



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

OPERATIONS COMMITTEE MEETING

NOTICE OF REGULAR MEETING

DATE: August 30, 2024

TIME: 10:00 a.m.

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

AGENDA

1. Call to Order/Roll Call
2. Public Comments (Meeting Open to the Public):
At this time, the public is permitted to address the Committee on items within the Committee's subject matter jurisdiction that do not appear on the agenda. Please limit comments to a maximum of three (3) minutes. If you wish to comment on an item that is on the agenda, please wait until the item is read for consideration.
3. Approval of Minutes of April 19, 2024, Operations Committee Meeting
4. California Highway Patrol Interoperability MOU for Oakland Area
5. Review Executive Director Authority for Interoperability MOUs
6. Review Proposed Subscriber MOU
7. Purchase of Replacement Batteries for Highland Park
8. East Bay Regional Communications System Authority Updates
 - Radio Issues Related to the SUA
 - Capital Improvement/Replacement Project
 - Radio Purchase Agreement
 - Accounts Receivable Aging
 - The City of Antioch Site on Walton Lane
 - Tracy Police Department Interest
9. Agenda Items for Next Meeting
10. Adjournment

Alameda County Office of Homeland Security and Emergency Services
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This AGENDA is posted in accordance with Government Code Section 54954.2(a)

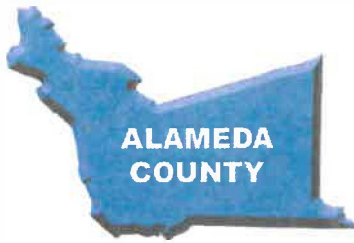
If requested, pursuant to Government Code Section 54953.2, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132), and the federal rules and regulations adopted 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



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OPERATIONS COMMITTEE MEETING

AGENDA ITEM NO. 3

REGULAR MEETING

DATE: April 19, 2024

TIME: 10:00 a.m.

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

DRAFT MINUTES

1. **Call to Order/Roll Call:** A regular meeting of the Operations Committee was held on Friday, April 19, 2024. The meeting was called to order at 10:01 a.m.

Committee Members Present:

A. Love, Chief, Oakland Housing Authority Police
J. Beltran, Assistant Sheriff, Contra Costa County Office of the Sheriff
R. Filice, Chief, East Bay Regional Parks Police Department
J. King, Chief, Moraga Police Department
M. Nichelini, Deputy Chief, Oakland Fire Department
Y. Sanchez, Sheriff, Alameda County Sheriff's Office

Staff:

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

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

On motion of Bm. J. King, seconded by Bm. Filice and by unanimous vote, the Operations Committee approved the minutes of the February 16, 2024 Operations Committee meeting, with revisions to page 4 of 5, regarding item: Central Cell Outage February 5, 2024.

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

C. Boyer, Auditor stated he had provided a cover page of budget highlights; the first page of the schedules summarized version of revenues and expenses that are budgeted for

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24/25. It was fairly consistent with FY 23/24. The radio counts and the dues that are being paid remain consistent with the prior year. Revenues were increased due to more favorable interest rates. Expenses were fairly consistent with last year. They are budgeting for a net loss of approximately \$2.7 million. The majority of this is coming from the Walton Lane project which is a one-time cost. Even when you back that out, the bottom line is based on what they are currently budgeting. There is currently a structural deficit with more expenses outflowing cash than revenues, inflowing cash. On the next page, there is a more detailed version of the expenditures. There is first the FY 23/24 budget, then in the column to the right of that they project where they think they are going to end with actual expenditures for FY 23/24. To the right is the budget for FY 24/25. This gives a more detailed breakdown of expenditures. The most notable items to mention are that in FY 23/24, they budgeted for the CIP as a separate line item called "Planning". That budget has been moved down to the CSI Telecommunications budget line item. Most of the other changes are being driven by contractual costs with Motorola and the renegotiation of the Aviat agreement. On the next page, it shows the Authority's different reserve balances. The Authority has three different types of reserves, the first being the operating reserves. This reserve is set at 50% of expenses; the second reserve balance is the debt reserve balance which is always budgeted at \$1 million; and the third reserve is the capital reserve that is whatever remaining reserve funds remaining after budgeting for the first two reserves, is allocated to the capital reserve. If you look at the second column projected for FY 23/24, they are projecting a total reserve balance of approximately \$15 million of which \$12 million is capital reserve. When you compare that to the FY 24/25 budget, you can see that the total reserve balance will be \$12 million, with approximately \$9 million capital reserve. That structural balance mentioned on the first schedule, this is how it is impacting things in terms of where the reserve balances are trending.

Bm. Sanchez joined the meeting at 10:08 a.m.

Mr. Boyer stated the next three pages were cash flow schedules. The first shows a ten-year cash flow projection based on the current budget and then they project out over ten years. There are two other scenarios presented to represent if they instituted an annualized dues increase, how that would affect the cash flow projections. The second one is a 3% annual increase, and the next is a 5% annual increase. They have always taken an approach with capital expenditures to project only capital expenditures that they know about. With the level of capital expenditures they know about now, if it continues for about the next five years and then it drops off it is because they do not know about any significant capital expenditures after that. If it is accurate, then that is an accurate projection. If there are items they are not anticipating, then it may be more optimistic than it would otherwise. Currently, they are starting off with reserves of \$15 million, if you look ten years out, they end with about \$15 million. If you look at total reserves about half way through the schedule, they drop as low as \$9.7 million. The schedule with the 3% increases in rate, you start with the \$15 million, and if you go about halfway through the projection, you drop as low as about \$11.7 million but then trend back up to about \$25 million; with a 3% increase over 10 years, you would create an additional \$10 million in reserves. With a 5% fee increase, you start at \$15 million in total reserves, drop as low as about \$13 million and then trend back up to about \$35 million. So, with a 5% annualized increase you are banking an additional \$20 million reserves.

Bm. Nichelini joined the meeting at 10:10 am.

Executive Director McCarthy stated it is hard to know where technology is going. The original service upgrade agreement with Motorola was for 10 years. The Authority and Motorola agree that 10 years was too long. That was a major conversation as to how far out could they predict technology changes. Six years was what was comfortable. The numbers here were they best they could do with what they knew. They have tied the Aviat and Motorola contract to six years. They will be checking every year going forward. It will be critical to look at the budget the next few years. The microwave/MPLS upgrade had to be completed because they could no longer do the SUA upgrades with that technology. These big projects were costly.

Bm. King stated in regard to the Capital replacement budget, and there is a decent balance and looking to grow it – they just installed a new microwave system that probably has a usable life of 20-years, that pushes the need to replace that section of capital equipment off 20 years. The Motorola contract pays for complete updates of equipment including dispatch consoles during the course of the six-year contract.

Executive Director McCarthy stated for the duration of the six years, every two years, the SUA will happen. That money is being invested back into the system. The SUA maintains the technology, the master site, the prime sites, the dispatch consoles. It is an on-going update every two years.

Bm. King stated that much of the \$72 million required to replace the system, much of that is already being done incrementally, such as the microwave system through the Motorola contract, some is being done with Motorola upgrades and updates.

Executive Director McCarthy stated the hard part is that EBRCSA owns some shelters. They do not own all shelters. BART owns its three shelters; Contra Costa County owns many of its shelters; Alameda County owns some of its shelters. He has lease agreement on Patterson Pass for a shelter and a few with EBMUD. EBRCSA may have to add in six more shelters for future sites.

Bm. King asked if Walton Lane would be going forward.

Executive Director McCarthy stated he has been speaking to the tower company at Walton Lane to see if they can come to some kind of understanding.

On motion of Bm. King, seconded by Bm. Filice and by unanimous vote, the Operations Committee agreed to recommend to full Board of Directors approval of the FY 24/25 budget, as discussed.

5. EBRCSA Rate Increase Discussion

Mr. Swing stated EBRCSA has not raised subscriber fees since December 2017. The budget presented shows a structural deficit. EBRCSA is not done with its CIP replacement project and CSI is working on it and intends to have it completed by December of 2024 so the Board can bring back a recommendation for a longer-term budget solution. In the meantime, EBRCSA can look at a one-time increase as a short-term solution to rectify the current deficit. The debt service would bring in about \$1.5 million a year, paying down debt service by \$650,000 and the balance goes to the capital reserve, \$1 million. The balance of the capital is going to the capital reserve from debt service payment that will expire in 26/27. Further justifying a need for a rate

increase today. A 3% increase would equal \$1 per subscriber unit to generate about \$252,000 annually. The other option is a 5% increase that will generate \$376,000 annually which would translate to about \$5 a month per subscriber unit. A one-time increase is recommended, with discussion of possibly more increases later.

The Operations Committee discussed scenarios that increased the radio fees anywhere from \$1 per month per unit to \$5 per month per unit. Also, they discussed recommending set increases in coming years for agencies to be able to budget for the future. Some agencies were in arrears in payments and collecting those monies would also help with the deficit.

On motion of Bm. King, seconded by Bm. Nichelini and by majority vote (Bm. Love voting no), the Operations committee agreed to recommend to the full Board the adoption of rate increase of \$1 per-radio, per month effective July 1, 2024, an additional increase of \$1 per-radio, per-month effective July 1, 2026, and an increase of \$1 per-radio, per-month effective 2028.

6. Redwood Public Law Contract

Executive Director McCarthy stated Meyers Nave, the Authority's Law firm had split with some attorneys going to Redwood Public Law. This item was to decide if the Authority would continue with Meyers Nave or move to Redwood Public Law as EBRCSA's attorney.

On motion of Bm. King, seconded by Bm. Filice and my majority vote (Bm. Sanchez absent), the Operations Committee agreed to recommend to the full Board the approval of the contract to engage Redwood Public Law as EBRCSA's attorney.

7. CSI Telecommunications Contract

Executive Director McCarthy stated radio engineers were difficult to find and CSI was previously contracted by EBRCSA. Their services are excellent and varied. They review the Motorola proposals and have the knowledge. They have been active with the Wiedemann site. They also deal with the FCC on behalf of the Authority. There are associated costs with FCC licenses and frequencies and are paid through money budgeted with this contract. CSI is also doing CIP work and was budgeted in last year's and this year's contract.

On motion of Bm. King, seconded by Bm. Nichelini, and by unanimous vote, the Operations Committee agreed to recommend to the full Board, the approval of the contract between EBRCSA and CSI Telecommunications.

8. Motorola Maintenance Agreement

Executive Director McCarthy stated this agreement was for networking support, which had recently changed. There used to be a technician on site, part-time and another that was on call 24/7. Motorola has changed that and now has integrated services. The master site is covered by the SUA, but it does not cover things like a blown fuse or security patches, etc. This agreement is what pays for those items. This is short-term agreement for \$96,000.

On motion of Bm. King, seconded by Bm. Nichelini and by unanimous vote, the Operations 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 East Bay Regional Communications System Authority (EBRCSA) System for the period of July 1, 2023, through June 30, 2024; and the amendment of EBRCSA's new attorney's name on the contract.

9. Radio Interoperability EBRCSA MOU

Executive Director McCarthy stated this allows for agencies to share talk groups when offering mutual aid amongst Fremont, Milpitas, Menlo Park and Milpitas. They currently share talk groups but this makes it official.

On motion of Bm. King, seconded Bm. Nichelini and by unanimous vote, the Operations Committee agreed to recommend to the full Board approval of the Interoperability MOU amongst EBRCSA, SVRIA, Fremont, Menlo Park, and Milpitas, allowing minor changes by the Executive Director regarding radio numbers.

Items below will be discussed at the May 3, 2024 Board meeting.

10. Updates on East Bay Regional Communications System Authority Projects

- Encryption
- Microwave/Ethernet/MPLS Project Update
- Cyber Security Active Eye Update
- SUA Update
- The City of Antioch Site on Walton Lane
- Wiedemann Project San Ramon

11. Agenda Items for Next Meeting

- Contra Costa County MOU

12. **Adjournment:** With no further business coming before the Operations Committee, the meeting was adjourned at 10:54 a.m.



**East Bay Regional
Communications
System Authority**



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AGENDA ITEM NO. 4

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

TO: Operations Committee
East Bay Regional Communications System Authority

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

A handwritten signature in black ink, appearing to read "D. Swing", positioned to the right of the "FROM:" line.

SUBJECT: Interoperability MOU – City of Oakland and California Highway Patrol

RECOMMENDATIONS:

Discuss the proposed Interoperability Memorandum of Understanding between the City of Oakland and the California Highway Patrol.

SUMMARY/DISCUSSION:

In addition to pre-planned events, the California Highway Patrol frequently supports the Oakland Police Department in spontaneous events that occur in the City of Oakland involving on-duty CHP officers helping to contain side-shows, vehicles pursuits and other high-risk events. Presently, CHP officers are unable to communicate with OPD field personnel during these events which hinders the response and safety of those involved. Both agencies have indicated their desire to share OPD talk groups. The radio shops of each agency would facilitate radio programming and the system has the capacity to add the 135 requested radios. The Executive Director is seeking the recommendation of the Operations Committee to the Board of Directors to implement the attached MOU.

Attachments:

1. Proposed Interoperability MOU

Radio Interoperability Agreement between the City of Oakland Police Department and the California Highway Patrol

The City of Oakland (“Grantor”) and the California Highway Patrol (“Grantee”) enter this Radio Interoperability Agreement (“Agreement”) dated February 16, 2024, by which the City of Oakland Police Department provides to the California Highway Patrol permission to operate on the City of Oakland’s Radio Frequencies, see appendix “A” on the East Bay Regional Communications System Authority (“EBRCSA”) proprietary P25 radio system for the purposes and on the terms and conditions specified in this Agreement.

1. **Term of the Agreement.** This Agreement shall become effective on the date it is fully executed by all parties, and shall remain in effect, unless terminated in accordance with the terms and conditions contained in this Agreement.
2. **Purpose.** This Agreement is for the purpose of radio interoperability required in the field to allow California Highway Patrol personnel to communicate with employees of the City of Oakland Police Department with whom its personnel work on a regular and recurring basis.
3. **Authorized Personnel.** Only Grantee’s personnel are authorized to use the programmed radios and transmit on the EBRCSA talk groups assigned to the City of Oakland Police Department under this Agreement. Grantee shall not allow any unauthorized personnel to utilize EBRCSA/City of Oakland Department talk groups or channels.
4. **Authorized Use.** Grantee’s Authorized Personnel may use the EBRCSA/City of Oakland Police Department talk groups and channels only (1) when working with employees of the City of Oakland Police Department or during joint operations, (2) during Priority 1 circumstances as defined in the California Law Enforcement Mutual Aid Radio System Plan (“CLEMARS”) system priority guidelines – disaster and extreme emergency operations for mutual aid and interagency communications, and (3) during Priority 2 circumstances as defined in the CLEMARS system priority guidelines - emergency or urgent operations involving imminent safety of life or protection of property. With the prior approval of EBRCSA, Grantee may also use the EBRCSA/City of Oakland Police Department talk groups and channels for training purposes on joint trainings with City of Oakland Police Department employees. The Grantee is a member of EBRCSA, therefore there will be no charge to Grantee for the access to the EBRCSA/ City of Oakland Police Department talk groups listed in Attachment “A”.
5. **Talk groups and Channels.** This Agreement authorizes Grantee and its Authorized Personnel to access and transmit only on the talk groups listed in Attachment “A” as approved by the City of Oakland Police Department.
6. **Primary Authority.** The Grantee’s Authorized Personnel communicating on City of Oakland Police Department channels recognize the ultimate authority of the City of Oakland Police

Department's Chain of Command while operating on the Department's designated channels, absent exigent circumstances. The City of Oakland Police Department Dispatchers shall be afforded the extent of command and control consistent with the normal operations of the Oakland Police Department. The City of Oakland Police Department shall have domain over Departmental talk groups and channels and any use of these talk groups and channels by the Grantee during preplanned operations should be coordinated prior to the start of the operation with the City of Oakland Police Department's Communications Division and designated Departmental personnel.

7. Radio Capabilities. Grantee must obtain its own radios capable of operation on a Motorola P25 system with the most current operating version installed in order to access talk groups on Grantor's 700MHz Interoperability System.
8. Radio System Maintenance and Upgrades. Grantor may perform periodic system upgrades and/or decommission parts of the radio systems. Grantor will make best effort to ensure the system is backward compatible with Grantee's radios. However, Grantor cannot and does not guarantee that the Grantee's radios will be supported through the life of this Agreement.
9. Radio Programming. Grantee shall submit any radios to be used under this Agreement to either the: Alameda County Radio Shop; Contra Costa County Radio Shop; Motorola Radio Shop (collectively identified as "Radio Shops"); or another Authorized EBRCSA Programming entity to program and authorize the radios to function on Grantor's EBRCSA system. Grantee shall be responsible for all maintenance and repair costs for their radios used under this Agreement.
10. Radio Identification Sheet. Grantee shall provide the Radio Shops or Authorized EBRCSA programming entity identified in Section 9 of this Agreement with a completed Radio Identification Sheet for each California Highway Patrol radio used under this Agreement, in order to allow Grantor the ability to properly track transmissions and radio IDs of Grantee's subscriber units and personnel accessing Grantor's network. A blank Radio Identification Sheet is attached to this Agreement as "Attachment B" and incorporated by reference as if fully set forth herein. When the personnel Grantee has assigned a programmed radio under this Agreement changes, Grantee shall provide an updated Radio Identification Sheet to the Radio Shops or Authorized EBRCSA programming entity responsible for the programming within 15 calendar days of the change, in which it shall provide updated information to the authorized personnel currently assigned to the radio.
11. Radio Limit. This Agreement authorizes Grantee to configure up to a maximum of 135 radios for use on the EBRCSA channels assigned to the Oakland Police Department.
12. Lost or Stolen Radio. In the event a radio programmed for access to the EBRCSA channels is lost or stolen, Grantee shall immediately, and in any event no later than within 24 hours, contact the EBRCSA and inform them of the six or eight digit radio numbers assigned to the lost or stolen radio for deactivation from the systems. If the radio is subsequently found,

Grantee shall notify the Grantor and the radio may be enabled again for operations on the EBRCSA system.

13. **Radio Identification.** When the Radio Shops or authorized EBRCSA programming entity programs a radio for Grantee, they shall designate and log that radio's call sign. Grantee must ensure that its personnel identify themselves at all times on radio channels using the predetermined call sign.
14. **Patching Prohibited.** Grantee shall not permit its personnel to use frequency bridging equipment, a dispatch console or any other mechanism to "patch" or "link" any EBRCSA talk groups to any other system, channel, sub-system or any type of communications bridging equipment.
15. **Communications Over the Radio.** Grantee agrees that its personnel will use plain speech when communicating on EBRCSA/City of Oakland Police Department talk groups assigned to the City of Oakland Police Department and plain speech when using California Mutual Aid frequencies. In the event of inappropriate language or behavior, or misuse of the radio system by any of Grantee's personnel, Grantor may revoke and disallow that individual from using EBRCSA's system and channels or may terminate this Agreement and prohibit all of Grantee's radios from use within its system. If this should occur, Grantor shall notify Grantee in writing of this revocation prior to deactivation.
16. **Disabling Radios.** Grantor may disable a Grantee's radio temporarily or permanently at Grantor's sole discretion. Examples of when Grantor may determine to disable a radio include, but are not limited to: (1) if the radio is malfunctioning; (2) Grantee's personnel has been deemed by Grantor to be using the radio in violation of this Agreement; (3) Grantee allows an unauthorized usage of the radio or the EBRCSA's systems or channels; or (4) if the radio is in any way interferes with the Grantor's communications.
17. **CLETS Transactions Prohibited.** Grantee shall not run or request to be ran any CLETS transactions through Grantor. In the event Grantee requires a CLETS transaction, it will switch to its primary channel to request the transaction through its agency ORI.
18. **Access to EBRCSA Records/NICE Recording.** If Grantee seeks access to EBRCSA records/NICE recording regarding audio transmissions, it shall submit a written request to the Grantor's Custodian of Records. The request shall specify the CAD or incident number (if known), the date and location of the incident, and the name, job classification, phone number and address of the California Highway Patrol employee submitting the request. The request shall also confirm that the employee submitting the request is authorized to obtain the records sought. The California Highway Patrol agrees to treat all un-redacted material as confidential and to use any records it obtains only for official California Highway Patrol purposes in accordance with all applicable state and federal statutes.
19. **Ongoing Associated Cost.** The Grantee is responsible for any ongoing associated cost surrounding the Grantee's use of EBRCSA encryption, radio updates, hardware, software,

and any servicing of radio equipment under the Grantee's domain and control during the duration of this Agreement.

20. Notices. Unless otherwise specifically provided herein, all notices and other communications shall be in writing, addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (only if prior written agreement has been made by the parties regarding transmission by facsimile):

To:
Oakland Police Department
Attention: Dr. Carlo M. Beckman
455 7th Street
Oakland, CA 94607

To:
California Highway Patrol
Attention: Commander
California Highway Patrol
P.O. Box 942898
Sacramento, CA 94298-0001

To:
East Bay Regional Communications System Authority
Attention: Tom McCarthy, Executive Director
4985 Broder Blvd.
Dublin, CA 94568

From time to time any party may designate a new address or recipient for notice for purposes of this Section 20 by written notice to the other parties.

21. Contact Information. Each party shall provide the other party with a list of appropriate contact personnel for notices and notifications under this Agreement. Each party is responsible for updating the list to ensure it is current.
22. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party, its officers, agents, and employees from any and all liabilities, claims, or losses of any nature, including attorney's fees, court costs and all reasonably related legal costs, to the extent caused by, arising out of, or in connection with the indemnifying party's gross negligence or willful misconduct pursuant to this Agreement.
23. No Assignment or Subcontracting. Grantee may not subcontract or assign any rights, duties or obligations under this Agreement. Any agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

24. Independent Agencies. None of the provisions of this Agreement are intended to create, and none shall be deemed or construed to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of the Agreement. Neither party nor its employees is an employee of the other party; nor is either party or its employees entitled to any of the benefits and protections afforded to employees of the other party. The parties to this Agreement shall have no authority, express or implied, to act on behalf of any signatory in any capacity whatsoever as an agent. The parties shall have no authority, express or implied, pursuant to this Agreement to bind each other to any obligation whatsoever. The parties agree that the provisions of this Agreement are not intended to directly benefit any third party, and shall not be enforceable by any person or entity not a party to this Agreement. This Agreement is not intended to confer any legal rights or benefits on any person or entity other than the parties to this Agreement.
25. Proprietary or Confidential Information of EBRCSA/City of Oakland and Third Parties. Grantee understands and agrees that in accessing and using the EBRCSA/City of Oakland Police Department talk groups and channels under this Agreement, Grantee may have access to private or confidential information that may be owned or controlled by EBRCSA or the City of Oakland Police Department or to which EBRCSA or the City of Oakland Police Department has authorized access, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to EBRCSA or the City of Oakland Police Department or to third parties. Grantee agrees that all information disclosed by EBRCSA or the City of Oakland Police Department to Grantee or to which Grantee has access by virtue of this Agreement shall be held in confidence and used only in performance of the Agreement.
26. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
27. Termination. Either party may terminate this Agreement for any reason at any time upon 10 days written notice to the other party, or in accordance with the terms and conditions contained in Section 20 of this Agreement.
28. Entire Agreement. This Agreement sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. The terms and conditions of the agreement may be modified only as provided for in Section 26 of this Agreement.
29. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable

30. Agreement Made in California: Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for any litigation relative to the formation, interpretation and performance of this Agreement shall be in Alameda County, California. Grantee understands and agrees to waive its rights under California Code of Civil Procedure Section 395 et. al. and agrees to have any dispute pertaining to this Agreement decided in the jurisdiction of courts Alameda County.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the dates specified herein.

Witness:

Agency: East Bay Regional Communications System Authority (EBRCSA)

Contact : David L. Swing

Contact Phone #: 925-803-7802

Rank/Position: Executive Director

Email: David.swing@acgov.org

Date: _____

Signature _____

Agency: City of Oakland

Contact: Jestin Johnson

Contact Ph #: _____

Rank/Position: City Administrator

Email: jdjohnson@oaklandca.gov

Date: Jul 25, 2024

Signature  _____
Jestin Johnson (Jul 25, 2024 21:59 PDT)

Agency: City of Oakland Police Department

Contact: Assistant Chief James Beere

Contact Ph #: 510-238-3330

Rank/Position: Assistant Chief

Email: jbeere@oaklandca.gov

Date: Jul 25, 2024

Signature James P Beere
James P Beere (Jul 25, 2024 15:31 PDT)

Agency: California Highway Patrol
Contact: Chief D. Jenkins
Contact Ph #: (916) 843-4000
Rank/Position: Chief, Information Management Division
Email: DJenkins@chp.ca.gov
Date: 02/07/2024

Signature _____

ATTACHMENT A

Authorized Talk Groups for Programming

Talkgroup_ID	Talkgroup ID (Hex)	Controlling Agency	Talkgroup_Name_Short	Talkgroup_Name_Long
3405	0D4D	Oakland PD	OPD PAT1	OPD PATROL 1
3406	0D4E	Oakland PD	OPD PAT2	OPD PATROL 2
3407	0D4F	Oakland PD	OPD PAT3	OPD PATROL 3
3408	0D50	Oakland PD	OPD PAT4	OPD PATROL 4
3409	0D51	Oakland PD	OPDPAT5	OPD PATROL 5
3418	0D5A	Oakland PD	OPD TAC1	OPD TAC 1
3419	0D5B	Oakland PD	OPD TAC2	OPD TAC 2
3420	0D5C	Oakland PD	OPD TAC3	OPD TAC 3
3421	0D5D	Oakland PD	OPD TAC4	OPD TAC 4
3430	0D66	Oakland PD	OPD SRS1	OPD SRS 1
3431	0D67	Oakland PD	OPD SRS2	OPD SRS 2
3432	0D68	Oakland PD	OPD SRS3	OPD SRS 3

3433	0D69	Oakland PD	OPD SRS4	OPD SRS 4
3434	0D6A	Oakland PD	OPD SRS5	OPD SRS 5
3437	0D6D	Oakland PD	OPDCRWD1	OPD CROWD 1
3438	0D6E	Oakland PD	OPDCRWD2	OPD CROWD 2

ATTACHMENT B
Radio Identification Sheet

Owner: California Highway Patrol

Radio Brand: _____

Radio Serial #: _____

Call Sign: _____

Agent Assigned: _____
 Last First M.I.

Agent Badge Number: _____

To be completed by Authorized EBRCSA Programming Entity - Radio Shop

Date programmed on 700MHz Interoperability System:

Radio ID #: _____

Radio Alias: _____

24/7 POC for any issues with this Unit is required.

Name: _____

Email: _____

Phone#: _____

2024 JUN -4 AM 10:34

APPROVED AS TO FORM AND LEGALITY

CITY CLERK

Lindson Chan
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 90299 C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A RADIO INTEROPERABILITY AGREEMENT WITH THE CALIFORNIA HIGHWAY PATROL, FOR THE OAKLAND POLICE DEPARTMENT TO PERMIT THE CALIFORNIA HIGHWAY PATROL TO OPERATE ON THE CITY'S RADIO FREQUENCIES, USING THE EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY ("EBRCSA") RADIO SYSTEM.

WHEREAS, the Oakland Police Department ("OPD") is a member of EBRCSA, of which the California Highway Patrol ("CHP") is not a member; and

WHEREAS, pursuant to Oakland Municipal Code Section 9.64.010.14.E, OPD's radio system is not a Surveillance Technology system; and

WHEREAS, under the proposed Radio Interoperability OPD will grant permission to the CHP to operate on the City of Oakland's Radio Frequencies (via EBRCSA) under specified circumstances; and

WHEREAS, the Radio Interoperability Agreement will expedite the flow of information and communication between agencies for joint operations or situational awareness, thereby improving cross-departmental awareness and potentially improving officer and public safety; and

WHEREAS, there is no additional cost to the City of Oakland; and

WHEREAS, Article V, Section 504(1) of the City Charter requires that the City Council authorize the City Administrator to enter into agreements for joint government actions; now, therefore, be it

RESOLVED: That the City Administrator is authorized to enter into a Radio Interoperability Agreement with the CHP, for OPD permit the CHP to operate on the City of Oakland's Radio Frequencies using the EBRCSA radio system; and be it

FURTHER RESOLVED: That the Radio Interoperability Agreement authorized by this resolution shall be approved by as to form and legality by the City Attorney before the City Administrator executes it, and a copy of the fully executed Agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

JUN 18 2024

PASSED BY THE FOLLOWING VOTE:


AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS - 8

NOES - 0

ABSENT - 0

ABSTENTION 0

ATTEST:



ASHA REED

City Clerk and Clerk of the Council of the
City of Oakland, California








OPD_CHP_Radio_MOU_Final 041824

Final Audit Report

2024-07-25

Created:	2024-07-25 (Pacific Daylight Time)
By:	Aracely Garza (AGarza@oaklandca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAANiaN30AyxWoUVXI6_DWvOo_8eKheNSxd

"OPD_CHP_Radio_MOU_Final 041824" History

-  Document created by Aracely Garza (AGarza@oaklandca.gov)
2024-07-25 - 3:06:12 PM PDT- IP address: 209.232.103.91
-  Document emailed to jbeere@oaklandca.gov for signature
2024-07-25 - 3:27:57 PM PDT
-  Email viewed by jbeere@oaklandca.gov
2024-07-25 - 3:30:24 PM PDT- IP address: 104.47.64.254
-  Signer jbeere@oaklandca.gov entered name at signing as James P Beere
2024-07-25 - 3:31:04 PM PDT- IP address: 209.232.103.82
-  Document e-signed by James P Beere (jbeere@oaklandca.gov)
Signature Date: 2024-07-25 - 3:31:06 PM PDT - Time Source: server- IP address: 209.232.103.82
-  Document emailed to Jestin Johnson (JDJohnson@oaklandca.gov) for signature
2024-07-25 - 3:31:08 PM PDT
-  Document e-signed by Jestin Johnson (JDJohnson@oaklandca.gov)
Signature Date: 2024-07-25 - 9:59:46 PM PDT - Time Source: server- IP address: 141.239.93.35
-  Agreement completed.
2024-07-25 - 9:59:46 PM PDT



City of
Oakland

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**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
OPERATIONS COMMITTEE
MEETING DATE: AUGUST 30, 2024**

TO: Operations Committee
East Bay Regional Communications System Authority

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

SUBJECT: MOUs for Interoperability

A handwritten signature in black ink, appearing to read "David Swing", positioned to the right of the "FROM:" line.

RECOMMENDATIONS:

Discuss the authority of the Executive Director to enter in a Memorandum of Understanding with allied agencies who are not members or users of the system.

SUMMARY/DISCUSSION:

Presently when an allied agency desires to use the talk groups of members agencies a Memorandum of Understanding (MOU) is drafted, brought to the Committees and Board of Directors for approval then executed by Executive Director. The EBRCSA by-laws do not require Board approval for operational items that are cost neutral. In an effort to implement interoperability more expediently, the Executive Director would like to change the practice of obtaining Board approval for cost neutral operational items and report back to the Operations Committee on interoperability MOUs and system capacity during programmatic updates of the Operations Committee meetings.

The current system capacity allows for expanded interoperability throughout the system.

Attachments:

1. Interoperability MOU Template

Memorandum of Understanding
Between The Cities of XXXX and the East Bay Regional Communications System
Authority Regarding Radio Interoperability

This Memorandum of Understanding (“**MOU**”) is made this day of _____, 2024 (“**Effective Date**”) by and among 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 (“**EBRCSA**”), the Cities of XXXX (“**City**”), and the. The parties may be individually referred to as a “**Party**” and collectively “**Parties.**”

RECITALS

A. EBRCSA 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**”). The Authority has developed a P25 compliant communications system that allows the highest level of interoperable communication in digital mode, which serves Alameda and Contra Costa Counties and individual political jurisdictions therein (the “**System**”).

B. EBRCSA has also entered into Operating Agreements with other local agencies whereby EBRCSA owns and operates the System for the benefit of those agencies (collectively, the “**Users**”). Pursuant to those Operating Agreements, **Users** agreed to pay a portion of the cost of the System, consisting of a buy-in cost based on the number of radios in use in the System, the cost of the System and the cost of annual operation of the System (collectively, “**User Payments**”).

C. EBRCSA as the Grantor, and Cities as Members, wish to facilitate radio interoperability for the Cities of XXX (collectively, “**Grantees**”). All Grantees are not Members or Users and therefore this MOU is necessary to enable Grantees’ authorized personnel to communicate with Members and Users (collectively, the “**Participants**”) with whom its authorized personnel work on a regular and recurring basis under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and hereby incorporated herein.
2. Term. This MOU shall become effective on the Effective Date and shall remain in effect until December 31, 2030 unless sooner terminated pursuant to Section 26 (“**Term**”).

3. Authorized Personnel. Grantees shall permit only their authorized personnel to use Radios as defined in Section 6 and transmit on the Channels as defined in Section 5. Grantees shall not allow any unauthorized personnel to access the Radios or the Channels.
4. Authorized Use. Grantees' authorized personnel may use the Channels only in the following circumstances: (1) during joint operations with Participants performing emergency response; (2) during Priority 1 circumstances as defined in the California Law Enforcement Mutual Aid Radio System Plan ("**CLEMARS**") – disaster and extreme emergency operations for mutual aid and interagency communications with Participants; or (3) during Priority 2 circumstances as defined in the CLEMARS - emergency or urgent operations involving imminent safety of life or protection of property with Participants. With the prior written approval of EBRCSA, Grantees may also use the Channels for training purposes when conducting joint trainings with Participants.
5. Talkgroups and Channels. Grantees and its authorized personnel may access and transmit only on the following talkgroups and channels: EBRCSA (Regional Interoperability) Talk Groups: **XXXX** (collectively "**Channels**") provided that such Channels which are encrypted require AES 256 encryption in order to access, and Grantees shall ensure its use of such encrypted Channels complies with all applicable law, regulations, guidance and administrative interpretations/orders regarding such use. All EBRCSA Channels are recorded.
6. Radio Capabilities. Grantees shall obtain its own radios capable of operation on a Motorola Phase 2 Digital TDMA P25 system with the most current version upgrade installed in order to access Channels on Grantor's 700/800 MHz Interoperability System ("**Radios**"). Grantees shall not utilize FDMA Radios on the Channels.
7. Radio System Maintenance and Upgrades. Grantor may perform periodic System upgrades and/or decommission parts of its radio systems. Grantor shall take all reasonable steps to ensure the System is backward compatible with the Radios. Notwithstanding that, Grantor does not guarantee that Grantees' Radios will be compatible for use throughout the Term.
8. Radio Programming and Costs. Upon EBRCSA's request, Grantees shall provide the Radios to the Alameda County Radio Shop and Contra Costa County Radio Shop, Motorola and other programming entities selected by EBRCSA (collectively, "**Radio Shop**") to program, apply firmware upgrades, perform radio alignment and/or perform any other programming to enable the Radios to function on the System (collectively "**Services**"). Once the Radios are provided to the Radio Shop pursuant to this Section, Radio Shop will send an invoice to Grantees for the Services and Grantees shall remit payment to the Radio Shop prior to the Radio Shop performing the Services. Radio Shop will complete the programming and performance tests within 30 days of receipt of payment by Grantees or delivery by Grantees of the Radios to the Radio Shop, whichever is later. Grantees shall be responsible for all maintenance and repair costs on the Radios.

9. Radio Identification Sheet. Grantees shall provide the Radio Shop with a completed Radio Identification Sheet substantially in the form attached hereto and incorporated herein as Exhibit A for each Radio provided to it to allow Grantor to track transmissions on Grantor's Channels. Within fifteen (15) calendar days of Grantees' personnel change to an assigned Radio, Grantees shall provide an updated Radio Identification Sheet to the Radio Shop responsible for the programming of such Radio identifying the change.
10. Radio Limit. Grantees are authorized to use a maximum of XXX radios for use on the Channels.
11. Lost or Stolen Radio. In the event a Radio is lost or stolen, Grantees shall immediately, and in any event no later than 24 hours, contact EBRCSA and advise it of the six-or eight-digit radio number assigned to such Radio for deactivation from its System. If the Radio is subsequently found, Grantees shall notify EBRCSA of the same and it may be enabled again for use on the Channels.
12. Radio Identification. Radio Shop will designate and log a unique Radio call sign to each Radio it performs Services upon ("Call Sign"). Grantees shall ensure its personnel identify themselves with such Call Sign when they utilize the Radios on the Channels.
13. Patching Prohibited. Grantees shall ensure that their personnel are prohibited from using frequency bridging equipment, a dispatch console or any other similar mechanism to "patch" or link any Channel to any other system, channel, sub-system or communications bridging equipment.
14. Communication Over Radio. Grantees shall ensure that its personnel use plain speech when communicating on the Channels. In the event of inappropriate language or behavior, or misuse of the radio system by any of Grantees' personnel, Grantor may disallow that individual from using the Channels, or may terminate this MOU upon written notice to Grantees prior to such action.
15. Disabling Radios. Grantor may disable a Radio temporarily or permanently in Grantor's sole discretion. Examples of when Grantor may determine to disable a Radio include, but are not limited to, (1) if the Radio is malfunctioning, (2) if Grantees' authorized personnel assigned to that Radio are using it in violation of the terms of this MOU, or (3) if the Radio is in any way interfering with the Grantor's communications.
16. CLETS Transactions Prohibited. Grantees shall not run or request to run any California Law Enforcement Telecommunications System ("CLETS") transactions through Grantor's Channels. Should Grantees require a CLETS transaction, it will switch to its primary channel to request the transaction through its agency ORI.
17. Access to EBRCSA Records. If Grantees seeks access to EBRCSA records regarding radio transmissions, it shall submit a written request to the EBRCSA Custodian of Records. The

request shall specify the CAD or incident number (if known), the date and location of the incident, and the name, phone number and address of Grantees' contact for the request who is authorized to obtain the information. Grantees agree to treat any unredacted records produced pursuant to this Section as confidential, to the extent permitted by law, and to use such records for official purposes only.

18. Notices. Unless otherwise specifically provided herein, all notices and other communications shall be in writing, addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via email:

To EBRCSA:

East Bay Regional Communications System Authority
4985 Broder Blvd
Dublin, CA 94569
Attention: David Swing, Executive Director
Email Address: David.Swing@acgov.org

To FREMONT:

City of Fremont
3300 Capitol Avenue
Fremont, CA 94538
Attention: Zoraida Diaz, Fire Chief
Email Address: zdiaz@fremont.gov

To MILPITAS:

City of Milpitas
Address: 777 S Main St
Address: Milpitas, CA 95035
Attention: Chief Jason Schoonover
Email: jschoonover@milpitas.gov

To MENLO PARK FIRE PROTECTION DISTRICT:

Menlo Park Fire Protection District
Address: 170 Middlefield Rd
Address: Menlo Park, CA 94025
Attention: Battalion Chief Michael Stahl
Email: michaels@menlofire.org

From time to time any Party may designate a new address or recipient for notice for purposes of this Section 18 by written notice to the other Parties.

19. Contact Information. Each Party shall provide the other Party with a list of appropriate contact personnel for notices and notifications under this MOU. Each Party is responsible for updating the list to ensure it is current.

20. Hold Harmless and Indemnification. Grantees individually agree to protect, indemnify, defend with counsel acceptable to Grantor and each Grantor member City, and hold harmless Grantor and its elective or appointive boards, officers, agents, and employees and each Grantor member City and their individual elected officials, officers, employees and agents from and against any and all claims, liabilities, demands, and expenses, or damages of any nature, including court, litigation and dispute resolution costs and attorneys' fees, for damages of any nature, including but not limited to injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with Grantees' use of the Radio and/or Channels or performance or lack of performance under the MOU by Grantees, Grantees' agents, officers, employees, contractors or subcontractors (collectively, the "Claims"), except for Claims resulting from the sole negligence or willful misconduct of Grantor in which case Grantees' obligations pursuant to this Section shall inure to each Grantor member City or sole negligence or willful misconduct of City in which case Grantees' obligations pursuant to this Section shall inure to Grantor. Grantees' obligation to indemnify and defend Grantor and each Grantor member City shall apply to all liability regardless of whether any insurance policies are applicable. Any such policy limits shall not act as a limitation upon the amount of indemnification to be provided by Grantees.

This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the Grantees to indemnify the Grantor and each Grantor member City shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this MOU.

21. No Guaranty or Warranty of Performance. Grantor does not guarantee, and there is no warranty, express or implied, that the Radios or Channels will function completely or properly. Neither Grantor nor any Grantor member City assumes any responsibility, liability for any radio call that is lost, dropped or unable to be made with any radios used by Grantees under this MOU. Grantees assume all liability for the failure of the Radios or Channels to complete, initiate or continue any radio call.

22. No Assignment or Subcontracting. Grantees may not subcontract or assign any rights, duties or obligations under this MOU. Any assignment made in violation of this provision shall confer no rights on any Party and shall be null and void.

23. Independent Agencies. None of the provisions of this MOU are intended to create, and none shall be deemed or construed to create any relationship between the Parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of the MOU. Neither Party nor its employees is an employee of the other Party; nor is either Party or its employees entitled to any of the benefits and protections afforded

to employees of the other Party. The Parties to this MOU shall have no authority, express or implied, to act on behalf of each other's signatories in any capacity whatsoever as an agent. The Parties shall have no authority, express or implied, pursuant to this MOU to bind each other to any obligation whatsoever outside of this MOU. The Parties agree that the provisions of this MOU are not intended to directly benefit any third Party, and shall not be enforceable by any person or entity not a Party to this MOU. This MOU is not intended to confer any legal rights or benefits on any person or entity other than the Parties to this MOU.

24. Proprietary or Confidential Information of EBRCSA. Grantees understand and agree that in accessing and using the Channels under this MOU, Grantees may have access to private or confidential information that may be owned or controlled by EBRCSA or to which EBRCSA has authorized access, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to EBRCSA or to third parties. Grantees agree that all information disclosed by EBRCSA to Grantees or to which Grantees have access by virtue of this MOU shall be held in confidence and used only in performance of the MOU.
25. Modification of MOU. This MOU may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this MOU.
26. Termination. Any Party may terminate this MOU for any reason at any time upon ten (10) business days written notice to the other Parties.
27. Entire MOU. This MOU sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This MOU may be modified only as provided in Section 25, "Modification of MOU."
28. Severability. Should the application of any provision of this MOU to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this MOU shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable
29. Interpretation, Jurisdiction and Venue. The formation, interpretation and performance of this MOU shall be governed by the laws of the State of California. Venue for any litigation relative to the formation, interpretation and performance of this MOU shall be in Alameda County, California.
30. Execution in Counterpart. This MOU may be executed in counterparts, either manually or digitally, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one MOU, which shall be binding upon and effective as to all

Parties. This MOU may be signed by an electronic signature as defined in California Civil Code Section 1633.2.

31. **Compliance with Laws.** In performing any services required under this MOU, the Parties shall observe and comply with all applicable Federal, State and local laws and regulations.
32. **No Waiver.** The failure of any Party hereto to enforce any of the provisions of this MOU, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, and said provision shall nevertheless be and remain in full force and effect.
33. **Authority to Enter into MOU.** Each Party warrants that the individuals who have signed this MOU have the legal power, right, and authority to execute this MOU and to bind each of their respective Parties.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereby have executed this MOU on the dates specified herein.

Agency: East Bay Regional Communications System Authority
Contact : David L. Swing
Contact Ph # 925-803-7802
Rank/Position: Executive Director
Email: David.Swing@acgov.org
Date: _____

Signature _____

Approved as to form:

Richard D. Pio Roda, Authority Counsel

Agency: _____
Contact : _____
Contact Ph Rank/Position: _____
Email: _____
Date: _____

Signature _____

Agency: _____
Contact : _____
Position: _____
Email: _____
Date: _____

Signature _____

EXHIBIT A

Radio Identification Sheet

Owner: _____

Radio Brand: Motorola or Compatible Subscriber

Radio Serial #: See Attachment B

Call Sign: See Attachment B

Agent Assigned: Insert name of authorized personnel
Last First M.I.

Agent Badge Number: (Various)

To be completed by Authorized EBRCSA Programming Entity - Radio Shop

Date programmed on 700/800 MHz Interoperability System:

Radio ID #: _____

Radio Alias: _____

24/7 POC for any issues with this Unit is required.

Name: _____

Email: _____

Phone#: _____

5594814.1



**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, Livemore, 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
OPERATIONS COMMITTEE
MEETING DATE: AUGUST 30, 2024**

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

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

A handwritten signature in black ink, appearing to read "David Swing", positioned to the right of the "FROM:" line.

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



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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:* [REDACTED] 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 tile 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 31st 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 31st 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.



**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
OPERATIONS COMMITTEE
MEETING DATE: AUGUST 30, 2024**

TO: Operations Committee
East Bay Regional Communications System Authority

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

A handwritten signature in black ink, appearing to read "David Swing", positioned to the right of the "FROM:" line.

SUBJECT: Purchase of Replacement Batteries

RECOMMENDATIONS:

Receive a report from the Executive Director recommending the purchase of replacement batteries for the Highland Radio site

SUMMARY/DISCUSSION:

Each radio site has batteries that back-up the radio system in the event of a power failure. The batteries provide redundant power to allow for the generator to start and begin generating power until the PG&E service is restored. During recent power failure of the Highland radio site, staff learned the batteries were in need of replacement. The Highland radio site has two battery packs. One battery pack supports the microwave system while the other supports the radio equipment. The cost to replace the batteries is \$27,200 which exceeds the \$25,000 purchasing authority of the Executive Director. Article VIII, Section 8.1 of the By-laws allows for either the Operations or Finance Committee to make recommendations to the Board of Directors for the purchase of items in excess of \$25,000. Since the items purchased are operational in nature, the Executive Directors is seeking the recommendation to purchase replacement batteries from the Operations Committee. It is anticipated the replacement batteries will last 15 years.

Attachment:

1. Invoice for replacement batteries



Quote Number	67738	Quote Date	08-15-2024
Contra Costa DOIT Highland Replacement			

Matthew Boyer
Contra Costa County DOIT

American Power Systems, LLC is pleased to provide you the following quotation:

Qty	Part Number	Description	Unit Price	Total Price	Lead Time
1	M8702405013R19ADL	024AGP 05013WL 19RRK non-V0 24-cell 19 relay rack complete system	\$10,800	\$10,800	12 Weeks
1	M8702410017024AFM	024AGP 10017WL non-V0 24-cell complete system	\$16,400	\$16,400	12 Weeks
				\$27,200	

Lead time: 12-Weeks ARO. Lead times are subject to change without notice.
 Price does not include freight or applicable taxes.
 Freight Terms FOB Origin / Prepay / Added.
 Terms: Net 30
 A 3% processing fee will be applied to all credit card transactions.
 Quote valid for 30 days.
 Returns subject to a 30% restocking fee. No credit for outbound and return freight.

Please reference quote number 67738 on your purchase order and you can email your purchase order to orders@ampowersys.com. Please make your purchase order out to American Power Systems, LLC with a bill to address of 1851 Central Place South Suite 206, Kent, Washington 98030.

Thank you for your time and consideration. If you need any additional information, please feel free to contact me.

Sincerely,
 Nick Knebel
nickknebel@ampowersys.com

Quotation Terms:

- Credit terms are subject to approval and periodic review. You can apply for credit [here](#).
- Credit card payment is available [here](#). A 3% processing fee will be applied to all credit card payments.
- Freight is FOB Origin and pricing is prepaid and added to invoice (unless otherwise agreed upon in writing).
- Freight estimates are valid for 7 days.
- Returned or cancelled items are subject to restocking fees.
- Lead times are subject to change without notice.
- Sales or use tax may be included in the final invoice in accordance with state laws.
- Please provide sales tax resales or exemption certificates with your purchase order.
- All other terms are available [here](#).