts throughout the term of this Operating Agreement to minimize any such discontinuance or reduction of service.

The Authority shall prepare a budget for all Operating Costs by the beginning of each fiscal year, and shall promptly provide each User with a copy thereof. To the extent Operating Costs in any year exceed the amount set forth in the budget, the Authority shall promptly notify each User in writing of such increases. Upon receipt of such notice, the User hereby agrees to use its best efforts to pay such increased Operating Costs as soon as possible.

The Authority acknowledges and agrees that the User has full authority and discretion to grant or deny applications for land use entitlements and approvals within its jurisdiction related to the Project, and that this Operating Agreement does not grant the Authority any such entitlements or approvals to develop the Project.

#### Section 2.03. Bond Issuance.

The Bonds shall be issued, sold and delivered on such terms and conditions as the Authority, in its reasonable discretion, deems necessary or desirable. User hereby agrees to cooperate with the Authority and its designated representatives, and to provide all reasonably requested material relating to the User, in order to timely accomplish such authorization, issuance, sale and delivery of the Bonds; provided that such cooperation does not constitute an agreement to issue any land use permits. However, User covenants to promptly process all applications of the Authority for necessary land use permits.

The Authority shall issue Bonds only for that portion of the Project's Construction that is not funded by prepaid Service Payments from Users..

#### Section 2.04. Term.

Unless extended by mutual agreement, the term of this Operating Agreement shall commence on the first date of delivery of any Bonds to the initial purchaser thereof (or if executed later, the date of execution of this Operating Agreement) and terminate (subject to such other termination events as provided in this Operating Agreement), on the date on which no Bonds are Outstanding.

### ARTICLE III

#### PAYMENT OF INITIAL PAYMENTS AND USER PAYMENTS; RESERVE AND REPLACEMENT FUND

##### Section 3.01. Payment of the Initial Payment and User Payments.

New Users who enter into an Operating Agreement and existing Users who have paid an Initial Payment of \$200 per radio who wish to increase the number of radios in their existing service, shall pay an Initial Payment to the Authority, or its successors or assigns, from any source of legally available money, of Two Hundred Dollars (\$200) per radio. The Initial Payments shall be deposited in the Reserve and Replacement Fund. In addition, each New User,

or User increasing the number of radios in service, shall pay an Operating Payment equal to the annual fee per radio paid by all then existing Users, and a Service Payment per radio equal to that paid annually by each existing User then paying a Service Payment, unless such New User selects prepayment of its Service Payment.

In the event that a User chooses to prepay its Service Payment at the time of its execution of the Operating Agreement, the Authority will calculate the appropriate contribution of the User based on the total cost of the Project, and will deposit such Service Payment made prior to Bond sizing in the Project Fund. Projected User Payments are set forth in Exhibit A.

In addition to any required Initial Payment, on each Due Date, beginning in 2013, unless required earlier pursuant to a supplemental agreement, the User shall pay to the Authority, or its successors or assigns, from any source of legally available money, its Service Payment, if any is due, and its Operating Payment. The Operating Payment owed by each User shall be in the amount annually determined by the Authority for such Operating Period. The payment in any Operating Period by a User of its User Payment shall be for use of the Project by such User during such Operating Period.

Each Initial Payment and User Payment shall be payable by the User in accordance with the terms hereof and at the times required herein in lawful money of the United States of America. In the event the User should fail to make any of the payments required in this Section 3.01, the payment in default shall continue as an obligation of such User until the amount in default shall have been fully paid, and the User agrees to pay the same with interest thereon, to the extent permitted under applicable law, from the date of default to the date of payment at the highest rate of interest represented by any Outstanding Bond plus one percent (1%). Overdue Service Payments, if received, shall be deposited in the Reserve and Replacement Fund to the extent that the amount on deposit therein is less than the Reserve and Replacement Fund Requirement, and then to the Revenue Fund. Overdue Operating Payments shall be used by the Authority to pay Operating Costs.

The User Payment coming due and payable during each Operating Period shall constitute the total payment for service to such User provided by the Project for such Operating Period, and shall be paid by each User in each Operating Period for and in consideration of the right of the use and service provided by the Project during each Operating Period. The parties hereto have agreed and determined that the total User Payment represents not more than the fair value of the cost of the service provided by the Project. In making such determination, consideration has been given to the estimated fair market value of the Project, the costs of financing, servicing and operating the Project, other obligations of the User and the Authority under this Operating Agreement, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the Users and the general public.

#### Section 3.02. Source of Payments: Budget and Appropriation.

The User Payments shall be payable from any source of legally available funds of the Users. User covenants to take such action as may be necessary to include all payments owed hereunder in each of its annual budgets during the term of this Operating Agreement and to make the necessary annual appropriations for all such payments. The covenants on the part of User

contained herein shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of User to take such action and do such things as are required by law in the performance of the official duty of such officials to enable such User to carry out and perform the covenants and agreements of such User in this Operating Agreement.

In the event of abatement of User's Service Payment due to the Project being unavailable for use, the User's Authorized Representative and officers charged with the duty of preparing and submitting the annual budget of User to its legislative body shall include in the proposed budget, and request that the legislative body include in the final approved budget, and thereby appropriate, any amount necessary to replenish the Reserve and Replacement Fund in the amount of such User's abated Service Payment. Such officers shall use their best efforts to obtain such appropriation. The request for inclusion in the final approved budget and appropriation shall be made in each Fiscal Year following any such abatement so long as is necessary to restore the Reserve and Replacement Fund. Notwithstanding the foregoing provisions of this paragraph, the decision of the legislative body as to whether or not to approve and appropriate any amount under this paragraph in any given Fiscal Year for the purpose of reinstating the Reserve and Replacement Fund Requirement is in the sole and sound discretion of such legislative body, and the failure to make any such appropriation in any given Fiscal Year shall not constitute an Event of Default under this Operating Agreement.

Section 3.03. Reserved.

Section 3.04. Abatement of Payment of User Payments.

If the Project shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, this Operating Agreement shall cease with respect thereto as of the day possession shall be so taken. If less than all of the Project shall be taken permanently, or if the Project or any portion thereof shall be taken temporarily, under the power of eminent domain, and there is a resulting substantial interference with the service provided by the Project, then (a) this Operating Agreement shall continue in full force and effect with respect thereto and shall not be terminated by virtue of such taking and the parties hereto waive the benefit of any law to the contrary, and (b) there shall be a partial abatement of the User Payments, in a commercially reasonable amount to be determined by the Authority such that the resulting User Payments represent fair consideration for the service provided by the remaining usable components of the Project. The User Payments shall be abated during any period in which there is a material failure by the Authority to provide radio service from the Project to such User. The amount of such abatement shall be determined by the Authority such that the resulting User Payments represent fair consideration for the service provided by the portions of the Project not damaged or destroyed. Such abatement shall continue for the period commencing with such material damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such material damage, destruction or malfunction, this Operating Agreement shall continue in full force and effect and User waives any right to terminate this Operating Agreement by virtue of any such damage and destruction.

Section 3.05. Receipt and Deposit of User Payments.



The Authority covenants and agrees that the User Payments, when and as received, will be received and held by or on behalf of the Authority in trust and deposited in the Revenue Fund.

Section 3.06. Establishment, Maintenance and Use of Reserve and Replacement Fund.

The Authority shall maintain and hold a separate fund to be known as the "Reserve and Replacement Fund." The Authority shall deposit Revenues remaining after paying Debt Service on the Bonds, and Operating Payments remaining after payment of all Operating Costs for the Fiscal Year, in the Reserve and Replacement Fund until the amount on deposit therein is at least equal to the Reserve and Replacement Fund Requirement, and thereafter add such amounts as the Authority shall determine from time to time as necessary to replenish the Reserve and Replacement Fund so that it has on deposit an amount at least equal to the Reserve and Replacement Fund Requirement. The Authority may withdraw amounts from the Reserve and Replacement Fund for use in repairing, improving or replacing the Project or any component thereof; providing credits to Users pursuant to Exhibit A hereto; or for any other lawful purpose that is authorized by the Authority's Board of Directors; provided, however, that in the event any User Payment is abated as provided herein or is insufficient to pay Debt Service, amounts on deposit in the Reserve and Replacement Fund may be used for transfer to the Trustee in an amount equal to such abated User Payments or such insufficiency, until such time as the abatement is discontinued and User Payments are sufficient to pay Debt Service.

ARTICLE IV

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 4.01. Compliance with Operating Agreement.

The Users will punctually pay the User Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by them.

The Authority will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein and in the Trust Agreement required to be observed and performed by it, and it is expressly understood and agreed by and among the parties to this Operating Agreement that each of the agreements, conditions, covenants and terms contained in this Operating Agreement is an essential and material term of the operation of the Project by the Authority.

Section 4.02. Against Encumbrances.

The Authority hereby covenants that as of the date hereof there is no pledge of or lien on the Revenues other than the pledge and lien securing the Bonds. The Authority will not make any pledge of or place any lien on the Revenues except as provided for herein or in the Resolution.

Section 4.03. Against Sale or Other Disposition of Property.

The Authority will not sell, lease, encumber or otherwise dispose of the Project or any part thereof; provided however, any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the Project, or any material or equipment which has become worn out, may be sold or exchanged at not less than the fair market value thereof, provided that such sale or exchange does not materially adversely affect the service provided by the Project and that the proceeds (if any) of such sale or exchange shall be deposited in either the Revenue Fund or the Reserve and Replacement Fund. The determination of which fund to receive such deposit shall be at the discretion of the Authority.

Section 4.04. Against Competitive Project.

To the extent permitted by law, the User covenants not to acquire, maintain or operate within the jurisdiction of the Authority any public safety radio system competitive with the Project without the prior written consent of the Authority, which consent shall not be unreasonably withheld. This covenant is not intended to, and does not, prohibit the User from acquiring, maintaining, or operating a public radio system within its jurisdiction if the Operating Agreement is terminated or when the User no longer participates in the Project or with the Authority.

Section 4.05. Tax Covenants.

The Authority and User hereby covenant that they shall not make or permit any use of the Project that may cause the Bonds, or bonds the proceeds of which are used to purchase the Bonds, to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

The Authority shall not use the Project to benefit a non-governmental unit until the Project achieves the baseline level of service to Users, and further covenants that so long as any Bonds remain Outstanding, the amount of capacity of the Project to be used, allocated or assigned to any person, other than a governmental unit, will not exceed ten percent (10%) of the total capacity of the Project during such period. For these purposes, the total capacity of the Project shall be determined by multiplying the capacity of the Project by the number of years in the term of the Bonds. The term "governmental unit" means the State of California or any political subdivision thereof but excludes the United States Government or any agency thereof.

Section 4.06. Access to the Project.

The Users and any Authorized Representative of the Users, and the Users' successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Project or any part thereof. The Users, any Authorized Representative of the Users and the Users' successors or assigns shall further have such rights of access to the Project or any component thereof as may be reasonably necessary to cause the proper maintenance of the Project in the event of failure by the Authority to perform its obligations hereunder; provided, however, that neither the Users nor any of their assigns shall have any obligation to cause such proper maintenance.

Section 4.07. Maintenance of Existence; Amendment of JPA Agreement.

User hereby covenants that so long as any Bonds are Outstanding, which are scheduled to be paid in full in June 2027, User will not terminate this Operating Agreement except as provided in this Section or Section 6.01 hereof. Withdrawal from the JPA Agreement shall not constitute a withdrawal from this Operating Agreement. User shall use its best efforts to maintain its existence and the existence of the Authority, will not dissolve or otherwise dispose of all or substantially all of its own or the Authority's assets and will not consolidate with or merge into another public agency or permit one or more public agencies to consolidate with or merge into it; provided, however, that User may dissolve, consolidate or merge, sell or otherwise transfer to another entity all or substantially all of its assets, provided that the surviving, resulting or transferee entity, as the case may be (i) is a public agency of the State of California or a subdivision thereof, (ii) assumes in writing all of the obligations of User under this Operating Agreement, and (iii) provides an opinion of Bond Counsel (addressed to the Trustee, Counties and the Authority) to the effect that such dissolution, consolidation, merger, sale or transfer will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes, and complies with the requirements of this Section 4.07. The Authority will use its best efforts to enforce the provisions of this Section 4.07.

So long as any Bonds are Outstanding, the User, if a Member, hereby covenants not to amend or modify the JPA Agreement in a manner which materially affects this Operating Agreement without first obtaining an opinion of Bond Counsel that such modification or amendment does not materially adversely affect the interests of the Bond Owners.

Section 4.08. Payment of Claims.

The Authority will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Revenues or any part thereof or on any funds in the control of the Authority prior or superior to the lien of the Bonds or which might impair the security of the Bonds.

Section 4.09. Compliance with Contracts.

The Authority will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Project and all other contracts affecting or involving the Project to the extent that the Authority is a party thereto, including the contract with the initial Project vendor.

Section 4.10. Insurance.

(a) The Authority shall procure and maintain, or cause to be procured and maintained, throughout the term of this Operating Agreement, casualty insurance against loss or damage to the Project, in an amount at least equal to the lesser of replacement cost of the Project or the then outstanding principal amount of the Bonds. Such insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke, fire, lightning, vandalism, malicious mischief and such other hazards as are normally covered by such insurance with extended coverage. Such insurance shall not cover loss or damage by seismic activity. Such insurance shall be subject to such deductibles as are customarily maintained by public agencies with respect to works and properties of a like character, but in any

case shall not exceed One Hundred Thousand Dollars (\$100,000). Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Authority, and may be maintained in whole or in part in the form of the participation by the Authority in a joint powers authority or other program providing pooled insurance; provided that such insurance may not be maintained by the Authority in the form of self-insurance. The Net Proceeds of such insurance shall be applied as provided in the Trust Agreement.

(b) The Authority shall maintain or cause to be maintained throughout the term of this Operating Agreement, a standard comprehensive general insurance policy or policies in protection of the Authority, the Users, and their respective members, officers, agents, employees, designated volunteers and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Project as required by the JPA Agreement. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the Authority shall deem adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Authority, and may be maintained in whole or in part in the form of self-insurance by the Authority, subject to the provisions of (e) below, or in the form of the participation by the Authority in a joint powers authority or other program providing pooled insurance. The proceeds of such liability insurance shall be applied by the Authority toward extinguishment or satisfaction of the liability with respect to which paid.

(c) The Authority will procure and maintain, or cause to be procured and maintained, workers' compensation insurance against liability for compensation under the Workers' Compensation Insurance and Safety Act of California, or any act hereafter enacted as an amendment or supplement or in lieu thereof, such insurance to cover all persons employed by the Authority in connection with the operation of the Project; provided that such insurance may be effected under a legal self-insurance program.

(d) The Authority shall procure and maintain, or cause to be procured and maintained, throughout the term of the Operating Agreement, business interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Project and the service provided thereby as a result of any of the hazards covered in the insurance required by this Section 4.10, in an amount at least equal to the Debt Service coming due and payable in the next two (2) consecutive years, net of any capitalized interest held pursuant to the Financing Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Authority, and may be maintained in whole or in part in the form of participation in a joint powers authority or other program providing pooled insurance; provided that such insurance may not be maintained by the Authority in the form of self-insurance. The Net Proceeds of such insurance, if any, shall be paid to the Trustee and deposited in the Revenue Fund, and shall be credited towards the User Payments allocable to the insured improvements as the same become due and payable.

(e) Insurance required to be maintained by subparagraphs (b) or (c) above may be effected under a legal self-insurance program so long as (i) the Authority shall certify to the Trustee that the Authority has segregated amounts in a special insurance reserve meeting the requirements of the applicable subparagraph (which segregated reserve may be held by any legal

depository of Authority funds) and (ii) the Trustee receives a certificate of a nationally recognized Insurance Consultant that such reserve is actuarially sound, upon which certificate the Trustee may conclusively rely. All policies of insurance required to be maintained herein shall provide that the Trustee shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby, provided, however, the Trustee shall not be responsible for the sufficiency of any insurance herein required.

Section 4.11. Books and Accounts; Statements.

(a) The Authority will keep proper books of record and accounts of the Project, separate from all other records and accounts of the Authority, in which complete and correct entries shall be made of all transactions relating to the Project. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Users.

(b) The Authority will prepare and file with the Trustee and the Counties annually within sixty (60) days after the close of each Fiscal Year during the term of this Operating Agreement a certified statement that all insurance required by this Operating Agreement to be carried by the Authority with respect to the Project is in full force and effect and complies with the terms hereof.

(c) The Authority will cause to be prepared not more than two hundred ten (210) days after the close of each Fiscal Year financial statements of the Authority for such Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon prepared by an Independent Certified Public Accountant who examined such financial statements, and a general statement of the physical condition of the Project. The Authority will furnish a copy of such summary statement to the Users.

Section 4.12. Payment of Taxes and Compliance with Governmental Regulations.

The Authority will pay and discharge all taxes, assessments and other governmental charges, if any, which may hereafter be lawfully imposed upon the Project or any part thereof when the same shall become due. The Authority will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Project or any part thereof, but the Authority shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

Section 4.13. Amount of Service and Operating Payments.

The Authority will, at all times during the term of this Operating Agreement, fix, prescribe and collect the Service Payments and Operating Payments in connection with use of the Project so as to yield sufficient amounts, after making reasonable allowances for contingencies and errors in the estimates, to pay the Debt Service and Operating Costs due in the applicable Fiscal Year. The Authority shall provide a written statement to the Counties and the Trustee by October 1 of each year to the effect that it has on deposit, or reasonably expects to

have on deposit when needed, sufficient funds to pay the Debt Service and Operating Costs as they come due in the current Fiscal Year.

Section 4.14. Operation of Project.

The Authority will, so long as the Bonds are outstanding, continue to operate the Project. The Authority will use its best efforts to employ, or cause to be employed, sufficient staff to maintain and operate the Project. User hereby covenants to purchase any replacement or additional components to be used in conjunction with the service provided by the Project from the Authority, or in conformity with such specifications as the Authority may, from time to time, prescribe. User will not use the service provided by the Project with any equipment which is not authorized by the Authority. User hereby covenants not to use the Project in any manner which may adversely affect the service provided by the Project.

Section 4.15. Reserved.

Section 4.16. Further Assurances.

The Authority and the User will each adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof of the respective parties to this Operating Agreement.

Section 4.17. Eminent Domain Proceeds.

If all or any part of the Project shall be taken by eminent domain proceedings, the Net Proceeds thereof shall be used to prepay or defease the Bonds.

Section 4.18. Use of Eminent Domain.

User hereby covenants and agrees, to the extent it may lawfully do so, that during the term of this Operating Agreement, and so long as any of the Bonds remain Outstanding and unpaid, User will not exercise the power of condemnation with respect to the Project or any component thereof. User further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if User should fail or refuse to abide by such covenant and shall condemn the Project or any component thereof, the appraised value of the Project or such component shall not be less than the greater of (i) if the Bonds are then subject to redemption, the principal and interest due on the Bonds outstanding through the date of their redemption, or (ii) if the Bonds are not then subject to redemption, the amount necessary to defease such Bonds to the first available redemption date in accordance with the Trust Agreement.

Section 4.19. Further Representations, Covenants and Warranties of the Authority.

The Authority represents, covenants and warrants to the Users as follows:

(a) Due Organization and Existence. The Authority is a joint exercise of powers authority duly organized and validly existing under the JPA Agreement and the laws of the State

of California, has full legal right, power and authority under the laws of the State of California to enter into this Operating Agreement and to carry out and consummate all transactions contemplated hereby, and by proper action the Authority has duly authorized the execution and delivery of this Operating Agreement.

(b) Due Execution. The representatives of the Authority executing this Operating Agreement have been fully authorized to execute the same pursuant to a resolution duly adopted by the Board of the Authority.

(c) Valid, Binding and Enforceable Obligations. This Operating Agreement has been duly authorized, executed and delivered by the Authority and constitutes the legal, valid and binding agreement of the Authority enforceable against the Authority in accordance with its terms.

(d) No Conflicts. The execution and delivery of this Operating Agreement, the consummation of the transactions on the part of the Authority herein contemplated and the fulfillment of or compliance by the Authority with the terms and conditions hereof do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Operating Agreement or the financial condition, assets, properties or operations of the Authority.

(e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of or filing or registration with any governmental authority is necessary in connection with the execution and delivery of this Operating Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Operating Agreement, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Operating Agreement or the financial conditions, assets, properties or operations of the Authority.

Section 4.20. Representations, Covenants and Warranties of User.

User represents, covenants and warrants to the Authority as follows:

(a) Due Organization and Existence. User is a public body, corporate and politic, duly organized and validly existing under the laws of the State of California, has full legal right, power and authority to enter into this Operating Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action User has duly authorized the execution and delivery of this Operating Agreement.

(b) Due Execution. The representatives of User executing this Operating Agreement are fully authorized to execute the same pursuant to official action taken by the governing body of the User.

(c) Valid, Binding and Enforceable Obligation. This Operating Agreement has been duly authorized, executed and delivered by User and constitutes the legal, valid and binding agreement of User, enforceable against User in accordance with its terms.

(d) No Conflicts. The execution and delivery of this Operating Agreement, the consummation of the transactions on the part of User herein contemplated and the fulfillment of or compliance by User with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which User is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of User, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions on the part of such User contemplated by this Operating Agreement or the financial condition, assets, properties or operations of such User.

(e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of User, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Operating Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of User after reasonable investigation, threatened against or affecting such User or the assets, properties or operations of such User which, if determined adversely to the User or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Operating Agreement, or upon the financial condition, assets, properties or operations of the User, and User is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and



adversely affect the consummation of the transactions contemplated by this Operating Agreement or the financial conditions, assets, properties or operations of User.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

#### Section 5.01. Events of Default.

Any one or more of the following events shall constitute an Event of Default hereunder:

(a) Failure by the User to punctually pay its User Payments when and as the same shall become due and payable;

(b) Failure by User to observe and perform any non-monetary condition or agreement on its part to be observed or performed, for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied has been given to User by the Authority or the Trustee; provided, however, that if in the reasonable opinion of User the failure stated in the notice can be corrected, but not within such thirty (30) day period, such failure shall not constitute an Event of Default if User shall commence to cure such failure within such thirty (30) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time;

(c) User shall file a petition seeking arrangement or reorganization under federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with the consent of a User seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of such User or of the whole or any substantial part of its property. However, such filing shall not constitute a default so long as User continues to pay its User Payments punctually.

#### Section 5.02. Remedies of the Authority.

Whenever any Event of Default occurs and is continuing, it shall be lawful for the Authority to, and the Authority shall, at the written direction of any Bondholder, exercise against the User any and all remedies available pursuant to law or granted pursuant to this Operating Agreement; provided, however, that notwithstanding anything herein or in the Trust Agreement to the contrary, there shall be no right under any circumstances to accelerate the User Payments or otherwise declare any User Payment not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the User is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; provided, that no termination of this Operating Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority shall have and is granted each and every one of the following remedies, subject in all respects to the limitations set forth in Section 5.04.

(a) Enforcement of Payments Without Termination. In the event the Authority does not elect to terminate this Operating Agreement with respect to a User in the manner hereinafter provided for in subparagraph (b) hereof, the User agrees to and shall remain liable for the payment of its User Payment and the performance of all conditions herein contained and shall reimburse the Authority for the full amount of its User Payments to the end of this Operating Agreement; provided that its User Payments shall be payable only at the same time and in the same manner as hereinabove provided for such User Payment, notwithstanding any suit brought by the Authority for the purpose of obtaining possession of the Project or any component thereof or the exercise of any other remedy by the Authority. Notwithstanding the provisions of the JPA Agreement, User agrees that this Operating Agreement constitutes full and sufficient notice of the right of the Authority to re-allocate service provided by the Project in the event of default by the User without effecting a surrender of this Operating Agreement, and further agrees that no acts of the Authority in effecting such re-allocation shall constitute a surrender or termination of this Operating Agreement irrespective of the term for which such re-allocation is made or the terms and conditions of such re-allocation, or otherwise, but that, on the contrary, in the event of such default by the User the right to terminate this Operating Agreement with respect to such User shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. Any User which is in default hereunder agrees to surrender and quit possession of the Project or any component thereof upon demand of the Authority.

(b) Termination of the Operating Agreement. Notwithstanding any provision of the JPA Agreement to the contrary, upon the User's default the Authority may, at its option, and shall, at the written direction of either Bondholder (Alameda or Contra Costa County), terminate this Operating Agreement and reallocate all or any portion of the User's service capacity of the Project; provided, that the Authority shall not terminate this Operating Agreement with respect to a User unless such termination will not materially adversely affect either Bondholder. In the event of such termination of this Operating Agreement by the Authority at its option and in the manner hereinafter provided on account of default by the User (and notwithstanding any re-allocation of the service capacity of the Project by the Authority in any manner whatsoever), the defaulting User nevertheless agrees to pay to the Authority the difference between all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of the User Payment and any amounts realized from the reallocation of such service capacity. Neither notice to pay the User Payment or notice to deliver up possession of any component of the Project given pursuant to law shall of itself operate to terminate this Operating Agreement, and no termination of this Operating Agreement on account of default by the User shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to such User of the election on the part of the Authority to terminate this Operating Agreement with regards to such User. User covenants and agrees that no surrender of the Project, or any component thereof, or any termination of this Operating Agreement shall be valid in any manner or for any purpose whatsoever unless stated and accepted by the Authority by such written notice. User hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned in accordance with the provisions herein contained.

(c) Proceedings at Law or In Equity. The Authority may, and shall at the written direction of either Bondholder:

(i) by mandamus or other action or proceeding or suit at law or in equity, enforce its rights against a User, or any board member, officer or employee thereof, and compel the User or any such board member, officer or employee to perform and carry out its or his duties under applicable law and the agreements and covenants contained herein required to be performed by it or him;

(ii) by suit in equity enjoin any acts or things which are unlawful or violate the rights of the Authority; or

(iii) by suit in equity upon the happening of an Event of Default require the User and its board members, officers and employees to account as the trustee of an express trust.

#### Section 5.03. Non-Waiver.

A waiver of any default or breach of duty or contract by the Authority (which waiver shall be subject to the prior written consent of the Bond Holders) shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by applicable law or by this Article V may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the Authority and the Users shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

#### Section 5.04. Remedies Not Exclusive.

No remedy herein conferred upon or reserved in this Agreement is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any other law.

#### Section 5.05. Agreement to Pay Attorneys' Fees and Expenses.

In the event any party to this Operating Agreement should default under any of the provisions hereof and the nondefaulting parties should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party, upon successful completion of such proceedings by the nondefaulting party, agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of and subject to any provision in the JPA Agreement regarding indemnification or payment of attorney fees, such attorney fees and such other expenses so incurred by the nondefaulting party.

Section 5.06. Trustee and Bond Owners to Exercise Rights.

Such rights and remedies as are given to the Authority under this Article V have been pledged by the Authority to the Trustee for the benefit of the Bond Owners, to which pledge User hereby consents. Such rights and remedies shall be exercised by the Authority, the Trustee and the Bond Owners as provided in the Trust Agreement.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Prepayment.

The User may prepay its Service Payments by a deposit with the Trustee, as escrow holder under an escrow deposit and trust agreement as referenced in and in conformance with the Trust Agreement, of either (i) cash in an amount which is sufficient to pay all unpaid Service Payments in accordance with the schedule set forth in the Trust Agreement, or (ii) non-callable Federal Securities or pre-refunded non-callable municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (iii) any other investment approved in writing by the Trustee, together with cash if required, in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon, be fully sufficient to pay all unpaid Service Payments pursuant to the Trust Agreement on their payment dates so that a pro-rata share of the Bonds shall be defeased as provided for in the Trust Agreement.

Notwithstanding the JPA Agreement or any other provision of this Operating Agreement, including without limitation Sections 4.07 and 5.01 hereof, in the event of a deposit pursuant to this Section 6.01, all obligations of the User under this Operating Agreement shall cease and terminate, excepting only the obligation of the User to pay the Operating Payments, to the extent the User is still using the service provided by the Project. The prepaid Service Payments are deemed to be and shall constitute a special fund for the payment of Service Payments in accordance with the provisions of this Operating Agreement.

The Authority shall consent to such prepayment or defeasance to the extent the same complies with the tax covenants of the Authority and the Counties.

Section 6.02. Benefits of Operating Agreement Limited to Parties.

Except as otherwise explicitly provided in Section 6.03, nothing contained herein, express or implied, is intended to give to any person other than the Authority and the User any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the Authority or the User shall be for the sole and exclusive benefit of the other party.

Section 6.03. Successor Is Deemed Included In All References to Predecessor.

Whenever the Authority or the User is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Authority or the User, and all agreements and covenants required hereby to be performed

by or on behalf of the Authority or the User shall bind and inure to the benefit of the respective successors thereof whether so expressed or not; provided, however, that the Authority shall not provide service from the Project to any successor to a User until such successor accepts in writing the obligations hereunder of the predecessor User.

Section 6.04. Waiver of Personal Liability.

No board member, officer or employee of User shall be individually or personally liable for the User Payment, but nothing contained herein shall relieve any board member, officer or employee of User from the performance of any official duty provided by any applicable provisions of law or hereby.

Section 6.05. Article and Section Headings, Gender and References.

The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Operating Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 6.06. Partial Invalidity.

If any one or more of the agreements or covenants or portions thereof contained herein required to be performed by or on the part of the Authority or the User shall be contrary to the law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Authority and User hereby declare that they would have executed this Operating Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 6.07. Assignment.

This Operating Agreement and any rights hereunder may not be assigned by either Party without obtaining the prior written consent of the other Party.

Section 6.08. Net Contract.

This Operating Agreement shall be deemed and construed to be a "net-net-net obligation" and User hereby agrees that the User Payments shall annually be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 6.09. California Law.

This Operating Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 6.10. Notices.

Any notice, request, complaint, demand or other communication under this Operating Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address as set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) forty-eight (48) hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. User, the Authority or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

Authority: East Bay Regional Communications System Authority  
Alameda County Office of Homeland Security and Emergency  
Services  
4985 Broder Boulevard  
Dublin California 94568  
Facsimile: (925)  
Attention: Thomas G. McCarthy, Executive Director

User: Name and title of authorized signer  
CBO name and address

Attest to: Attorney/Law Firm  
Attention: \_\_\_\_\_

Section 6.11. Effective Date.

This Operating Agreement shall become effective upon its execution and delivery, and shall terminate as set forth in Section 2.03 hereof.

Section 6.12. Execution in Counterparts.

This Operating Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 6.13. Amendments.

The User and the Authority may at any time amend or modify any of the provisions of this Operating Agreement, but only with the prior written consent of the Bond Owners of a majority in aggregate principal amount of the outstanding Bonds.

No such amendment shall adversely affect the rights, obligations, immunities or indemnities of the Trustee hereunder without the Trustee's written consent. The Authority shall

obtain and cause to be filed with the Trustee an opinion of Bond Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment have been satisfied. Promptly following the effective date of any amendment or modification pursuant to this Section, the Authority shall mail written notice thereof to each rating agency which then maintains a rating on the Bonds.

Section 6.14. Business Days.

Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

IN WITNESS WHEREOF, the Authority and the undersigned User has entered into this Operating Agreement effective on the date first written above.

**[Signature Pages to Follow.]**

AUTHORITY:

East Bay Regional Communications System Authority

By: \_\_\_\_\_  
Gregory J. Ahern, Chair

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Laura McKinney, Attorney at Law

USER:

CBO name

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

ATTEST:

By: \_\_\_\_\_  
[Name and Title]

APPROVED AS TO FORM:

By: \_\_\_\_\_  
[Name and Title]



## **EXHIBIT A**

### SERVICE AND OPERATING PAYMENT AMOUNTS

AS OF FISCAL YEAR 2013-2014

The amount of User's Operating Payments will be calculated and made each year based on the total number of radios that Subscribers have committed to place in service in the Project, once the User has paid the upfront cost of \$200 per radio. There are two types of payment categories:

Payment Category #1 – If the User prepays its Service Payment it will only be responsible for its Operating Payments.. The amount to prepay the Service Payment is estimated to be \$1,545 per radio placed in service. The Operating Payment for a User that has prepaid its Service Payment is estimated to be \$30 per month per radio subscribed to the Project. The Authority will notify the User of the amount of the Operating Payment in January of the fiscal year preceding the fiscal year for such payment. Operating Payments will be due by August 31<sup>st</sup> of the fiscal year in which such payment is due.

Payment Category #2 – If the User does not prepay its Service Payment, it will be responsible for both the Service Payment and Operating Payment components of the User Payment. Such User will pay a combined User Payment that includes the Service Payment and Operating Payment components, with an estimated combined payment of \$45 per month for each radio it subscribes to the Project. The Authority will notify the User of the amount of the required User Payment in January of the fiscal year preceding the fiscal year for such payment. The User Payment will be due by August 31<sup>st</sup> of the fiscal year in which such payment is due.

The estimated payments reflected in this Exhibit A are based on Project costs of \$17,000,000 and a total number of 11,000 radios committed to service on the Project. In the event that prior to January 1, 2013, the total number of radios committed to service on the Project increases or decreases, or the Project cost decreases, the User will receive a credit or a rate adjustment, as applicable.

User: \_\_\_\_\_

Amount of Prepayment of Service Payments (if applicable):

\_\_\_\_\_

Date of Prepayment of Service Payments (if applicable):

\_\_\_\_\_

Amount of Initial Payment (if applicable): \_\_\_\_\_

Date of Payment of Initial Payment (if applicable): \_\_\_\_\_

Radio count: \_\_\_\_\_

## EXHIBIT B

### PROJECT DESCRIPTION

The East Bay Regional Communications System (EBRCS) is a P-25 compliant digital communications system manufactured by Motorola providing interoperability for emergency responders and others on the system in Alameda and Contra Costa counties. The system is a Motorola Astro 25 SmartZone Project 25 700/800 MHz. system. The system consists of 36 repeater sites divided into 6 simulcast cells.

Cell	Repeater Sites	Channels	Standalones	Channels
ALCO Northwest	4	16	1	4
ALCO Southwest	7	12	1	5
ALCO East	4	10	1	4
CCCO West	4	10	1	5
CCCO Central	8	10		
CCCO East	3	7	2	3-4

The EBRCS system specifications were developed by AECOM of Lynchburg Virginia. The system Master site controller is located at the Alameda County Office of Emergency Services and Homeland Security in Dublin. All of the repeater sites are connected back to the Master Site through a looped digital microwave system. Each cell will have a prime site that will house additional equipment to coordinate signal timing between itself and the other repeater sites within the cell. Each repeater site is equipped with an emergency generator and a minimum of 2 hours of batter backup power, and meets Motorola's R56 standards for grounding. The sites are owned by multiple agencies within Alameda and Contra Costa counties, with the majority of the sites owned by the two counties. The EBRCS Authority has entered into, or is in the process of entering into licensing agreements for use of the non county-owned sites. Each public safety dispatch center has connectivity to the system through microwave. The EBRCS Authority will provide dispatch consoles and/or console upgrades for each center. Currently there are 110 planned replacements and 39 upgrades to existing facilities.

1551170.2