



East Bay Regional Communications System Authority



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

BOARD OF DIRECTORS MEETING

NOTICE OF REGULAR MEETING

DATE: February 28, 2025

TIME: 10:00 a.m.

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

AGENDA

1. Call to Order/Roll Call: (Regular Session)

2. Introductions and Recognition

2.1 New Board Members

3. Public Comments (Meeting Open to the Public):

At this time, the public is permitted to address the Board on items within the Board's subject matter jurisdiction that do not appear on the agenda. Please step to the podium and clearly state your name for the record. In accordance with State Law, no action or discussion may take place on any item not appearing on the posted agenda. If the item requires action, it will be referred to staff and/or placed on the next agenda. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of three (3) minutes. If you wish to comment on an item that is on the agenda, please wait until the item is read for consideration, and then make your way to the podium. Please limit comments to a maximum of three (3) minutes.

4. Consent Calendar

Consent Calendar items are typically non-controversial in nature and are considered for approval by the East Bay Regional Communications System Authority Board with one single action. Members of the public, staff or the Board of Directors who would like an item removed from the Consent Calendar for purposes of public input may request the Board Chair to remove the item.

4.1 Approval of Minutes from the Board Meeting of December 6, 2024

4.2 Receive Status Report on System Operations

4.3 Receive Mid-Year Budget Report

4.4 Receive Mid-Year Accounts Receivable Report

5. Written Communications: None

6. **Public Hearings:** None

7. **Action Items:**

- 7.1 Consider Adoption of a Resolution Authorizing the Board Chair to Sign a Letter of Support for a Federal Community Project Funding Application to Acquire Two Radio Sites on Wheels
- 7.2 Consider Formation of an Ad-Hoc Working Group to Update the Authority By-laws
- 7.3 Consider Adoption of a Resolution Authorizing the Board Chair to Sign a Letter Requesting the Extension of Technical Support for Critical Radio Infrastructure to Motorola Solutions Incorporated
- 7.4 Consider Adoption of a Resolution to Authorize the Board Chair to Sign and the Executive Director to Implement a Land Lease for a Radio Tower on Walton Lane with the City of Antioch

8. **Committee Updates:**

- 8.1 Receive Informational Report on Recent Finance Committee Activities
- 8.2 Receive Informational Report on Recent Operations Committee Activities

9. **Reports:**

- 9.1 Receive Informational Report on Radio Purchase Agreement
- 9.2 Receive Informational Report on Pearl Radio Site Shelter

10. **Agenda Items for Next Meeting:**

- 10.1 Walton Lane Radio Site Plan and Contracts

11. **Board Comments:**

12. **Adjournment**

This AGENDA is posted in accordance with Government Code Section 54954.2(a) If requested, pursuant to Government Code Section 54953.2, this agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation, please contact the EBRC SA 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 L. Swing
Executive Director
Dated: 02/24/25



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AGENDA ITEM NO. 4.1

**AGENDA STATEMENT
BOARD OF DIRECTORS MEETING
MEETING DATE: FEBRUARY 28, 2025**

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

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

SUBJECT: Approval of Minutes of the December 6, 2024 Board of Directors Meeting

RECOMMENDATION:

Approve the minutes of the December 6, 2024 Board of Directors Meeting.

SUMMARY/DISCUSSION:

The Board of Directors will consider approval of the minutes of the December 6, 2024 Board of Directors Meeting.

RECOMMENDED ACTION:

It is recommended that the Board of Directors approve the attached minutes of the December 6, 2024 Board of Directors Meeting.



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BOARD OF DIRECTORS MEETING

NOTICE OF REGULAR MEETING

DATE: December 6, 2024

TIME: 10:00 a.m.

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

DRAFT MINUTES

1. Call to Order/Roll Call:

Chair Meyer called the meeting to order at 10:00 a.m.

Present: C. Andersen; A. Averiett; J. Beltran; J. Calabrigo; D. Covington; J. Diaz; J. Ezell; J. King; P. Meyer; M. Nino; S. Perkins; M. Rodriguez; M. Salinas; P. Stokes; M. Toms

2. Introductions and Recognition

2.1 New Board Members

Executive Director Swing introduced several new members who have, or will be, joining the Board including Angela Averiett, Jestin Johnson, and Jonas Aguiar.

3. Public Comments – None.

4. Consent Calendar

On motion by Bm. King, seconded by Bm. Andersen/Nino, and by unanimous vote, the Board approved the items on the consent calendar as recommended with modification to item 4.2 regarding the 2025 Board and Committee meeting calendar dates.

4.1 Approval of Minutes from the Board Meeting of September 13, 2024

Recommendation: Approve meeting minutes.

4.2 Approval of the 2025 Board and Committee meeting calendar

Recommendation: Approve the 2025 EBRCSA Meeting Schedule with revisions to the Board of Directors regular meeting schedule to replace the March 7, 2025 date with February 28, 2025, and the Finance and Operations Committees regular meeting schedule to replace the February 14, 2025 date with February 7, 2025.

4.3 Consider Adoption of a Resolution Authorizing the Board Chair to Sign and the Executive Director to Implement A MOU With Contra Costa ITD for Radio Site Maintenance

Recommendation: Adopt Resolution No. 24-16 authorizing the Board Chair to sign and the Executive Director to implement a MOU with Contra Costa ITD for Radio Site Maintenance.

4.4 Approval of Audited Financial Statements.

Recommendation: Accept the 2024 Audited Financial Statements.

4.5 Approval of Purchase of Replacement Batteries for Kregor Radio Site

Recommendation: Approve the purchase of replacement batteries for the Kregor Radio site.

4.6 Receive Report on Accounts Receivable Aging

Recommendation: Receive the Summary of the Accounts Receivable Aging.

5. Written Communications: None

6. Public Hearings: None

7. Action Items:

7.1 Consider Adoption of a Resolution Authorizing the Executive Director to Implement a Policy to Establish Minimum Fund Balances for the Operating Fund and Capital Fund.

Recommendation: Adopt Resolution No. 24-17 authorizing the Executive Director to implement a policy to establish a minimum fund balance for the Operating Fund and Capital Fund.

Bm. Perkins reported that the Finance Committee was in favor of the policy.

On motion by Bm. Perkins, seconded by Bm. King, and by unanimous vote, the Board approved the item as recommended.

7.2 Consider Adoption of a Resolution Authorizing the Executive Director to Revise the Annual Bill for Services Policy to Require Board of Directors Approval for any Deviation in Pricing

Recommendation: Adopt Resolution No. 24-18 authorizing the Executive Director to revise the Annual Bill for Services Policy to require Board of Directors' approval for any deviation in pricing

Executive Director Swing clarified that this applies to subscription fees.

On motion by Bm. Perkins, seconded by Bm. Nino, and by unanimous vote, the Board approved the item as recommended.

7.3 Consider Adoption of a Resolution Authorizing the Executive Director to Implement Proposed Subscriber Rate Increases

Recommendation: Adopt Resolution No. 24-19 authorizing the Executive Director to implement proposed subscriber rate increases.

Executive Director Swing clarified that if an agency joins the Authority now, they will make service payments at a rate that is cost-neutral to the rest of the member agencies.

On motion by Bm. Calabrigo, seconded by Bm. Perkins, and by unanimous vote, the Board approved scenario option One(B).

7.4 Nomination and Annual Election of a Board Chair and Vice Chair

Recommendation: Conduct the Annual Election of a Board Chair and Vice Chair, as required by the JPA Agreement and Bylaws

Chair Meyer opened the nominations for Board Chair. Chair Meyer nominated Bm. King. Chair Meyer closed the nomination period.

On motion by Chair Meyer, seconded by Bm. Calabrigo, and by unanimous vote, the Board approved Jon King as the next Board Chair.

Chair Meyer opened the nominations for Vice Chair and clarified that it must be a member from Alameda County because the Board Chair is representing Contra Costa County. Bm. Averiett nominated Bm. Salinas. Chair Meyer closed the nomination period.

On motion by Bm. Averiett, seconded by Bm. Andersen, and by unanimous vote, the Board approved Mark Salinas as the next Vice Chair.

7.5 Consider Adoption of Resolution authorizing the Board Chair to Sign a Professional Services Contract with David Swing Consulting and Investigations for Executive Director Services for a Monthly Fee of \$22,500

Recommendation: Adopt Resolution No. 24-20 authorizing the Board Chair to sign a professional services contract with David Swing Consulting and Investigations for Executive Director Services for a monthly fee of \$22,500

Bm. Calabrigo reported that the Finance Committee recommended approval of the item.

On motion by Bm. King, seconded by Bm. Ezell, and by unanimous vote, the Board approved the item as recommended.

8. Committee Updates:

8.1 Receive Informational Report on Recent Finance Committee Activities

There were no new updates that are not already on the agenda.

8.2 Receive Informational Report on Recent Operations Committee Activities

There were no new updates that are not already on the agenda.

9. Reports:

9.1 Receive Informational Report on Radio Purchase Agreement

Executive Director Swing reported that the agreement is still pending review with Contra Costa County. The agreement is intended to provide an additional 11% discount on purchases in addition to the 27% price reduction. Executive Director Swing will send out a member-wide communication that will include the radio purchase agreement if approved.

9.2 Receive Informational Report on City of Antioch Walton Lane

Executive Director Swing reported no new updates on timing and he is continuing to work with Antioch City Attorney's Office for a land lease to replace the tower.

9.3. Receive Informational Report on Pearl Radio Site Shelter

Executive Director Swing reported that this site is on EBMUD property in the City of Richmond. The contract requires EBRCSA to maintain the shelter that is in a state of disrepair and needs to be demolished. This site was not identified in capital repairs plans as an EBRCSA asset. He believes this is the only such site on EBMUD property in need of repair but an assessment is in progress to confirm.

The shelter is shared with EBMUD in that there is shared equipment stored inside. The radio equipment in the shelter will need to be temporarily relocated to a temporary shelter for the shelter demolition that will take about a year. The only radio equipment that is

available is that intended for Walton Lane with the construction of the Walton Lane radio site intended to occur in parallel.

Executive Director Swing stated that the cost for the site shelter project is not yet available and relocating the tower to a new site is not viable.

9.4 Recognition of Outgoing Board Members

The Board recognized outgoing board members Paige Meyer and Scott Perkins.

10. Agenda Items for Next Meeting

10.1 Spending Authority of the Executive Director Bylaws Revision

11. Board Comments

12. Adjournment

There being no further business, the meeting adjourned at 11:08 a.m.



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AGENDA ITEM NO. 4.2

AGENDA STATEMENT BOARD OF DIRECTORS MEETING DATE: FEBRUARY 28, 2025

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

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

SUBJECT: System Usage Report

RECOMMENDATIONS:

Receive report on system status and operations

SUMMARY/DISCUSSION:

The following report will provide a quarterly update to the Board of Directors on significant incidents during the past three months as well as overall system usage. In the past three months the Authority experienced two unexpected events that impacted system reliability in the Tri-Valley. The first incident was the result of an electrical short caused by a cable inadvertently making contact with a DC Power Rectifier at the Sunol radio site. Fortunately, the radio shop had a replacement part on-hand and was able to repair the issue in a timely manner. Radio shop personnel checked with the users of the system in the impacted areas and they reported no significant issues related to the site outage.

The second incident occurred during the afternoon and weekend of January 4, 2025. Both the Livermore and Pleasanton Police Departments reported intermittent lost radio transmissions. The Alameda County Radio Shop mobilized throughout the weekend to determine the cause of the lost transmissions. A team from Motorola was also consulted and they were unable to immediately determine the cause. The staff of the Contra Costa radio shop was consulted on Monday and explained they had experienced a similar issue and recommended a course of action

to diagnose the problem. The issue was a channel failure which led to no audio when the system selected that channel for use. Once the radio shop removed that channel from use the problem was resolved. The benefit of a trunked system is that the system will search for another available channel and still function as intended.

The Authority recently activated a system monitoring program called Cirrus Central (CC). The base plan of CC is part of the existing Service Upgrade Agreement contract. CC is in use, and highly recommended, by the Silicon Valley Regional Interoperability Authority. Additionally, the two radio shops have also found the software helps them manage the system. Staff included copies of a weekly usage report as information for the Board of Directors. The average weekly system usage is approximately 22% except for the site serving Vallejo, which is near 35%. This is largely because the Vallejo site has less capacity than the standard EBCRSA sites.

While it is anticipated that the system will have capacity during a surge event, the actual impact on system usage is untested. To evaluate surge usage, the Executive Director contacted his counterpart in Los Angeles (LA-RICS) to learn about the extent of a system surge during the recent Palisades and Eaton fires. The Executive Director will report back to the Board of Directors once more information is received.

Staff presented this report to the Operations Committee and the Committee recommended its presentation to the full Board.

Attachment:

1. System Status Report

System Utilization

for CA East Bay RCS

Generated at: 02/16/2025 01:29 GMT-06:00

The report provides the average site resource utilization by call type. You can explore the data by site to help determine if you may need to modify your resources: add a new channel, provision the system differently, etc.

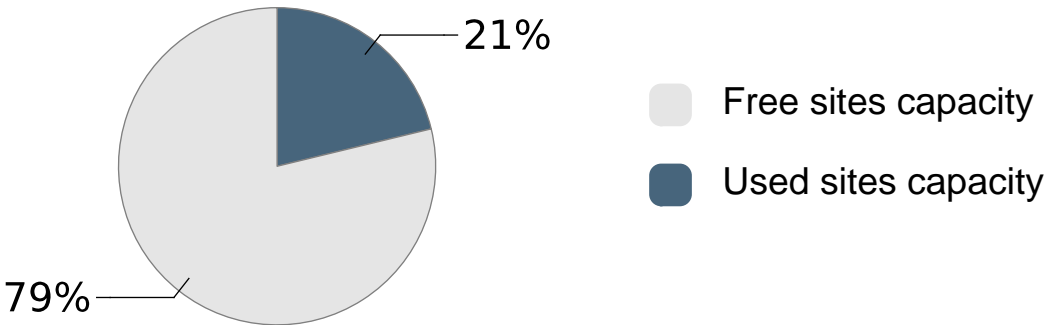
Time range

Context

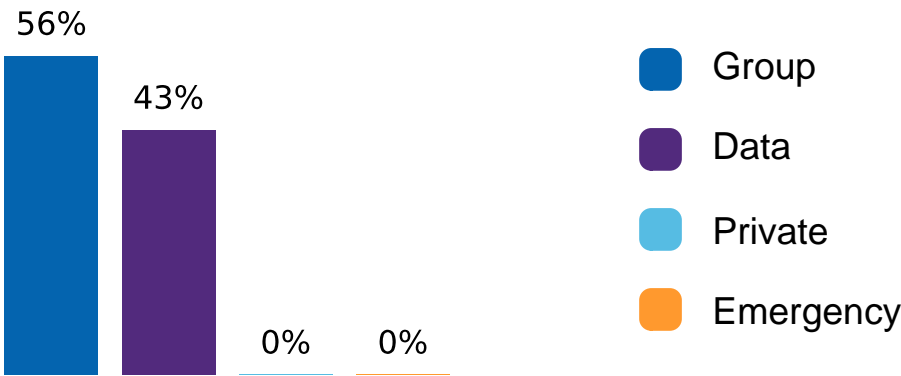
02/09/2025 00:00 GMT-06:00
- 02/15/2025 23:59 GMT-06:00

System

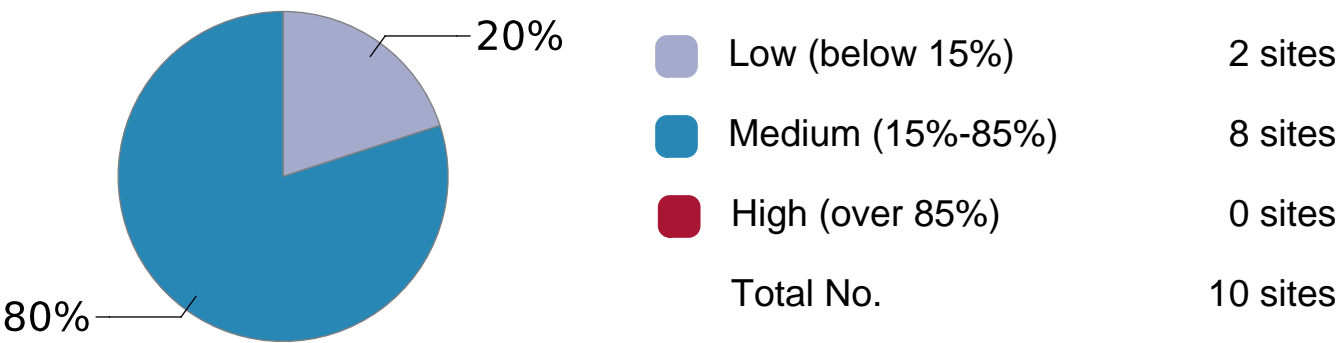
Total utilization



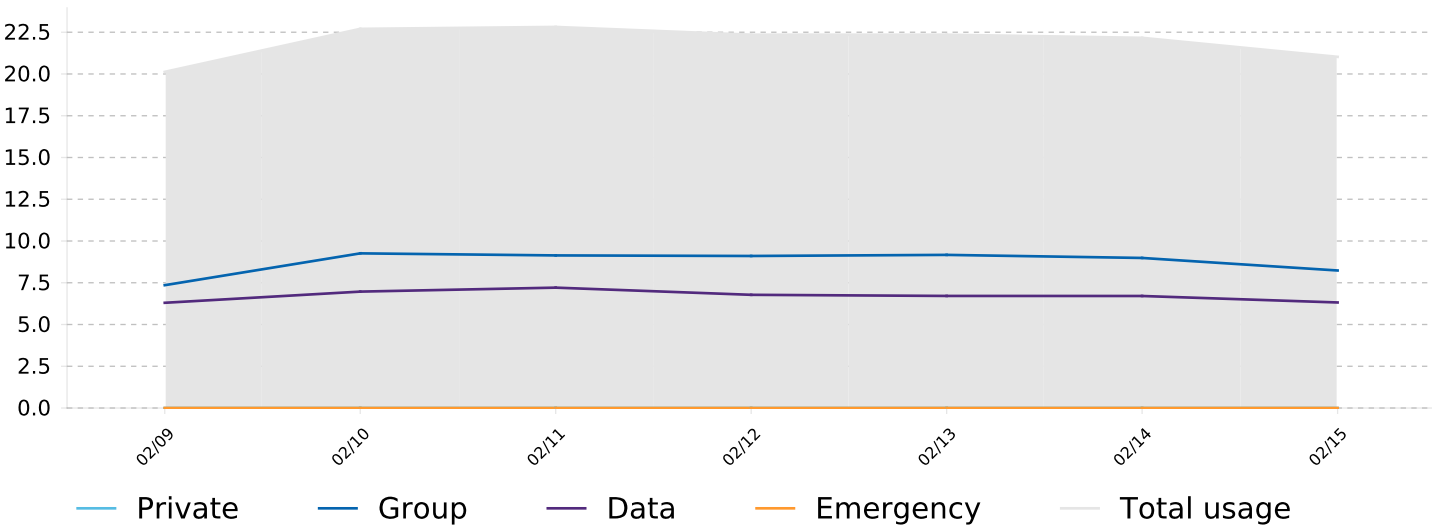
Utilization by call



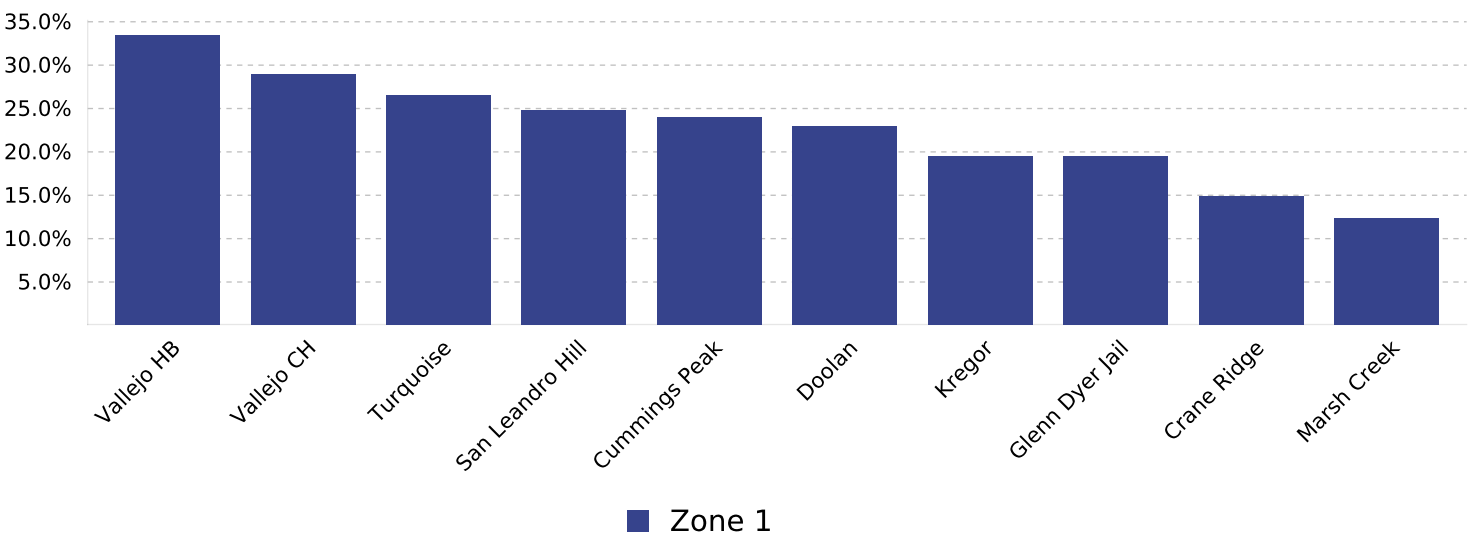
Site utilization level



System utilization over time



Highest utilization by site



System utilization by site

Site ID	Site alias	Zone ID	Available slots	Avg utilized slots	Total utilization %	by:	group calls	private calls	data calls	emergency calls
8	Marsh Creek	1	9	1.1	12 %		1.2	0	0.08	0
7	Crane Ridge	1	11	1.6	15 %		5.1	0	0.69	0
4	Glenn Dyer	1	35	6.8	19 %		11	0	5.7	0.01
6	Kregor	1	19	3.7	20 %		5.8	0	8.4	0.01
2	Doolan	1	23	5.3	23 %		11	0	7.9	0.01
5	Cummings	1	23	5.5	24 %		11	0	8.6	0.01
1	San Leandro	1	23	5.7	25 %		12	0	8.4	0.01
3	Turquoise	1	19	5	27 %		7.2	0	8.8	0.01
9	Vallejo CH	1	5	1.4	29 %		2.3	0	6.6	0.01
10	Vallejo HB	1	3	1	33 %		0.13	0	0.02	0



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AGENDA ITEM NO. 4.3

AGENDA STATEMENT BOARD OF DIRECTORS MEETING DATE: FEBRUARY 28, 2025

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

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

SUBJECT: Presentation of Mid-Year Budget Update

RECOMMENDATIONS:

Receive Update on Mid-Year Budget Status

SUMMARY/DISCUSSION:

The Auditor's Office provided a mid-year budget report that shows the Authority has spent nearly 55% of its appropriated expenses. This is largely due to having paid the entire year of the Motorola contract at the start of the fiscal year.

Revenues for the year are approximately \$4.2m over budget with an additional \$900,000 anticipated by the end of the fiscal year. The additional revenue is due to the collection of past due monies and is a one-time addition to the fund balance. Staff anticipates future year revenue will more closely align with financial projections.

Based on current spending trends, staff anticipates being under budget at the end of the fiscal year. The Budget vs. Actual detail as of December 31, 2024 is attached as Attachment 1.

Attachments:

1. Mid-Year budget vs. actual report

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



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East Bay Regional Communications System
Profit & Loss Budget vs. Actual
 July through December 2024

8:46 AM
 01/09/2025
 Accrual Basis

	<u>Jul - Dec 24</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense				
Income				
405100-Initial Payments	-200.00			
405300-Service Payments	1,713,210.00	1,512,000.00	201,210.00	113.31%
405500-Operating Payment	11,481,186.00	7,453,000.00	4,028,186.00	154.05%
405700 - Delinquency Fee 10%	42,079.20			
Total Income	<u>13,236,275.20</u>	<u>8,965,000.00</u>	<u>4,271,275.20</u>	<u>147.64%</u>
Gross Profit	13,236,275.20	8,965,000.00	4,271,275.20	147.64%
Expense				
605000-Administration				
605010-Executive Director	122,270.00	263,000.00	-140,730.00	46.49%
605020-Administrative Assistant	4,146.75	40,000.00	-35,853.25	10.37%
605030-Travel	0.00	7,000.00	-7,000.00	0.0%
605040-Misc	4,230.14	13,000.00	-8,769.86	32.54%
605050-Training	<u>0.00</u>	<u>30,000.00</u>	<u>-30,000.00</u>	<u>0.0%</u>
Total 605000-Administration	130,646.89	353,000.00	-222,353.11	37.01%
605210-Audit Fees	0.00	26,000.00	-26,000.00	0.0%
605215-Contingency	0.00	100,000.00	-100,000.00	0.0%
605230-Legal	5,560.00	33,000.00	-27,440.00	16.85%
605240-Lease	0.00	81,000.00	-81,000.00	0.0%
605250-Website Hosting	1,133.32	6,000.00	-4,866.68	18.89%
605300-Maintenance				
605305 - Astro Maintenance	1,521,344.43	1,540,000.00	-18,655.57	98.79%
605306 - Mtrla Recharact Astro	1,386,155.65	1,410,000.00	-23,844.35	98.31%
605307 - Mtrla Recharact MPLS	99,235.25	102,000.00	-2,764.75	97.29%
605308 - Mtrla Recharact NICE	283,068.73	310,000.00	-26,931.27	91.31%
605315 - MDR	298,517.94	305,000.00	-6,482.06	97.88%
605330 - Network administration	0.00	280,000.00	-280,000.00	0.0%
605340 - HVAC maintenance	10,338.00	75,000.00	-64,662.00	13.78%

	Jul - Dec 24	Budget	\$ Over Budget	% of Budget
605350 - Generator maintenance	32,983.63	69,000.00	-36,016.37	47.8%
605360 - ALCO general	300,000.00	600,000.00	-300,000.00	50.0%
605370 - COCO general	103,325.25	345,000.00	-241,674.75	29.95%
605380 - CSI telecommunications	39,068.65	260,000.00	-220,931.35	15.03%
605390 - Microwave maintenance	42,310.98	215,000.00	-172,689.02	19.68%
605395 - Misc Maintenance	12,221.21	20,000.00	-7,778.79	61.11%
Total 605300-Maintenance	4,128,569.72	5,531,000.00	-1,402,430.28	74.64%
605410-Licenses and Permits	2,328.00	20,000.00	-17,672.00	11.64%
605420-Membership Fees	0.00	13,000.00	-13,000.00	0.0%
605430-Security	19,816.50	35,000.00	-15,183.50	56.62%
605440-Utilities	57,717.06	293,000.00	-235,282.94	19.7%
605600-Insurance	0.00	108,000.00	-108,000.00	0.0%
605750 - Capital Outlay	1,871,240.00	4,759,000.00	-2,887,760.00	39.32%
Total Expense	6,217,011.49	11,358,000.00	-5,140,988.51	54.74%
Net Ordinary Income	7,019,263.71	-2,393,000.00	9,412,263.71	-293.33%
Other Income/Expense				
Other Income				
706600-Interest	183,252.20			
Total Other Income	183,252.20			
Net Other Income	183,252.20			
Net Income	7,202,515.91	-2,393,000.00	9,595,515.91	-300.98%



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AGENDA ITEM NO. 4.4

**AGENDA STATEMENT
BOARD OF DIRECTORS
MEETING DATE: FEBRUARY 28, 2025**

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

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

SUBJECT: Receive Mid-Year Accounts Receivable Summary

RECOMMENDATIONS:

Receive the Summary of the Accounts Receivable Aging

SUMMARY/DISCUSSION:

Newly adopted Board policy requires the presentation of the Accounts Receivable (A/R) Aging to the Board of Directors by December of each year. The Finance Committee requested an update to the Board at its February 7, 2025 meeting. This report provides a summary of the current A/R Aging.

As of February 18, 2025, the total current year outstanding balance for radio services (shown in the 181-270 -day column) is approximately \$428,880 and the total of the prior years (shown in the greater than 400 days column) is approximately \$1,509,934. The combined total is \$1,734,427. Staff anticipates receiving a check from the City of Berkeley for \$410,136 for current year services by the end of the month. Attachment 1 contains the A/R Aging detail. The columns that include the date range of 271 to more than 400 days are blank and were intentionally omitted for readability.

Attachment

1. Accounts Receivable Aging Detail

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

East Bay Regional Communications System
A/R Aging Summary
 As of February 18, 2025

1:35 PM

02/13/2025

	Current	1 - 90	91 - 180	181 - 270	> 400	TOTAL
Alameda County Bayshore Ambulance Company	0.00	0.00	0.00	0.00	1,080.00	1,080.00
Allowance for Doubtful Accounts	0.00	0.00	0.00	0.00	0.00	0.00
ATF	0.00	0.00	0.00	0.00	68,580.00	68,580.00
Bay Medic Transportation	0.00	0.00	-17,360.00	0.00	17,360.00	0.00
CA Dept of Corrections (CDCR)	0.00	0.00	0.00	1,104.00	437,480.00	438,584.00
California State University East Bay	0.00	0.00	0.00	-34,440.00	47,400.00	12,960.00
Central Contra Costa Sanitary District	0.00	0.00	0.00	0.00	0.00	0.00
City of Alameda	0.00	0.00	-61,800.00	0.00	61,800.00	0.00
City of Benicia	0.00	0.00	-24,400.00	0.00	24,400.00	0.00
City of Berkeley	0.00	41,013.60	0.00	410,136.00	0.00	451,149.60
City of El Cerrito	0.00	0.00	0.00	0.00	218,264.00	218,264.00
City of Fremont	0.00	0.00	0.00	0.00	0.00	0.00
City of Hercules	0.00	0.00	0.00	0.00	66,540.00	66,540.00
City of Livermore	0.00	0.00	0.00	0.00	0.00	0.00
City of Pleasant Hill	0.00	0.00	-1,000.00	0.00	0.00	-1,000.00
City of Pleasanton	0.00	0.00	0.00	0.00	2,200.00	2,200.00
City of Richmond Fire Department	7,551.60	0.00	0.00	0.00	73,080.00	80,631.60
City of Union City	0.00	0.00	0.00	0.00	600.00	600.00
CoCo Commun. Collge. Dist. Police Dept.	0.00	0.00	0.00	0.00	30.00	30.00
Contra Costa County Fire District	0.00	0.00	0.00	0.00	4,000.00	4,000.00
County of Alameda	0.00	0.00	0.00	0.00	0.00	0.00
County of Contra Costa (customer)	0.00	0.00	0.00	0.00	0.00	0.00
Dept of Corrections- OCS	0.00	0.00	0.00	0.00	4,480.00	4,480.00
Eagle Ambulance	0.00	0.00	0.00	0.00	16,200.00	16,200.00
Falcon Critical Care Transportation	0.00	0.00	0.00	-36,720.00	65,416.00	28,696.00
Federal Reserve Bank	2,760.00	0.00	0.00	27,600.00	27,000.00	57,360.00
Lawrence Berkeley National Laboratory	0.00	0.00	0.00	0.00	9,552.00	9,552.00
Lawrence Livermore Lab	717.60	0.00	0.00	7,176.00	14,820.00	22,713.60
Livermore Pleasanton Fire Department	0.00	0.00	0.00	0.00	13,700.00	13,700.00
Medic Ambulance	2,539.20	0.00	0.00	25,392.00	0.00	27,931.20

	Current	1 - 90	91 - 180	181 - 270	> 400	TOTAL
Norcal Ambulance	0.00	0.00	0.00	0.00	13,416.00	13,416.00
Oakland Housing Authority	0.00	0.00	0.00	27,528.00	0.00	27,528.00
Oakland International Airport	110.40	0.00	0.00	1,104.00	0.00	1,214.40
Oakland School Police Department	0.00	0.00	-18,840.00	0.00	18,840.00	0.00
Oro Loma Sanitary District	0.00	0.00	0.00	0.00	108,452.00	108,452.00
Paramedics Plus	0.00	0.00	-106,280.00	0.00	106,280.00	0.00
Port of Oakland	1,048.80	0.00	0.00	0.00	37,540.00	38,588.80
Sonoma County Ambulance c/o Life West	0.00	0.00	0.00	0.00	3,240.00	3,240.00
U.S. Coast Guard	0.00	7,520.00	0.00	0.00	0.00	7,520.00
U.S. Dept. of Justice	0.00	0.00	0.00	0.00	0.00	0.00
U.S. Marshals Service	0.00	2,116.00	0.00	0.00	8,100.00	10,216.00
United Ambulance Service	0.00	0.00	-40,084.00	0.00	40,084.00	0.00
TOTAL	14,727.60	50,649.60	-269,764.00	428,880.00	1,509,934.00	1,734,427.20



East Bay Regional Communications System Authority




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

AGENDA ITEM NO. 7.1

AGENDA STATEMENT BOARD OF DIRECTORS MEETING DATE: FEBRUARY 28, 2025

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

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

SUBJECT: Consider Adoption of a Resolution Authorizing the Board Chair to Sign a Letter of Support for a Federal Community Project Funding Application to Acquire Two Sites on Wheels for Resilient Radio Communications

RECOMMENDATIONS:

Consider Adoption of a Resolution Authorizing the Board Chair to Sign a Letter of Support for a Federal Community Project Funding Application to Acquire Two Sites on Wheels for Resilient Radio Communications

SUMMARY/DISCUSSION:

Contra Costa County recently informed the Executive Director of an opportunity to apply for special project funding through the Federal government community project funding process. Funding of this nature is generally for \$1,000,000 to \$2,000,000. While the Board of Directors recently approved a rate increase to fund a Capital Replacement Program, the EBRCSA does not have a funding strategy for a site on wheels (SOW). A SOW will provide a temporary radio site in the event of a catastrophic site failure due to a natural disaster or criminal act. A SOW is aligned with the “resiliency” emergency management principle to better respond during and recover after a natural disaster.

Due to the timing of the request, the Executive Director did not bring the application request to any Board committees. Additionally, the application is anticipated to be due in April necessitating Board direction before the May meeting.

The Executive Director recommends the Board of Directors adopt a resolution authorizing the Chair of the Board to sign a letter of support for the funding and for the Executive Director and/or Board Chair to seek letters of support from other local government bodies and Congressional offices from within the service area.

If successful, the award will require the EBRCSA to supplement the Federal funding with local dollars. Given that each SOW has an estimated cost of \$1,100,000 for a total of \$2,200,000, the local contribution will be a minimum of \$440,000 with an award of \$1,760,000 based on Federal guidance of a minimum 20% local match. The EBRCSA could pursue funding from the State Homeland Security Grant Program or other grant funding sources to bridge the funding gap.

If the resolution is adopted by the Board of Directors, it is anticipated that the EBRCSA Executive Director will assist staff from Contra Costa County to obtain letters of support from other local government entities, Associations representing Police, Fire and EMS, and members of Congress representing the areas served by the Authority's member agencies.

Attachment:

1. Resolution of Support for Federal Funding

RESOLUTION NO. 25-xx

**A RESOLUTION OF THE
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**

**ADOPTION OF A RESOLUTION AUTHORIZING THE BOARD CHAIR TO SIGN A
LETTER OF SUPPORT FOR A FEDERAL COMMUNITY PROJECT FUNDING
APPLICATION TO ACQUIRE TWO RADIO SITES ON WHEELS**

WHEREAS, the East Bay Regional Communications System Authority (“EBRCSA”) P-25 compliant communications system serves Alameda and Contra Costa counties and individual political jurisdictions therein (the “System”); and

WHEREAS, the reliability of the EBRCSA system is critical to public safety; and

WHEREAS, based on recent natural disasters the EBRCSA has identified a need to own portable radio sites to ensure a resilient radio system that aids in the response to and recovery from natural disasters, terrorist or criminal events; and

WHEREAS, the EBRCSA supports the application of Federal Community Project Funding by Contra Costa County to acquire partial funding for two radio sites on wheels.

NOW, THEREFORE, the Board of Directors of the East Bay Regional Communications System Authority does **RESOLVE** that it adopts the proposed resolution to the accompanying Agenda Report and authorizes the Executive Director to draft and the Board Chair to sign a letter in support of Contra Costa County’s application aligned with the intent of the Board of Directors; and

BE IF FURTHER RESOLVED, that in their discretion or as the need arises, the Board Chair and/or the Executive Director shall take all actions necessary to effect the purpose and intent of this Resolution, including but not limited to contacting and sending letters of support to the Authority’s members’ local, State, and Federal representatives.

On motion of xx, seconded by xx, the foregoing Resolution was passed and adopted this 28th day of February 2025 by the following votes:

AYES:

NOES: .

ABSTAIN:

ABSENT:

ATTEST:

Jocelyn Kwong, Board Secretary



East Bay Regional Communications System Authority




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

AGENDA ITEM NO. 7.2

AGENDA STATEMENT BOARD OF DIRECTORS MEETING DATE: FEBRUARY 28, 2025

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

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

SUBJECT: Consider formation of a Board ad-hoc committee to update the EBRCSA By-laws

RECOMMENDATIONS:

Consider formation of a Board ad-hoc committee to update the EBRCSA By-laws

SUMMARY/DISCUSSION:

At the September 13, 2024 meeting, the Board inquired about the sufficiency of the spending authority of the Executive Director. The spending authority is established at \$25,000 in Authority by-laws section 8.1 whereas either the Operations or Finance Committees may approve purchases up to \$25,000. Section 9.4 also allows the Executive Director the same spending authority. The by-laws state that Board of Directors approval is required for any expenditure above \$25,000. The spending limit has required the Director to bring routine purchases to the Board, which can delay purchases because the Board meets on a quarterly basis.

The Executive Director recommends a complete review of the by-laws since the by-laws were last updated on October 11, 2011 and the capacity and needs of the EBRCSA have since changed. A full review will better ensure the by-laws are contemporary and relevant to the operations of the Authority today.

The Operations and Finance Committees recommend the formation of a working group to include two members from each committee with the Executive Director staffing the ad hoc committee to review the existing by-laws and recommend changes to the Board's working committees and then to the Board of Directors at the May 30, 2025 meeting.

The Board Chair and Executive Director propose the following persons serve on the ad hoc committee:

Cindy Silva, Board Member (Finance Committee – Elected Official, Contra Costa County)
Joe Calabrigo, Board Member (Finance Committee – City Manager, Contra Costa County)
Jon King, Board Chair (Operations Committee – Law Enforcement, Contra Costa County)
Matthew Nichelini, Alternate Board Member (Operations Committee – Fire, Alameda County)

Staffed by David Swing, Executive Director (EBRCSA)

The current by-laws are attached to this report for review as Attachment 1.

Attachment:

1. Current EBRCSA By-laws

East Bay Regional Communications System Authority	1
Adopted Bylaws	
Amended by Reso No 08-14, 11/21/08	
Amended by Reso No 09-03, 02/20/09	
Amended by Reso No 10-08, 06/18/10	
Amended by Reso No 11-19, 10/21/11	

BYLAWS

EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

The East Bay Regional Communications System Authority (hereafter the "Authority") is a cooperative agency voluntarily established by its members pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California, for the purpose of acquiring, planning, designing, constructing, operating and maintaining a P25 compliant or equivalent communications system serving Alameda and Contra Costa Counties and their individual political jurisdictions.

Pursuant to Section 11 of the Joint Exercise of Powers Agreement for the Authority (hereafter the "Agreement") dated September 11, 2007, by and between the following members:

Alameda County, Contra Costa County, Alameda, Albany, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Pleasanton, San Leandro, Union City, Brentwood, Clayton, Concord, Danville, El Cerrito, Hercules, Martinez, Moraga, Oakley, Pittsburg, Pinole, Pleasant Hill, Richmond, San Pablo, San Ramon, Walnut Creek, Kensington Police Community Services District, San Ramon Valley Fire Protection District, Rodeo-Hercules Fire Protection District, East Bay Regional Parks District

These By-Laws were adopted by the Board of Directors for the Authority by:
Resolution No. 07-5 adopted on December 7, 2007

Article I: Definitions

- A. **"Agreement"** shall mean the Joint Powers Authority agreement
- B. **"Board"** shall mean the 23 member Board of Directors
- C. **"Operations Committee"** shall mean the Operations Committee identified in Section 8.1 of the Bylaws
- D. **"Finance Committee"** shall mean the Finance Committee identified in Section 8.1 of the Bylaws
- E. **"Quorum"** shall mean a majority of the Board Members (12)
- F. **"Technical Advisory Committee"** shall mean the Technical Advisory Committee identified in Article VIII, Section 8.1 of the Bylaws

Article II: Principal Office

Section 2.1. The principal office for the transaction of business of the Authority is hereby fixed and located at:

Alameda County Office of Homeland Security and Emergency Services
4985 Broder Blvd.
Dublin CA. 94568

Article III: Notice

Section 3.1. Notice from one member agency to another shall be given as provided in Section 16 of the Agreement. Member agencies may change the address to which notices shall be sent by giving notice of such change to all other member agencies at least thirty (30) days prior to the effective date of such change.

Article IV: Board of Directors

Section 4.1. The Authority shall be governed by a Board of Directors (hereafter the "Board") consisting of twenty-three (23) Directors. Each Director shall have an alternate that will be appointed by their representative organization. Alternates, once selected, can serve to fill any vacancy of a Director for their represented organization/county. Directors and their alternates shall, at the time of their appointment and for the duration of their service on the Board, be employees or officers of their member agencies. Alternates shall serve as Directors in the absence of their respective Directors and shall exercise all duties and responsibilities thereof. Each Director and each alternate shall serve at the pleasure of the appointing entity and may be removed by the appointing entity at any time without notice.

Section 4.2. The Directors shall represent the entities and be appointed as set forth in Section 6a of the Agreement.

Section 4.3. A resignation of a Director or alternate shall be in writing and filed with the East Bay Regional Communications System Executive Director.

Section 4.4. The alternate may not participate and/or vote at a meeting attended by the appointed Board member.

Section 4.5. Directors and alternates are the only ones eligible to represent their Board position including participation and voting at the Board of Directors meetings.

Section 4.6. Director and alternate vacancies shall be timely filled by the applicable appointing entity, and officer vacancies shall be timely filled by the applicable electing or appointing entity.

Article V: Presiding Officers

Section 5.1. The officers shall be a Chair, and Vice-Chair. The duties, and term, as applicable, are as set forth in Section 6 Administration c. Procedures (*Procedures.*(1) *The Board shall elect annually a Chair from among its membership to preside at meetings and shall select a Secretary who may, but need not, be a Director. The Board may, from time to time, elect such other officers as the Board shall deem necessary or convenient to conduct the affairs of the Authority.*) of the Agreement. In the absence of the Chair, the Board shall be presided over by the Vice-Chair, who shall be elected annually from among the Board's membership. The election of the Chair and Vice Chair will be accomplished pursuant to the process outlined in Section 5.3 of the Bylaws. The Board will appoint a Secretary as set forth 6.c of the Agreement to provide minutes of the meetings, as outlined in Section 6. Administration b. Meetings (4) (*(4) Minutes. The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director, the Members, and other parties upon request.*) of the Agreement. The Secretary will not be a Board member.

Section 5.2. The positions of Chair and Vice Chair will be filled by a representative from each county. If the Chair is from Alameda County, the Vice Chair will be from Contra Costa. If the Chair is from Contra Costa, the Vice Chair will be from Alameda.

Section 5.3 The Board of Directors will receive nominations from sitting members of the Board to fill the positions of Chair and Vice Chair at a meeting of the Board. The Board will vote on the nominations for Chair and Vice Chair following Robert's Rules of Order. The newly elected Chair and Vice Chair will assume their positions at the conclusion of the meeting, and will continue in the positions for one year.

Article VI: Meetings

Section 6.1. The procedures for Board meetings shall be as set forth in Section 6 Administration b. Meetings

b. Meetings.

(1) *Regular Meetings. The Board shall by resolution establish the number of regular meetings to be held each year and the date, hour and location at which such regular meetings shall be held; provided, that the Board shall meet at least once every year.*

(2) *Special Meetings. Special meetings of the Board may be called in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.).*

(3) *Conduct of Meetings. All meetings of the Board shall be held in accordance with the Ralph M. Brown Act (Government Code Section 54950 et seq.).*

(4) *Minutes. The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director, the Members, and other parties upon*

request.

(5) *Quorum.* Twelve (12) Directors of the Board shall constitute a quorum for the transaction of business. Except as provided in Section 7 below, actions of the Board shall require the affirmative vote of a majority of the entire Board (i.e., twelve (12) affirmative votes). of the Agreement.

Section 6.2. Committee meetings will be posted on the web site and meeting notices will be sent to Board members and alternates by email.

Section 6.3. Agendas and Minutes of all meetings will be posted on the web site.

Article VII: Legal Notices

Section 7.1. All legal notices required by the Government Code shall be published in one or more newspapers of general circulation or posted according to state law.

Article VIII: Authority Organization

Section 8.1. In Section 5. Duties (f) *(f. To establish within six (6) months of the execution of this Agreement ad hoc operational and technical committees as necessary to consider and recommend to the Board of Directors system implementation issues.)* the Board is directed to form committees as necessary to provide recommendations and direction on issues relating to the EBRCS. In order to provide recommendations to the full Board of Directors on operational and financing issues, and provide day to day oversight, standing Operational and Finance committees will be formed as standing committees of the Board, and the committees will be required to follow the Brown Act. Agendas and minutes of the committee meetings will be made available on the web site. The committees will be made up of Board members and/or alternates, with representation and authority as listed below.

In the event that neither a Board member nor his or her designated alternate can attend a committee meeting, alternates to the Finance and Operations Committees will be selected first by discipline from Board members or alternate Board members from the appropriate county. If the Executive Director receives notice of the absence of a committee member, the Executive Director will contact Board members or alternates from the appropriate discipline or county. If no one from the discipline is able to attend, the Executive Director will contact Board members and/or alternates from the appropriate county until a replacement can be found.

Operations Committee: The Operations Committee will have 7 members and be responsible for review of system operational and technical issues including but not

limited to the review of existing technology, system upgrades, implementation of new technology, and provide support for the existing system implementation. The operations committee can appoint ad hoc committees when it needs to bring in additional expertise to address issues. The operations committee will also be able to approve expenditures up to \$25,000 without approval of the full Board of Directors. They will make recommendations to the Board through the Executive Director.

Operations Committee Representation:

- Board Chair or Vice Chair
- 2 Police Chiefs (one from each county)
- 2 Fire Chiefs (one from each county)
- 2 Sheriff's (one from each county)

Finance Committee: The Finance Committee will have 8 members and be responsible for the development of a budget, and review of financing options in order to develop a financing plan. The committee will also develop recommendations for subscriber unit pricing to account for the ongoing operations, upgrades and replacement. The Finance Committee will also be able to approve expenditures up to \$25,000 without approval of the full Board of Directors. They will make recommendations to the Board on finance issues through the Executive Director.

Finance Committee Representation:

- Board Chair or Vice Chair
- 2 City Managers (one from each county)
- 2 Elected Officials (one from each county)
- 2 County (one from each county)
- 1 Special District

Technical Advisory Committee: The Technical Advisory Committee will have 10 to 20 members, consisting of Fire Protection, Law Enforcement and Radio Technicians constituting balanced representation of Alameda County and Contra Costa County, and the EBRCSA Executive Director, for the purpose of providing technical expertise and advice to the Operations Committee and/or the EBRCSA Board on operational decisions to be made in connection with implementation of the EBRCSA P-25 compliant or equivalent communications system.

Article IX: Staff

Section 9.1. There will be an Executive Director of the EBRCS who will be responsible for the general management, administration, direction and development of the Authority's operations and procedures on a daily basis, including grant applications, acquisitions of equipment, financial administration, meeting administration, recordkeeping, all facilities, employees, consultants, and their respective uses.

Section 9.2. The Executive Director will be appointed by a majority of the Board of Directors and may be removed by a majority of the Board of Directors.

Section 9.3. The Executive Director working through designated member agencies shall be responsible for employment practices, and the administration of all approved policies regarding employee compensation, leave, and other personnel matters. The Executive Director will bring to the Board a resolution adopting the personnel practices of one of the member agencies.

Section 9.4. The Executive Director, upon the approval of the Board Chair or Vice Chair, will be able to approve certain expenditures up to \$25,000 without approval of the full Board of Directors, the Operations Committee, or the Finance Committee. Any such expenditure will be reviewed at the next regularly scheduled meeting of the Finance Committee.

Article X: Board Reimbursement and Compensation

Section 10.1. Directors and alternates representing the authority shall receive reimbursement for any actual expenses incurred for travel directly related to the business of the authority. There will be no per diem or travel reimbursement for attending Board of Directors or committee meetings. The Board will adopt the reimbursement policies of Alameda County.

Article XI: Finances

Section 11.1. The financial system of the Authority shall be kept under the provisions as specified in California Government Code Sections 6505 and 6505.5.

Section 11.2. The budget shall be adopted as set forth in Section 6. Administration d.Fiscal Matters (4) Budget ((4) Budget. *The Board shall adopt a budget no later than one hundred twenty (120) days after the first meeting of the Board and no later than June 30th of each year thereafter.*) of the Agreement.

Section 11.3. Expenditures by the Authority may not exceed the final budget without a budgetary revision approved by a 2/3 vote of the Board.

Section 11.4. Purchasing for the Authority shall be administered by the Executive Director, pursuant to the purchasing procedures of a charter county (Alameda County) as listed in State statute and shall be authorized by the Authority's Auditor, within budgetary amounts.

Article XII: Amendments

Section 12.1. These Bylaws may be amended from time to time by resolution of the Board. Amendments shall be ratified by a 2/3 majority of the Board of Directors.

Article XIII: Indemnification

The Joint Powers Agreement addresses indemnification in Section 9. *Indemnification 9. Indemnification. The Authority shall acquire such insurance protection as is necessary to protect the interest of the Authority and its Members. The Authority shall assume the defense of and indemnify and save harmless the Members and their governing bodies, officers, agents, and employees from all claims, losses, damages, costs, injury, and liability of every kind, nature, and description directly or indirectly arising from the performance of any of the activities of the Authority or the activities undertaken pursuant to this Agreement.*



East Bay Regional Communications System Authority




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

AGENDA ITEM NO. 7.3

AGENDA STATEMENT BOARD OF DIRECTORS MEETING DATE: FEBRUARY 28, 2025

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

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

SUBJECT: Consider Adoption of a Resolution Authorizing the Board Chair to Sign a Letter Requesting the Extension of Support for Critical Radio Infrastructure to Motorola Solutions Incorporated

RECOMMENDATIONS:

Consider Adoption of a Resolution Authorizing the Board Chair to Sign a Letter Requesting the Extension of Support for Critical Radio Infrastructure to Motorola Solutions Incorporated

SUMMARY/DISCUSSION:

During the Capital Infrastructure Replacement discussion, the Board of Directors voted to increase subscriber rates to fund a 15-year Capital Replacement Plan (Plan). The Plan included a \$64,000,000 investment to replace critical radio infrastructure equipment (equipment) that was deemed at end of support by Motorola Solutions Incorporated (MSI). Some of the equipment will be end of support in 2028 whereas other items are end of support in 2032. Staff recommends sending a letter to MSI requesting the extension of the end of support dates so that the EBRCSA can raise sufficient funds while also maintaining system reliability through a support contract.

Currently, the EBRCSA plans to begin the equipment replacement process six to eight years after the planned end of support. While the Executive Director and radio shops do not anticipate any critical failures, the assurance of support allows for the ability to repair the system with support from MSI if needed.

The Executive Director recommends Board of Directors approval for the Chair of the Board to sign a letter to MSI requesting the extension of the planned end of support timelines for the planned equipment replacement.

The Executive Director will share the letter with the EBRCSA Counsel for input prior to it being finalized and with the Board of Directors once signed.

Attachment:

1. Resolution authorizing letter to extend the support timelines

RESOLUTION NO. 25-xx

**A RESOLUTION OF THE
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**

* * * * *

**ADOPTION OF A RESOLUTION AUTHORIZING THE BOARD CHAIR TO SIGN A
LETTER REQUESTING THE EXTENSION OF TECHNICAL SUPPORT FOR
CRITICAL RADIO INFRASTRUCTURE TO MOTOROLA SOLUTIONS
INCORPORATED**

WHEREAS, the East Bay Regional Communications System Authority (“EBRCSA”) P-25 compliant communications system serves Alameda and Contra Costa counties and individual political jurisdictions therein (the “System”); and

WHEREAS, the reliability and financial sustainability of the EBRCSA system is critical to public safety; and

WHEREAS, based on Motorola Solutions Incorporated’s planned platform migration the EBRCSA must fund a \$67,000,000 equipment replacement; and

WHEREAS, the EBRCSA formally requests that Motorola Solutions Incorporated extend the technical support offerings for its critical radio infrastructure from 2028 to 2036 and beyond.

NOW, THEREFORE, the Board of Directors of the East Bay Regional Communications System Authority does **RESOLVE** that it adopts the proposed resolution to the accompanying Agenda Report and authorizes the Executive Director to draft and the Board Chair to sign a letter in support of Motorola Solutions Incorporated extending its technical support of critical radio infrastructure aligned with the intent of the Board of Directors; and

BE IT FURTHER RESOLVED that the Executive Director is authorized to take all actions, and execute all documents necessary to effect the purpose and intent of this Resolution.

On motion of xx, seconded by xx, the foregoing Resolution was passed and adopted this 28th day of February 2025 by the following votes:

AYES:

NOES: .

ABSTAIN:

ABSENT:

ATTEST:

Jocelyn Kwong, Board Secretary



East Bay Regional Communications System Authority




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

AGENDA ITEM NO. 7.4

AGENDA STATEMENT BOARD OF DIRECTORS MEETING DATE: FEBRUARY 28, 2025

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

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

SUBJECT: Consider Adoption of a Resolution to Authorize the Board Chair to Sign and the Executive Director to Implement a Land Lease for a Radio Tower on Walton Lane with the City of Antioch

RECOMMENDATIONS:

Consider adoption of a resolution to authorize the Board Chair to sign and the Executive Director to implement a land lease with the City of Antioch for a radio tower on Walton Lane.

SUMMARY/DISCUSSION:

The EBRCSA seeks to improve the radio system's reception in the city of Antioch. EBRCSA staff worked to secure lease space on one of the existing commercial radio towers without success. As a result, EBRCSA staff determined that the best solution is to replace an existing City of Antioch radio tower with a new tower that can hold additional equipment. The new tower would stand on property owned by the City of Antioch, requiring a land lease agreement. Staff has been in conversations with the City of Antioch City Attorney's Office to draft the lease language. The City of Antioch informed the Authority on January 29, 2025 of its desire to proceed with the lease for the Walton Lane radio site. Based on the capital investment on behalf of the Authority and benefit to the Antioch community, the EBRCSA Executive Director proposed the terms of a zero-dollar lease for up to 20 years.

The City of Antioch is agreeable to the duration and is proposing the following changes:

1. \$1.00 annually recurring lease for up to 20 years.
2. The Authority may not rent space on the tower without written permission of the City of Antioch.

The Operations Committee met on February 7, 2025 and asked that the terms be amended to extend the lease for an initial term of 20 years with two 10-year extensions for a total term of 40 years and that the EBRCSA be able to install equipment for other public safety partners on the tower without the approval of the City of Antioch.

While the City of Antioch was unable to make the EBRCSA Operations Committee's proposed changes to the draft lease, Antioch staff recommend presenting those changes in the final document for City Council approval. Staff requests the Board's approval of the proposed terms of the lease and to direct the Executive Director to present the amended terms to City of Antioch staff for approval by the Antioch City Council. If approved by the Board of Directors, City of Antioch staff assured the Executive Director they will present the terms to the City Council for approval.

The Executive Director will begin to assemble contract proposals for the required site work so that construction can begin as soon as possible. Staff anticipates returning to the Board's Committees in May 2025 to review the contracts and recommend final contracts to the Board of Directors for approval on May 30, 2025, to begin construction in June, 2025.

Staff provides as information only the following potential work milestones and timeline for the project. The proposed timeline assumes contractor availability, minimal delays on the Pearl shelter project, and the ability to build a new tower near the existing tower.

Build Plan

Task	Proposed Date
Obtain necessary permits	04/25
Identify vendors for tower and electrical work	04/25
Present contracts to BOD for approval	05/25
Complete foundation work	06/25
Install new tower	07/25
Install new shelter	08/25
Install electrical for new shelter	09/25
Install Microwave and Radio antennas	09/25
Install radio equipment	11/25
Optimize site and activate	12/25

Attachments:

1. Resolution
2. Draft Communications Site Ground Lease Agreement

RESOLUTION NO. 25-xx

**A RESOLUTION OF THE
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY**

* * * * *

**ADOPTION OF A RESOLUTION TO AUTHORIZE THE BOARD CHAIR TO SIGN AND
THE EXECUTIVE DIRECTOR TO IMPLEMENT A LAND LEASE FOR A RADIO
TOWER ON WALTON LANE WITH THE CITY OF ANTIOCH**

WHEREAS, the East Bay Regional Communications System Authority (“EBRCSA”) P-25 compliant communications system serves Alameda and Contra Costa counties and individual political jurisdictions therein (the “System”); and

WHEREAS, the EBRCSA determined a need to provide additional radio coverage in the City of Antioch; and

WHEREAS, the EBRCSA has worked collaboratively with the City of Antioch to prepare a lease agreement for property owned by the City of Antioch for the construction of a new radio tower; and

WHEREAS, the EBRCSA initially sought to enter into a land lease agreement for a term of 10 (ten) years with 2 (two) 5 (five) year extensions for a total of 20 (twenty) years for the annual sum of \$1.00 per year (one-dollar); and;

WHEREAS, the EBRCSA Operations Committee recommended revised terms of the lease at its February 7, 2025 meeting to be an initial 20 (twenty) year term with 2 (two) 10 (ten) year extensions for a total of 40 (forty) years.

NOW, THEREFORE, the Board of Directors of the East Bay Regional Communications System Authority does **RESOLVE** that it adopts the proposed land lease with the City of Antioch to the accompanying Agenda Report and authorizes the Board Chair to sign and the Executive Director to implement the terms aligned with the intent of the Board of Directors; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized to take all actions and execute all documents necessary to effect the purpose and intent of this Resolution, including the negotiation and amendment of terms and conditions to the lease, subject to approval as to form by Authority Counsel.

On motion of xx, seconded by xx, the foregoing Resolution was passed and adopted this 28th day of February 2025 by the following votes:

AYES:

NOES: .

ABSTAIN:

ABSENT:

ATTEST:

Jocelyn Kwong, Board Secretary

[Lessee to insert its internal site and/or contract identification information, if any]

CITY OF ANTIOCH

COMMUNICATIONS SITE

GROUND LEASE AGREEMENT

THIS COMMUNICATIONS SITE GROUND LEASE AGREEMENT (“**Agreement**”) is entered into and effective as of the latter signature date provided below (“**Effective Date**”) by and between **City of Antioch**, a California municipal corporation, with its principal place of business at City Hall, 200 H Street, Antioch, California 94509 (“**Lessor**”) and **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, with a mailing address of 4985 Broder Blvd., Dublin, CA 94568 (“**Lessee**”). This Agreement may refer to Lessor and Lessee individually as a “**Party**” or collectively as the “**Parties**”.

R E C I T A L S

This Agreement is entered into based upon the following facts, circumstances and understandings:

A. Lessor is the owner of certain real property located in the City of Antioch, County of Contra Costa, State of California described on **Exhibit “A”** attached hereto and incorporated herein by this reference, commonly known as 75 Walton Lane, Antioch, California 94509, Assessor Parcel Numbers 071-151-004 and 071-151-007 (the “**Property**”).

B. Lessee desires to enhance public safety communication infrastructure by leasing a portion of the Property, including access and utility routes as described in Section 1 and **Exhibit “B”**, for the construction, operation, and maintenance of a new wireless communications facility. Lessee intends to invest approximately \$1.8 million into the construction, installation, and related improvements of the structure and associated ground equipment, as further detailed in **Exhibit “C”**.

C. The Lessor, in its capacity as a proprietary landowner and not a government regulatory agency, desires to lease such Premises (as defined below) to Lessee on the terms and conditions provided for herein.

NOW THEREFORE, in consideration of the facts recited above and the covenants, conditions and terms set forth below, the Parties hereby agree as follows:

1. Grant of Lease.

a. Grant and Scope. Subject to the terms and conditions in this Agreement, Lessor, in its proprietary capacity as the Property owner, leases to Lessee exactly [Premises square footage to be inserted once available] [(#)] of ground space (the “Premises”), as more particularly described and depicted in Exhibit “B”, together with a non-exclusive right to use the Access Route and Utility Route, all as defined herein and more particularly described and depicted in Exhibit “B” and/or Exhibit “C”, for only the Permitted Use as defined herein and for no other purpose whatsoever without Lessor’s prior written consent, which Lessor may withhold in its sole and absolute discretion for any or no reason. This Agreement and all Lessee’s rights and/or privileges to use the Premises, the Access Route and the Utility Route will remain subject and subordinate to all leases, subleases, licenses, sublicenses, easements, reservations, covenants, conditions, restrictions and exceptions, whether recorded or unrecorded, that exist prior to the Effective Date.

b. Premises Condition. Except as may be specifically and explicitly provided otherwise in this Agreement, Lessor makes no warranties or representations whatsoever about the Property’s, Premises’, Access Route’s or Utility Route’s condition, fitness or suitability for Lessee’s use. Lessee expressly warrants and represents to Lessor that Lessee or its Agent (as defined below) inspected the Property, Premises, Access Route and Utility Route, and any environmental or other conditions on the Property, Premises, Access Route, and Utility Route, and accepts the Premises, Access Route and Utility Route in its present “AS-IS” and “WITH ALL FAULTS” condition. Lessee expressly acknowledges and agrees that neither Lessor nor its Agents made any warranties, representations or promises to Lessee or its Agents about the Property, Premises, Access Route, and Utility Route, whether in whole or in part, or any aspect about the Property, Premises, Access Route and Utility Route, which includes, without limitation, any structures or improvements, utilities or Hazardous Materials as defined herein. As used within this Agreement, “Agent” means a Party’s agent, employee, director, officer, contractor, subcontractor or representative in relation to this Agreement or the Premises.

c. Certified Access Specialist Disclosure. Pursuant to California Civil Code § 1938, and to the extent applicable to this Agreement, Lessor expressly advises Lessee, and Lessee expressly acknowledges, that a Certified Access Specialist (as defined in California Civil Code § 55.53) has not inspected any Premises in whole or in part to determine whether it meets all applicable construction-related accessibility requirements.

d. Subsurface and Utility Improvement Rights. Lessor reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, stormwater sewers, pipelines, manholes and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along the Premises, and any part thereof, and to enter the Premises for any and all such purposes. Lessor also reserves the right to grant franchises, easements, rights-of-way and permits in, over, upon, through, across and along any and all portions of the Premises for the installation, operation and maintenance of public utilities. Lessor shall not exercise any rights reserved under this section in a manner that unreasonably interferes with Lessee’s operations or access under this Agreement or impairs the security of any secured creditor of Lessee. Lessor agrees that rights granted to third parties by reason of this section must contain provisions that the surface of the Premises will be restored as nearly as practicable to its original condition upon the completion of any construction.

2. Permitted Uses.

a. Permitted Use; Communication Facility. Beginning on the Commencement Date, Lessee may use the Premises to: (i) transmit and receive radio communication signals in accordance with all applicable Laws as defined herein; and (ii) construct, maintain, repair, add, replace, upgrade, remove, and operate a radio communication vertical support structure, equipment shelter, equipment, cables, and accessories (“**Communication Facility**”), all in the locations and configurations more particularly described and depicted in Exhibit “C” attached hereto and incorporated herein (collectively, the “**Permitted Use**”), for purposes reasonably necessary to accomplish the Permitted Use, but for no other purpose whatsoever without Lessor’s prior written consent, which Lessor may withhold for any or no reason in Lessor’s sole discretion. For avoidance of doubt, Lessee may construct, maintain, repair, add, replace, upgrade, remove, and operate current or future Communication Facility for public safety purposes or from Lessee’s public safety partners upon the Premises without Lessor’s prior written consent. “**Laws**” as used herein means all present and future statutes, ordinances, codes, orders, policies, regulations and implementing requirements and restrictions by federal, state, county and/or municipal authorities, whether foreseen or unforeseen, ordinary as well as extraordinary, as adopted or as amended at the time in question.

b. Prohibited Uses. Lessee shall not use the Premises or any areas on the Property (whether in whole or in part) in any unlawful manner or for any illegal purpose. In addition, Lessee shall not use the Premises in whole or in part in any manner that interferes with the maintenance, operation or future operation of Lessor’s governmental operations on the Property, or constitutes a nuisance either under applicable Laws or as determined by Lessor in its sole but reasonable discretion. Lessee shall take all precautions to eliminate any nuisances or hazards in connection with its uses and activities on or about the Premises. Lessee acknowledges and agrees that its rights under this Agreement do not authorize Lessee to erect, post or maintain, or permit others to erect, post or maintain, any signs, notices, graphics or advertisements whatsoever on the Premises, except signs that may be required under applicable Laws for site identification and/or public health and safety reasons. Lessee shall not permit the Premises, Access Route or Utility Route to be used by any third parties at any time during the Term in a manner that would impair Lessor’s title to or interest in the Premises, Access Route or Utility Route or in such a manner as would cause a claim or claims of adverse possession, adverse use, prescription or other similar claims in, to or with respect to the Premises, Access Route or Utility Route.

c. Tests. At any time throughout the Term, Lessee will have the right, but not the obligation, at Lessee’s sole cost and expense, to conduct necessary non-invasive tests, surveys and other reasonably necessary inspections (collectively “**Tests**”) on the Premises, Access Route or Utility Route to determine suitability for the Permitted Use; provided that: (1) Lessee has first furnished Lessor with all up-to-date insurance documentation required in Section 20 (Insurance) under this Agreement; (2) Lessee complies with the access procedures provided in Section 4 (Access) below before performing any tests; (3) Lessee complies with all of Lessor’s reasonable rules and regulations necessary to avoid undue interference with other authorized activities or operations on the Property; and (4) Lessee shall promptly return any areas on the Property affected by any Tests to the condition that existed immediately prior to such Tests, reasonable wear and tear excepted. Notwithstanding any provision in this Agreement to the contrary, Lessee shall not have the right to undertake any invasive activities or tests upon the Property, or any environmental

testing on the Property beyond the scope of a standard “Phase I” environmental site assessment investigation, without the prior written approval by Lessor of a written workplan for such environmental site assessment or other invasive testing, where Lessor’s approval may be given, withheld or conditioned in its sole and absolute discretion for any or no reason.

3. Governmental Approvals.

a. Permits and Other Regulatory Approvals. The Parties acknowledge and agree that Lessee shall not commence any work at the Property until Lessee first obtains all necessary certificates, permits, and other approvals that federal, state, or local authorities may require, which may include without limitation a conditional use permit and any other permit obtained through any other City of Antioch department (collectively “**Regulatory Approvals**”).

b. Lessor’s Cooperation with Regulatory Approvals. If requested by Lessee, Lessor agrees to reasonably cooperate with Lessee, at the sole cost and expense of Lessee, in executing all documents required by any governmental authority in connection with any development of, or construction on the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Lessee in Lessee’s reasonable discretion to utilize the Premises for the purpose of constructing, maintaining and operating the Communication Facility. Lessor shall take no unreasonable action that would adversely affect the status of the Property or the Premises with respect to the proposed use by Lessee, except as required in connection with Lessor’s municipal functions including but not limited to the construction, maintenance, repair or safekeeping of the water tank site on the Property.

c. Regulatory Approval Applications. Lessee must provide to Lessor complete copies of all applications, letters of authorization and related documents for Regulatory Approvals to be filed with any federal, state, or local authorities (“**Applications**”) for Lessor’s review for consistency with the terms of this Agreement prior to Lessee’s submission of Applications to such federal, state, or local authorities. Lessor agrees to execute such consistent Applications within a reasonable period of time after Lessor’s receipt of Lessee’s written request containing the Applications. In no event shall Lessor’s consent for any Applications be deemed granted under this Agreement. Lessor agrees to be named as the property owner for such Applications and Regulatory Approvals. Lessor may only be named as the applicant if the federal, state, or local authorities will not allow Lessee to be directly named as the applicant on such Applications. Lessee shall provide Lessor with copies of all Applications and Regulatory Approvals for the Communication Facility within in ten (10) days after Lessee’s receipt of Lessor’s request for same. Lessee shall indemnify, defend and hold harmless Lessor from any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including reasonable attorney fees, whether direct or indirect (“**Claims**”), to the extent caused by or arising out of Applications and Regulatory Approvals. This indemnification obligation shall survive the expiration or earlier termination of this Agreement.

d. Proprietary Capacity Acknowledgment. The Parties expressly acknowledge and agree Lessor enters this Agreement solely in its proprietary capacity as the owner or controller of the Property and not in its capacity as a regulatory agency. Lessee acknowledges and agrees that any federal or state laws applicable to Lessor in its regulatory capacity will not be applicable to Lessor in its proprietary capacity and Lessee will not seek to have such laws applied to Lessor or

any approval, disapproval, act or failure to act in connection with this Agreement. Lessee further acknowledges and agrees that: (i) only the terms and conditions in this Agreement will govern the criteria and timeframes for Lessor's decisions or actions in its proprietary capacity in response to Lessee's requests for Regulatory Approvals in connection with this Agreement; (ii) any approval or disapproval Lessor may issue in its proprietary capacity in connection with this Agreement will not be deemed to be an approval or disapproval Lessor may be required to issue in its regulatory capacity, if any; and (iii) any approval or disapproval Lessor may issue in its proprietary capacity will not give preference to Lessee or Lessee's applications over other persons or applications in any regulatory proceeding solely based on this proprietary relationship.

4. Access.

a. Grant of Access. Except as may be specifically provided otherwise in this Agreement, Lessor grants Lessee a nonexclusive license for overland vehicular and pedestrian ingress and egress from the Access Route to the Premises for purposes reasonably related to the Permitted Use only along the route more fully described and depicted in Exhibit "B" (the "**Access Route**"): (1) during regular business hours (8:00 a.m. to 5:00 p.m. Pacific Time Monday through Friday excluding public holidays); or (2) at any time in the event of a bona fide emergency that may cause injury to persons or damage to the Property.

b. Access Notification; Protocols. Access during regular business hours must be coordinated in advance with not less than forty-eight (48) hours prior notice by email to publicworks@antiochca.gov or by telephone call to City's Water Treatment Plant at (925) 779-7027 or (925) 779-7029. In the event of a bona fide emergency that may cause injury to person or damage to the Property, Lessee shall: (1) notify the Antioch Police Department dispatch in advance if such access occurs after 8:00 p.m. and before 5:00 a.m. Pacific Time or on a public holiday, and (2) in all events, provide notice of such emergency access to Lessor as soon as reasonably practicable, but in no event later than twenty-four (24) hours after such access, and provide Lessor (i) the date and time of emergency access; (ii) the nature of the event requiring emergency access; and (iii) and the names of the persons and/or company that accessed the Premises. Except in an emergency, Lessor may require Lessee to access the Property on alternative dates and times in the event that Lessor is performing construction, maintenance or repair work at the water tank site on the Property and Lessee's access would, in Lessor's sole but reasonable discretion, interfere with Lessor's work.

Lessee and its contractors are required to complete a sign-in sheet at the City's Water Treatment Plant located at 401 Putnam Street, Antioch, California 94509 prior to access. Additionally, Lessee and its contractors shall provide the following information to the above email address when requesting access, and if not provided in advance by email, Lessee and its contractors must provide the following information in person at the City's Water Treatment Plant prior to accessing or commencing work at any of the City's water tank sites:

- the name and telephone number of Lessee's contractor to access the Premises or perform work;
- Lessee's site name and number
- Lessee's personnel contact name, email address and telephone number;
- a copy of this Agreement, as it may be amended (if requested);

- a copy of the City issued Building Permit for the work to be performed (if applicable to the reason for access); and
- the time period for which access is requested.

c. Access Regulations; Parking; Keys. Lessee shall not disturb or interfere with other users or tenants of the Property or their access thereto. Lessee acknowledges and agrees that no vehicle parking is allowed in the Access Route that in any way obstructs, impedes, and/or prevents the use of the driving surface over the Property or to and around the water tank. Except in a bona fide emergency that may cause injury to persons or damage to the Property, Lessor reserves the right to require that Lessee and Lessee's Agents be escorted to the Premises by Lessor or a representative of Lessor. Lessor may impose reasonable rules and regulations on the manner in which Lessee uses the Access Route, which includes without limitation rules and regulations: (1) for the locations in which Lessee, its Agents, Invitees (as defined below) and other personnel may park vehicles and equipment on the Access Route or other areas of the Property; (2) necessary to secure the Property; and (3) necessary to ensure access to the Property for all users authorized by Lessor. Lessor shall provide any reasonable rules and regulations to Lessee in writing in advance. As used within this Agreement, "**Invitee**" means the client, customer, invited guest, tenant, subtenant, lessee, assignee and/or sublicensee of a Party in relation to the Premises or Property.

Lessor will issue to Lessee, and Lessee shall safeguard and not share with others, except its Agents and Invitees, any keys or codes necessary to access the Premises via the Access Route. Lessee, and any Agent or Invitee working for Lessee, shall be required to return any site access keys upon leaving the Property. Each time Lessee fails to comply with this requirement, Lessor may, in its sole and absolute discretion, re-key the Property and distribute new keys at Lessee's sole cost and expense plus an administrative fee of Two Hundred Fifty and 00/100 Dollars (\$250.00). Lessee agrees that this administrative fee is reasonable.

d. Relocation of Access Route. Lessor may adjust the Access Route to a reasonably comparable route that does not materially impede Lessee's access to the Premises when reasonably necessary for Lessor's use of the Property. In the event Lessor makes such adjustment to the Access Route, the Access Route shall be surveyed by a licensed surveyor at the sole cost of Lessor, in which event such survey shall replace and supersede the description of the Access Route set forth in Exhibit "B" of this Agreement. Lessor shall give prior written notice to Lessee that shall include the survey describing the adjusted Access Route.

e. Lessor's Access to the Premises. Lessor and its Agents may, after reasonable advance written notice and at any time without advance notice in case of emergency (but with notice to Lessee as soon as reasonably practicable after emergency access) or for any purpose related to protecting the Property, enter onto and inspect the Premises. During the six (6) months before the expiration of the Term, Lessor may exhibit the Premises to prospective tenants at times approved by Lessee and in the presence of Lessee or its Agent. In the event of an emergency, Lessor may enter on or pass through the Premises. If, under such emergency circumstances, Lessee is not present to open the Premises, Lessor may enter by any means without liability to Lessee except for failure to exercise reasonable care under the circumstances. Lessor's actions under this section will not constitute an actual or constructive eviction or relieve Lessee of any obligation with respect to making any repair, replacement, or improvement or complying with any Laws. No

provision of this section shall be construed as obligating Lessor to perform any maintenance, repairs, alterations or improvements.

5. Utilities.

a. Utility Requirements. Lessee shall procure its own electrical, cable, gas, telephone, trash, and other such services (collectively, “**Utilities**”) under its own account and meters and at its sole cost and expense. Lessor shall reasonably cooperate with Lessee’s Utilities providers at no cost to Lessor. Lessor, in its proprietary capacity under this Agreement, shall not provide any Utilities whatsoever to Lessee, except to the extent that it may separately provide such Utilities to the public through separate governmental operations. Under no circumstances shall Lessee “submeter” from Lessor or use any utility service billed by the utility to Lessor.

b. Utility Route. Lessor grants to Lessee a nonexclusive license for a utility route over, under and upon the Property (the “**Utility Route**”) in the location(s) described and depicted in Exhibit “B” for the installation, repair, replacement and maintenance of utility wires, cables, conduits and pipes. Lessor grants the Utility Route to Lessee for the Permitted Use during the Term and thereafter for a reasonable period of time for Lessee to remove its Communication Facility. Lessee’s interest in the Utility Route shall immediately dissolve and any rights granted thereby shall automatically revert back to Lessor upon the expiration of the Restoration Period, and if such Utility Route is recorded, it shall be released consistent with the provisions of Section 11 (Removal and Restoration; Reconveyance) and Section 29(j) (Recording) of this Agreement.

6. Construction.

a. Plans and Specifications. Lessee may not commence any construction or installation activities on the Property that involve new structures or increased loading on existing structures without prior written approval from the City of Antioch Engineer/Director of Public Works or their designee. Lessee shall submit its written request for approval together with complete engineering plans, specifications and a structural analysis report, all in a form reasonably acceptable to the City of Antioch Engineer/Director of Public Works. The City of Antioch Engineer/Director of Public Works may (but is not obligated to) review all or part of such materials and may reasonably approve, conditionally approve or reject them for cause.

b. Manner of Construction. Lessee and its Agents shall perform all work on the Property and Premises in a good, safe and workmanlike manner, in strict compliance with this Agreement and all applicable Laws. All installed equipment must be high quality, safe, fire resistant, modern in design and attractive in appearance, all as approved by Lessor.

c. Lessee’s Contractors. Lessee shall use only qualified and trained persons and appropriately licensed contractors for all work performed on or about the Premises. At least ten (10) business days before any work commences on or about the Premises that requires Lessor’s prior approval, Lessee shall provide Lessor with: (1) a schedule with all activities to be performed in connection with the work; and (2) a list with all the names, contractor’s license numbers and business addresses for all contractors who will be physically present on the Property.

d. Labor and Material Costs. Lessee shall be responsible for all direct and indirect costs (labor, materials, and overhead) in connection with designing, purchasing and installing the Communication Facility in accordance with this Agreement and all applicable Laws. Lessee shall

timely pay for all labor, materials, equipment and all professional services related to the Permitted Use or furnished to the Premises at Lessee's direction or for Lessee's benefit.

e. Coordination; Supervision. Lessee must coordinate all its installation, construction and other work on or about the Premises with Lessor so as to avoid any interference (physical, electronic or otherwise) with any existing utilities, substructures, facilities, Lessor or Lessor's municipal operations. Lessor may, but will not be obligated to, supervise any construction activities in connection with this Agreement that require Lessor's prior review and approval, which shall not be unreasonably withheld, conditioned or delayed. Upon a written demand and reasonable supporting documentation from Lessor, Lessee shall reimburse Lessor for its actual cost to supervise such construction activities, not to exceed One Hundred Fifty Five and 00/100 Dollars (\$155.00) per hour.

f. Construction Staging. Lessee and its Agents and Invitees shall not use any surrounding area, including without limitation, any other portion of the Property not exclusively leased by the Lessee as a staging, construction, or storage area without Lessor's prior written consent, which consent by Lessor shall not be unreasonably withheld, conditioned or delayed. Lessor may in its sole but reasonable discretion withhold or revoke its consent to allow Lessee's to use any staging area when Lessee's use unreasonably interferes with other persons or entities authorized to use the Property.

g. As-Built Site Plans. Within ninety (90) days after Lessee completes any subsurface construction, installation or other work on the Property that requires Lessor's prior review and approval, Lessee shall furnish Lessor with as-built site plans that depict all the subsurface equipment and any improvements in the then-current location and configuration. Lessee shall also provide such as-built site plans in a native or portable document format.

h. Modifications and Alterations. Except as expressly provided otherwise in this Agreement, Lessee may not modify or alter Communication Facility in any manner other than as shown on Exhibit "C" without Lessor's prior written consent, which Lessor will not unreasonably withhold, delay or condition. Subject to the preceding sentence, Lessor acknowledges that Lessee, from time to time, may need to upgrade or add new technologies to the Communication Facility based on its sole discretion as to the need for such upgrade or addition **without Lessor's prior written consent**. After Lessee completes any approved modification or alteration, Lessee shall produce or cause to be produced a revised Exhibit "C" that shows all equipment and other improvements comprising the Communication Facility in their current, as-built location and configuration. Such revised Exhibit "C" will not become effective until both Parties sign each page thereto.

i. Routine Maintenance. Routine maintenance means ensuring that the Communication Facility and Premises are kept in good operating condition, in good aesthetic condition in accordance with this Agreement and in safe condition in accordance with all applicable Laws ("**Routine Maintenance**"). Routine Maintenance includes, but is not limited to, inspections, testing and repairs that are not otherwise modifications or alterations pursuant to Section 6(h) (Modifications and Alterations). Routine Maintenance also includes like-for-like equipment replacements and modifications of existing equipment shown on Exhibit "C" but does not include additional equipment installations not shown on Exhibit "C" or replacement or modified equipment of greater or materially different dimensions or weight. Lessee shall comply

with the access procedures provided in Section 4 (Access) above before performing any Routine Maintenance work.

j. Trenching. No open-cut trenching shall be permitted across any paved access route unless approved by Lessor in writing in advance. Such approval may be denied by Lessor for any or no reason. Trenching alongside and directional boring underneath paved access routes may be permitted as needed as approved in writing in advance by the City of Antioch Engineer/Director of Public Works in their sole discretion.

k. Structural Observations. Lessor's professional structural engineer licensed in California shall conduct all structural observations for any and all structural work required as set forth in Lessee's structural engineering and structural plans and wet-stamp all engineering documents and plans, all at Lessee's sole cost.

l. Hours of Construction. Lessee's construction activities shall not unreasonably obstruct access to or otherwise unreasonably interfere with any other users or tenants of the Property. Lessee shall schedule its construction activities between the hours of 8:00 a.m. and 5:00 p.m. Pacific Time Monday through Friday excluding public holidays unless approval in writing in advance is obtained from the City of Antioch Director of Public Works/City Engineer, and is otherwise permitted by the City of Antioch Municipal Code.

7. Term.

a. Initial Term. The initial term of this Agreement shall commence on the first day of the month after the Effective Date (the "Commencement Date") and automatically expire **twenty (20)** years thereafter unless earlier terminated in accordance with this Agreement ("**Initial Term**").

b. Renewal Term(s). Upon the expiration of the Initial Term, this Agreement shall automatically renew for up to two (2) additional **ten (10)** year terms (each a "**Renewal Term**"), unless Lessee is in Default of this Agreement beyond any applicable cure period at the end of the Initial Term or any Renewal Term or Lessee delivers to Lessor written notice of its intent not to renew at least ninety (90) days before the end of the then-current Initial Term or Renewal Term. The Parties collectively refer to the Initial Term and any Renewal Terms exercised by the Lessee as the "**Term**." The terms and conditions for each Renewal Term shall be the same terms and conditions as in this Agreement, except that the Rent shall be increased as set forth below.

c. Holdover Term. Lessee's right to possess and use the Premises, Access Route or Utility Route shall immediately terminate at the expiration or the earlier termination of this Agreement. In the event that Lessee continues to possess or use the Premises, Access Route or Utility Route or any part of the Property after this Agreement expires or terminates, then: (1) this Agreement will automatically convert to a month-to-month tenancy with Rent payable in monthly installments ("**Holdover Term**"); (2) either Lessor or Lessee may terminate the Holdover Term on 30 days' prior written notice for any or no reason thereby automatically commencing the Restoration Period on the effective date of such termination; and (3) all other terms and conditions in this Agreement shall continue. There is no right to a Holdover Term in this Agreement.

8. Rent.

a. Base Rent. Lessee shall pay to Lessor the amount of One and 00/100 Dollar (\$1.00) per year ("**Rent**") commencing on the Commencement Date of the Agreement within forty-five

(45) days following the Commencement Date; thereafter, Lessee shall pay to Lessor each subsequent Rent payment in advance on or before the anniversary of the Commencement Date.

b. Payments. Lessee shall make payments due and owing to Lessor pursuant to this Agreement separate from any other payments that Lessee may owe to Lessor: (i) in Lessor's proprietary capacity pursuant to any other agreements; or (ii) in Lessor's regulatory capacity. Any written notice required pursuant to Section 28(a) (Notices) tendered to the recipient and address specified in Section 28(b) (Notices) is invalid and not considered to be tendered to Lessor, except to the extent the recipient and addresses in Section 28(a) and Section 28(b) are the same. No payment by Lessee or receipt by Lessor of a lesser amount than payment due will be deemed to be other than a payment made on account toward the total payment due, nor will any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction. Lessor's acceptance of such checks or payment will be without prejudice to Lessor's right to recover the balance of the amount due or pursue any other remedy in this Agreement. Lessee may require receipt of a validly completed IRS Form W-9 (or its equivalent) prior to the duty to tender the Rent and any other amounts due under this Agreement. **Without penalty or prejudice to any other conditions or provisions herein, Lessee may pay all of the Rent due for the whole Term in one payment.**

9. Maintenance and Repairs.

a. **Lessee's Maintenance Obligations.** Throughout the Term and any Holdover Term, Lessee, at its sole cost and expense, shall maintain, repair and secure its Communication Facility and all other personal property and improvements brought onto the Property in good, orderly and safe condition free of debris, graffiti and any other dangerous, noxious or offensive condition which would create a hazard or undue vibration, heat, noise or interference.

b. **Abatement.** Lessee shall abate any graffiti, household trash, litter, debris, any other dangerous, noxious or offensive condition which would create a hazard or undue vibration, heat, noise or interference in Lessor's sole but reasonable discretion, or any other public nuisance that arises from Lessee's use of the Premises, within forty-eight (48) hours after Lessor's notification to Lessee of same. Lessor may, in Lessor's sole but reasonable discretion, extend the period of time for Lessee's abatement after Lessor's receipt of a request from Lessee that includes a showing of good cause for such extension.

c. **Lessee's Duty to Repair to Property.** Throughout the Term of this Agreement, Lessee shall promptly repair any damage to any area where it enjoys exclusive control, which includes the Premises. Upon receipt of Lessor's notice to Lessee of damage to the Property caused by or attributable in whole or in part to Lessee, Lessee shall, at its sole cost and expense, promptly repair all such damage to the Property caused as a result of Lessee's or its Agents' construction, operation, maintenance, omissions, or other use in connection with the Communication Facility. Lessee shall immediately provide Lessor with written notice of damage caused by Lessee to the Property or Lessor's improvements. At Lessor's option, Lessee shall, at its sole cost and expense, promptly repair the same in accordance with industry standard practices and approved by Lessor, or Lessor may cause such repairs at Lessee's reasonable expense and Lessee shall reimburse Lessor for the reasonable costs of such repairs within thirty (30) days of receipt of notice from Lessor, which notice shall include documentation reasonably evidencing such costs.

d. Removal of Vegetation. Lessee has the right, at Lessee's sole cost and expense, to remove vegetation from the Premises where such vegetation interferes with or presents a hazard to Lessee's use of the Premises. If Lessee removes any such vegetation, Lessee must immediately dispose of the removed vegetation, at Lessee's sole cost and expense, off of the Property and in accordance with applicable Laws. Before Lessee may remove any other obstructions from any other portion of the Property other than the Premises, Lessee must obtain Lessor's prior written approval.

e. Routine Generator Testing. Lessee shall schedule any routine testing of any generator equipment approved on Exhibit "C" between the hours of 9:00 a.m. and 5:00 p.m. Pacific Time Monday through Friday excluding public holidays unless prior written approval is obtained from the City of Antioch Director of Public Works/City Engineer and is otherwise permitted by the City of Antioch Municipal Code.

f. Lessor's Maintenance Obligations. Lessor shall maintain and repair the Property as reasonably necessary to permit access to and over the Property as required in this Agreement, subject to reasonable wear and tear and damage from the elements. Lessor shall reasonably attempt to provide Lessee with notice before Lessor commences any maintenance or repairs to the Property that will or reasonably might temporarily impair Lessee's use or access to of the Premises, except no such notice shall be required in connection with any public emergency, or emergency or urgent maintenance on the Property or the water tank site. In the event of any such impairment, Lessor shall provide alternate access to the Premises. Lessor shall not be responsible for repairs or maintenance in connection with the Communication Facility or Premises or for any associated costs except to the extent caused by Lessor or its Agents. Lessor shall maintain the Access Route in a manner sufficient to allow access, weather and seasonal conditions permitting. Lessee acknowledges that the Access Route as currently constructed and maintained is sufficient to provide it with access. Lessor, under no circumstances, shall be required to expand or enlarge the Access Route.

g. Lessee's Work. All of Lessee's work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner, and subject to the conditions of any Regulatory Approvals, and in full compliance with all applicable Laws.

10. Intentionally Omitted.

11. Removal and Restoration; Reconveyance.

a. Within ninety (90) calendar days after this Agreement expires or terminates ("**Restoration Period**"), Lessee, at its sole expense, shall (i) cause the immediate cessation of all its radio transmissions from the Property; and (ii) completely remove Lessee's facilities, equipment and improvements; (iii) restore the Premises and any affected areas of the Property to its original condition as it existed before the Effective Date, excluding ordinary wear and tear; (iv) surrender the Premises to Lessor; and (v) if Lessee has recorded a memorandum of this Agreement or any other documents in Lessor's Property chain of title with the Contra Costa County Recorder's Office, promptly execute and record a release to reconvey to Lessor all of Lessee's rights in the Property granted pursuant to this Agreement pursuant to Section 29(j) (Recording).

b. Notwithstanding any other provision of this Agreement, Lessee's obligation to pay the Rent shall continue and Lessee shall be deemed in actual possession of the Premises until

Lessee has complied with all removal, restoration, surrender and reconveyance requirements of this Agreement.

12. Intentionally Omitted.

13. Interference with Communications.

a. Lessee's Interference Obligations. Lessee shall not operate equipment, cause or allow others to operate the equipment or use the Premises in a manner that causes interference with other communication transmission or reception equipment lawfully used by Lessor, its Agents or any third parties authorized by Lessor to use the Property existing as of the Effective Date. Any such interference will be deemed a default under this Agreement and, after Lessee receives notice that such interference exists, Lessee will be responsible to promptly eliminate any such interference at no cost to Lessor. Lessor agrees to reasonably cooperate with Lessee's efforts to locate the interference source. In the event that Lessee does not promptly cure such interference within seventy-two (72) hours following notice, Lessee shall reduce power or cease operations of the interfering equipment until the interference is cured. The Parties acknowledge that continued interference with communication transmission or reception equipment lawfully used by Lessor, its Agents or any third parties authorized by Lessor to use the Property may result in irreparable harm and, therefore, Lessor will have the right to bring an action against Lessee to enjoin such interference or terminate this Agreement.

b. Lessor's Governmental Communications. Lessee acknowledges that the Property serves in its primary and paramount use as a water tank site, Lessor may use communications equipment on the Property in connection with its governmental or regulatory functions, that such equipment and/or the frequencies on which such equipment operates may change from time to time, such use of the Property by Lessor and any communications in connection with Lessor's governmental or regulatory functions are paramount over and superior to Lessee's operations. Notwithstanding anything in this Agreement to the contrary, any interference with Lessee's operations or Communication Facility caused by any communications equipment used by Lessor in its governmental or regulatory capacity in connection with its governmental or regulatory functions: (1) will not be a default under this Agreement; (2) will not entitle Lessee to demand a cure to such interference; and (3) will not entitle Lessee to bring any judicial action for any injunction. Notwithstanding the foregoing, Lessor agrees to reasonably cooperate with Lessee's efforts to locate the interference source and make a good faith effort to resolve the interference with Lessee's operations or Communication Facility in a manner that does not diminish Lessor's governmental or regulatory functions and use of its communications equipment within seventy-two (72) hours following notice from Lessee. The provisions in this section shall not preclude Lessee's right to seek relief from the FCC in accordance with the FCC's rules and regulations.

14. Taxes.

a. Title to Lessee's Equipment and Improvements. Lessee's Communication Facility, equipment and other improvements constructed, installed or placed on the Premises, Access Route or Utility Route by Lessee or at Lessee's request or direction will be and at all times remain Lessee's personal property and will not be deemed fixtures or real property for any purpose, whether such objects would be deemed fixtures or real property under applicable Laws or not. Lessor grants Lessee the right to remove all or any portion of the same from time to time during

the Term, Holdover Term and Restoration Period, in Lessee's discretion and without consent from Lessor.

b. Possessory Interest Taxes. Lessee understands and acknowledges that: (1) this Agreement and/or any improvements placed by or for Lessee on the Property may create a possessory interest, as defined in California Revenue and Taxation Code § 107, subject to taxation; (2) Lessee will be required to timely pay any and all such possessory interest taxes; and (3) any transfer, assignment or sublicense in connection with this Agreement, and any options to extend or renew this Agreement, may constitute a change in ownership for taxation purposes and therefore result in a revaluation for any possessory interest created under this Agreement. Lessee further acknowledges that Lessee will have no Claim for damages against Lessor for any possessory interest taxes levied against the Premises, Communication Facility or Lessee's improvements because it received actual notice that this Agreement may create a possessory interest and that Lessee would be solely liable for any and all taxes levied on such possessory interest.

c. Lessee's Tax and Assessment Obligations. Lessee agrees to pay when due and prior to delinquency any and all taxes, assessments, charges, excises and exactions whatsoever, which includes without limitation any possessory interest taxes (collectively, "**Impositions**"), that arise from or in connection with Lessee's uses on the Premises or the Communication Facility that may be imposed on Lessee under applicable Laws. Lessee shall not allow or suffer any lien for any Impositions to be imposed on the Premises or the Property. In the event that Lessor receives any Imposition notices on or in connection with the Premises or Communication Facility, Lessor shall promptly (but in no event later than thirty (30) calendar days after receipt) forward the same to Lessee, together with reasonably sufficient written documentation that details any increases in the taxable or assessable amount attributable to the Communication Facility.

d. Lessee's Right to Contest Taxes or Assessments. Lessee will have the right to contest any Impositions that Lessee disputes in good faith, so long as no lien attaches to the Property and Lessee complies with any bond, deposit, collateral or other requirements under applicable Laws.

15. Liens. Throughout the entirety of this Agreement, Lessee shall keep the entire Premises free and clear from all mechanics' liens, materialmen's liens, and other liens for any work or labor done, services performed, obligation incurred, or materials and appliances used or furnished for or in connection with any operation of Lessee, any repair, alteration, or addition which Lessee may make or permit or cause to be made, or any work or construction by, for, or permitted by Lessee on or about the Premises. Lessee shall cause and ensure that all construction shall occur lien-free and in compliance with all applicable federal, state, and local laws, ordinances, regulations, and government permit conditions. Lessee will inform all contractors and material suppliers that provide any work, service, equipment or material to Lessee in connection with the Premises that the Premises is public property not subject to any mechanics' liens or stop notices. If any Lessee contractor or material supplier files any lien or imposition that attaches to the Premises, Lessee shall promptly (but in no case later than thirty (30) days after discovery) cause such lien or imposition to be released. In the event that Lessee does not cause such lien or imposition to be released within the thirty (30) day period, Lessor will have the right, but not the obligation, to cause such lien or imposition to be released in any manner Lessor deems proper, which includes without limitation payment to the lienholder, with or without notice to Lessee. Lessee shall reimburse Lessor for all costs and expenses incurred to cause such lien or imposition

to be released (which includes without limitation reasonable attorneys' fees) within ten (10) days after Lessee receives a written demand from Lessor together with reasonable documentation to support such costs and expenses. Lessee shall indemnify, defend, and hold Lessor harmless against all such liens, claims of liens, and suits or other processes and procedures that pertain thereto. Lessee shall give Lessor ten (10) days' written notice prior to its commencement of construction or performance of any work on or about the Premises so Lessor shall have the opportunity to post notices of non-responsibility or other notices which may prevent a lien from attaching to Lessor interest in the Premises or the structure.

16. Default.

a. Material Default. A material default and breach under this Agreement ("**Default**") shall be deemed to occur when:

i. Lessee does not deliver any sums due under this Agreement within twenty (20) calendar days after receipt of written notice from Lessor;

ii. A defaulting Party does not observe or perform any non-monetary term under this Agreement within the time period as required in this Agreement or, if no time period is specified, not more than thirty (30) calendar days after receipt of written notice from the non-defaulting Party; provided, however, that no Default shall occur when the nature of the cure reasonably requires more than thirty (30) calendar days, the defaulting Party promptly commences to cure when it receives written notice from the non-defaulting Party, and the defaulting Party diligently prosecutes its cure to completion; or

iii. Lessee attempts in any manner to exclude Lessor from the Property, excluding the Premises, except as provided in this Agreement.

b. Sums Paid During Default. Neither Lessee's payment nor Lessor's or its Agents' acceptance of any Rent or any other sums due to Lessor or its Agents under this Agreement during any such Default will be deemed to cure any such Default, waive Lessor's right to demand material compliance with such obligation, term, covenant or condition or be deemed to be an accord and satisfaction for any Claim Lessor may have for further or additional sums.

c. Event of Default Costs. All costs reasonably incurred by the non-defaulting Party in connection with an Event of Default, as defined herein, of the other party, including, but not limited to, all costs, expenses and actual accountants' appraisers', attorneys' and other professional fees, and any collection agency or other collection charges, shall be due and payable by the defaulting Party to the non-defaulting Party within thirty (30) days following the defaulting Party's receipt of the non-defaulting Party's demand. For the purposes of the foregoing "**Event of Default**" shall mean the continuing default by a defaulting Party of its duties or obligations under this Agreement after receipt of written notice of the Default from the non-defaulting Party, and, if expressly applicable hereunder, the expiration of all applicable periods to cure the Default.

d. Cumulative Remedies. Except as may be specifically provided otherwise in this Agreement, any and all rights, benefits and/or remedies provided or afforded to either Party under this Agreement or any other instrument or document executed pursuant to this Agreement are and will be cumulative and not exclusive of any legal or equitable rights, benefits or remedies available to either Party under applicable Laws.

17. **Termination.** In addition to any other provision in this Agreement that authorizes Lessor or Lessee to terminate this Agreement, this Agreement may be terminated by either Lessor or Lessee upon thirty (30) days' written notice when the other remains in Default beyond any applicable cure period, as may be extended.

18. **Damage or Destruction of Premises.** If the Premises, in whole or in part, becomes damaged or destroyed due to any cause, Lessor will have no obligation to repair, rebuild or replace the damaged or destroyed Premises. If the Premises, in whole or in part, becomes so damaged or destroyed that it materially impairs Lessee's Permitted Use, and such damage or destruction resulted from a cause not attributable to Lessee or any other person or entity affiliated with Lessee or under Lessee's direction or control, Lessee may elect to terminate this Agreement within sixty (60) days after such damage or destruction occurs. In the alternative, Lessee may elect to continue this Agreement, including without limitation the obligation to pay Rent, and place and operate a temporary communication facility (e.g., a "cell on wheels") in a location mutually acceptable to the Parties until Lessee can resume operations of the Communication Facility at the Premises or an alternate location. Lessor shall bear no cost or expense to repair and restore any damage to the Premises, except any damage arising from Lessor's negligence or willful misconduct.

19. **Condemnation.**

a. **Permanent Takings.** If any entity with the power to condemn permanently takes any Premises in whole or in part, or if Lessor transfers the Premises (in whole or in part) to such entity in lieu of eminent domain, the following provisions will apply:

i. This Agreement will automatically terminate on the date the permanent taking or transfer occurs. Lessor will be entitled to any award paid or made in connection with the taking or any sums paid in lieu of such taking. Lessee hereby expressly waives any right or claim to any portion thereof, including any Claim for loss of business or goodwill. All damages, whether awarded as compensation for diminution in value of the Agreement or to the fee of the Premises, shall belong to Lessor. Lessee will have no Claim against Lessor for the value of any unexpired Term of this Agreement or otherwise except that Lessee may claim any portion of the award that is specifically allocable to Lessee's loss or damage to Communication Facility or other trade fixtures or personal property.

ii. If Lessor transfers the Premises (in whole or in part) to any entity with the power to condemn in lieu of eminent domain, the proceeds from such transfer shall be distributed in the same manner as in a condemnation.

iii. The Parties understand, acknowledge and agree that this Section 19(a) is intended to fully govern the Parties' rights and obligations in the event of a permanent taking. Each Party hereby waives and releases any right to terminate this Agreement in whole or in part under California Code of Civil Procedure §§ 1265.120 and 1265.130 and under any similar applicable Laws to the extent applicable to this Agreement.

b. **Temporary Takings.** Any taking that affects the Premises in whole or in part for less than ninety (90) days will have no effect on this Agreement, except that Lessee will be entitled to a pro-rata abatement in **or refund of** the Rent to the extent that such temporary taking materially impairs Lessee's use of the Premises. Furthermore, in the event that Lessor receives an award, if any, in connection with such temporary taking, Lessee will receive the portion from the award that

represents compensation for the use or occupancy of the Premises during the Term but not to exceed the Rent payable by Lessee for the period of the taking, and Lessor will retain the balance of the award.

20. Insurance. Lessee shall maintain during the Term of this Agreement insurance against Claims or injuries to persons or damages to property arising from or in connection with Lessee's operation and use of the Premises. The cost of such insurance shall be borne solely by Lessee. The insurance required by this Section 20 does not in any way limit Lessee's liability under this Agreement. Lessee shall maintain insurance as follows:

a. Commercial General Liability Insurance. Services Office Form CG 00 01, or at least as broad as, covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the occurrence limit. If Lessee's operations include work within 50 feet of a railroad right of way, Lessee shall have removed any exclusion on their liability policy limiting coverage for work near a railroad, or shall provide a Railroad Protective Liability policy in favor of Lessor. Limits for such coverage shall be no less than \$5,000,000. The required limits may be met by a combination of primary and excess or umbrella insurance.

The General Liability policy is to contain, or be endorsed to contain, the following provisions:

i. The City of Antioch, its officers, officials, Agents, employees and volunteers are to be covered as additional insureds by policy language or a separate written endorsement form reasonably acceptable to the City of Antioch with respect to liability arising out of work or operations performed by or on behalf of Lessee including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement of the Lessee's insurance at least as broad as ISO Form CG 20 10. The coverage shall contain no special limitations on the scope of protection afforded to the City of Antioch, its officers, officials, Agents, employees or volunteers.

ii. The Lessee's insurance coverage shall be primary insurance with regard to the City of Antioch, its officers, officials, Agents, employees and volunteers. Any insurance maintained by the City of Antioch, its officers, officials, Agents, employees and volunteers shall be in excess of Lessee's insurance and shall not contribute to it.

b. Property Insurance. The Lessee will also maintain property insurance against all risks of loss to any Lessee improvement or betterment at full replacement costs with no coinsurance penalty provision.

c. Worker's Compensation Insurance & Employer's Liability. Lessee shall also maintain Workers' Compensation Insurance as required by the State of California with statutory limits and Employer's Liability Insurance with limits no less than \$1,000,000 per accident for bodily injury or disease.

d. General Requirements.

i. Any deductibles or self-insured retentions must be declared to the Lessor prior to the full execution of this Agreement. After the full execution of this Agreement, Lessee shall provide prompt written notice to Lessor if any such deductibles or self-insured retentions change.

ii. Insurance is to be placed with insurers with a Best's rating of no less than A-:VII and authorized to do business within the State of California.

iii. Lessee shall furnish to the Lessor certificates of insurance and endorsements as required by this clause. All certificates and endorsements are to be received and approved by the Lessor before work commences, which approval may not be unreasonably withheld or delayed. However, failure to obtain the required documents prior to the work beginning shall not waive Lessee's obligation to provide them. The Lessor reserves the right to require endorsements, required by these specifications, at any time.

iv. Each liability insurance policy required by this Section 20 shall be endorsed to provide Lessor with thirty (30) days' prior written notice of cancellation by the insurer for any reason other than non-payment of premium and such notice shall be mailed directly to the Lessor.

v. Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of the Lessee may acquire against the Lessor by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Lessor has received a waiver of subrogation endorsement from the insurer.

vi. Lessor reserves the right to reasonably modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance, upon a minimum of thirty (30) days after Lessee's receipt of written notice from Lessor; provided, however, that Lessor may not exercise its right to modify these requirements more than once every three (3) years from the date of the last modification.

21. Assignment; Sublease.

a. Assignments and Transfers. Lessee may not assign or transfer this Agreement in whole or in part. Any assignment or transfer of this Agreement in whole or in part shall require Lessor's prior written approval, which approval Lessor shall not unreasonably withhold, delay or condition. Any assignment or transfer that violates this Section 21(a) shall be deemed void and without any legal effect whatsoever, and Lessor shall have the right (but not the obligation) to terminate this Agreement upon written notice to Lessee.

b. Sublease; Collocation. Except as provided in Section 2, Lessee may not sublease, sublicense, allow collocation, or in any other manner allow a third Party to occupy or use the Premises, or any portion thereof, without Lessor's prior written consent, which Lessor may withhold, condition or deny for any or no reason. Any act that violates this Section 21(b) shall be deemed to be a material default by Lessee and Lessor shall have the right (but not the obligation) to exclude any unauthorized third parties from the Property. Any request for collocation shall require a separate negotiation and amendment of this Agreement, at Lessor's sole discretion.

c. Continuing Obligations after Transfer. No assignment, sublease or other transfer, whether with Lessor's consent or not, will relieve Lessee from any obligation under this Agreement unless: (1) Lessor expressly releases Lessee from such obligations in a written release signed by the City Manager; (2) Lessee's transferee demonstrates the present ability to perform such obligations to the City Manager's satisfaction; and (3) Lessee's transferee expressly and irrevocably assumes such obligations in a writing signed by Lessee's transferee. Any assignment, sublicense or other transfer that is not in compliance with this Section 21 will be deemed to be a material default by Lessee. Any payment by any third-party person or entity accepted by Lessor in connection with this Agreement will not be deemed to waive any provision or obligation in this Agreement or be construed to be consent by Lessor to any assignment or sublease.

22. **Subordination.** This Agreement shall be subordinate to each and every deed of trust, mortgage or other security instrument which may now or hereafter affect the Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof, provided that any mortgagee shall recognize the validity of this Agreement in the event of foreclosure. In confirmation of such subordination, Lessee shall execute and deliver promptly any certificate of subordination that Lessor may request, provided that such certificate acknowledges that this Agreement remains in full force and effect. In the event that the Premises is or shall be encumbered by such a mortgage, upon Lessee's written request, Lessor shall, at Lessee's sole cost and expense, use commercially reasonable efforts obtain and furnish to Lessee a non-disturbance agreement for each such mortgage. If Lessor fails to provide any non-disturbance agreement pursuant to the foregoing within a reasonable period of time, Lessee may withhold and accrue, without interest, the Rent until such time as Lessee receives all such documentation. If any mortgagee or lender succeeds to Lessor's interest in the Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Lessee shall attorn to and recognize such successor as Lessor under this Agreement.

23. **Indemnification; Limitation of Liability.**

a. General Indemnification Obligations. Lessee, for itself and its successors and assigns, shall indemnify, defend and hold Lessor, its Agents, Invitees, elected and appointed officials and volunteers (the "**Indemnified Lessor Party(ies)**") harmless from and against any and all Claims incurred in connection with or arising in whole or in part from any act or omission by Lessee or its Agents or Invitees in connection with this Agreement or the Communication Facility, whether any negligence may be attributed to any Indemnified Lessor Parties or not, whether any liability without fault is imposed or sought to be imposed on any Indemnified Lessor Parties or not, but except to the extent that such Claim is directly and exclusively caused by Lessor's sole active negligence or willful misconduct or, as described in Section 13.b., interference with Lessees' Communication Facility caused by any communications equipment used by Lessor in its governmental or regulatory capacity in connection with its governmental or regulatory functions. Lessee's obligations under this Section 23 include, without limitation, all reasonable fees, reasonable costs and expenses for attorneys, consultants and experts, and Lessor's actual costs to investigate and defend against any Claim. Lessee expressly acknowledges and agrees that: (a) Lessee has an immediate and independent obligation to defend any Indemnified Lessor Parties from any Claim that actually or potentially falls within this Section 23, even when the allegations in the Claim are or appear to be groundless, fraudulent or false; and (b) Lessee's obligations arise at the time any Indemnified Lessor Parties tender a Claim to Lessee and continue until such

Claim's final, non-appealable resolution. Lessee's obligations under this Section 23 shall survive the expiration or earlier termination of this Agreement.

b. Lessor's Indemnity. The absence of Lessor's indemnification of Lessee under this Agreement shall not be construed to limit or waive any statutory or legal rights in equity or at law that Lessee may have against Lessor for (i) the negligent, willful or intentional acts or omissions of Lessor or Lessor's Agents in connection with this Agreement; (ii) Lessor's breach of this Agreement; or (iii) a breach of any representation, warranty or covenant of Lessor contained or incorporated in this Agreement.

c. Negligent or criminal acts by members of the public using the Property shall not be deemed to be the liability or responsibility of Lessor or Lessee.

d. Limitation of Liability. Lessee expressly acknowledges and agrees that the Rent or any other sums payable to Lessor under this Agreement do not consider any potential liabilities for consequential or incidental damages. Lessor would not willingly enter this Agreement without a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages due to Lessor's or its Agents' acts or omissions, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting Lessee's indemnification obligations or other waivers contained in this Agreement and as a material consideration for this Agreement, Lessee fully releases, waives and discharges forever any and all Claims against Lessor for consequential and/or incidental damages that arise from or in connection with this Agreement, which includes without limitation any lost profits from disruption to the Communication Facility, any interference with uses or activities conducted by Lessee under this Agreement, from any cause whatsoever, and whether due to Lessor's or its Agents' active or passive negligence or willful misconduct or not, and covenants not to sue for such damages Lessor, and the City of Antioch's other departments, and all City of Antioch agencies, officers, directors and employees, and all persons acting by, through or under them.

e. No Personal Liability. Neither Party shall hold any employees, officers, officials, volunteers, or contractors of the other Party personally liable for any Default or liability under this Agreement. No elected or appointive board, agency, member, officer, employee or other Agent of Lessor will be personally liable to Lessee, its successors and assigns, in the event of any Default or breach by Lessor or for any amount which may become due to Lessee, its successors and assigns, or for any obligation of Lessor under this Agreement.

f. This Section 23 shall survive the expiration or earlier termination of this Agreement.

24. Hazardous Materials.

a. Lessee will not, nor shall Lessee allow others under its control or authority to place or use any flammable or Hazardous Materials on the Premises in any manner that violates any federal, state, or local law, regulation, rule, policies, or order that pertains to flammable or Hazardous Materials, except for those contained in its back-up power batteries (lead acid batteries), backup power generator and fuel storage tank (if applicable), and common materials used in telecommunications operations, such as cleaning solvents, all if properly handled. Lessee shall handle any Hazardous Materials it brings onto the Premises in accordance with all applicable federal, state and local laws and regulations.

b. Lessee agrees to defend, indemnify and hold harmless Lessor and its officers, officials, Agents, employees, and volunteers against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach by Lessee or parties acting under or on behalf of Lessee in their use of flammable or Hazardous Materials on the Property, except in the event of Lessor's sole negligence or willful misconduct.

c. "**Hazardous Materials**" shall mean hazardous or radioactive material, polychlorinated biphenyls, friable asbestos or other hazardous or medical waste substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or by any other federal, state or local law, statute, rule, regulation or order (including any Regulatory Approvals) concerning environmental matters, or any matter which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of a material safety data sheet.

d. This Section 24 shall survive the expiration or earlier termination of this Agreement.

25. Public Record Disclosure. Lessee acknowledges that Lessor is a public entity under the laws of the State of California. Furthermore, the Parties acknowledge that this Agreement constitutes a public record that Lessor must publicly disclose under (1) the California Public Records Act, California Government Code sections 6250 *et seq.*; (2) Title 17, California Code of Regulations sections 91000 *et seq.*; (3) Article I, section 3, of the California State Constitution; and (4) any other law or regulation that may require public entities to disclose public records.

26. Bankruptcy.

a. In the event a receiver is appointed in any bankruptcy proceeding or action to which Lessee is a Party who claims authority to take possession or control of the Premises or the business conducted thereon, or any action taken or offered by Lessee under any insolvency or bankruptcy action, such action shall constitute a material breach of this Agreement by Lessee, and this Agreement shall not be treated as an asset of Lessee. In such an event, this Agreement may be terminated, subject to any applicable cure periods, unless Lessee provides Lessor with assurances that it intends to cure the Default.

b. Lessor and Lessee expressly intend, agree, and acknowledge that in the event that Lessee becomes a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* ("**Bankruptcy Code**"), this Agreement is and shall be treated for all purposes and considered for all intents as an unexpired lease of nonresidential real property for purposes of Section 365 of the Bankruptcy Code, 11 U.S.C. § 365 (as may be amended or superseded), and subject to the provisions of 11 U.S.C. § 365(d)(3) and 11 U.S.C. § 365(d)(4) (as may be amended or superseded).

c. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act to have assumed all of the obligations of Lessee arising under this Agreement both before and after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor a written instrument that confirms such assumption. Any monies or other considerations payable or otherwise to be delivered in

connection with such assignment shall be paid to Lessor, shall be Lessor's exclusive property, and shall not constitute property of the Lessee or of the estate of Lessee within the meaning of the Bankruptcy Code. Any monies or other considerations that constitutes Lessor's property under the preceding sentence not paid or delivered to Lessor shall be held in trust for the benefit of Lessor and be promptly paid to Lessor.

27. Relocation. Lessee acknowledges that the fundamental and paramount use of the Property is to serve as a water tank site and that this Agreement is granted and renewed based on the fact that the location of the Premises and Communication Facility does not now or in the future interfere with the fundamental and paramount use of the Property.

a. **Temporary Relocation.** Lessee, at Lessee's sole cost and expense, agrees to temporarily power down and temporarily relocate the Communication Facility or a portion thereof to a mutually agreed upon location on the Property if access underneath the equipment or improvements is reasonably required to facilitate Lessor's performance of maintenance, repair or similar work at the Property; provided, however, that Lessor gives Lessee at least sixty (60) days' prior written notice. Notwithstanding the foregoing, in the case of a bona fide emergency which is reasonably likely to result in damage or injury to persons, the Property or the water tank, Lessor will provide the greatest amount of notice reasonably possible under the circumstances.

b. **Permanent Relocation.** If Lessor desires to repair, redevelop, modify, remodel or in any way alter Lessor's improvements on Premises or the Property to accomplish a public or governmental purpose, including but not limited to the provision of water services to the public ("**Redevelopment**"), and such Redevelopment necessitates the permanent relocation of the Communication Facility or a portion thereof, Lessee agrees to cooperate with Lessor regarding such Redevelopment and Lessor shall use commercially reasonable efforts to accommodate Lessee's continuing use of the Property. Lessor shall provide Lessee at least ninety (90) business days prior written notice and Lessee shall relocate the Communication Facility to another mutually agreed upon location at Lessee's sole cost and expense. The Parties shall amend this Agreement to reflect such relocation.

c. **Temporary Facilities.** If necessary to prevent disruption in the continuous operation of Lessee's network in the area served by the Communication Facility at the Premises during any relocation, Lessee may place and operate a temporary communication facility (e.g., a "cell on wheels") in a location mutually acceptable to the Parties until Lessee can resume operations of the Communication Facility at either the original Premises or the new location.

28. Notices.

a. Any notice or demand required to be given herein shall be made in writing and sent by United States Postal Service certified or registered mail, return receipt requested, postage prepaid, or nationally recognized overnight courier service, courier fee prepaid, to the address of the respective Parties set forth below in this subsection (a):

Lessor: City of Antioch, California
Attn: City Manager's Office – LEGAL Notice
P.O. Box 5007
Antioch, CA 94531

With a true and complete copy to:

City of Antioch, California
Attn: City Attorney – LEGAL Notice
P.O. Box 5007
Antioch, CA 94531

Lessee: East Bay Regional Communication Systems Authority
Attn: Executive Director
4985 Broder Blvd
Dublin, CA 94568

With a true and complete copy to:
East Bay Regional Communication Systems Authority
Attn: Executive Director
4985 Broder Blvd
Dublin, CA 94568

All notices, demands or other correspondence in connection with this Agreement will be deemed to have been delivered upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing or the date an attempt to make delivery fails if undeliverable to the specified address. Any copies required to be given constitute an administrative step for the Parties' convenience and not actual notice. A Party may change its notice addresses from time-to-time upon at least thirty (30) days' prior written notice to the other Party's then-current notice address.

b. Lessor's designated payee is:

City of Antioch
A/R Finance Department
Attn: Finance Director
P.O. Box 5007
Antioch, CA 94531

Lessor may from time to time designate any other payee and address for the payee by written notice to Lessee.

29. Miscellaneous.

a. Interpretation; Construction.

i. The recitals set forth in this Agreement are true and correct and incorporated herein by this reference.

ii. The section captions in this Agreement are included for the Parties' convenience and reference and do not define or limit the scope or intent of any provision in this Agreement.

iii. This Agreement has been jointly negotiated and, although formulated at the outset by counsel for Lessor, the Agreement has been reviewed by counsel for Lessee, and each such counsel has participated in the preparation of the final Agreement. The language used in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party, and it is agreed that no provision hereof shall be construed against any Party hereto by virtue of the activities of that Party or such Party's attorneys.

iv. Inclusive terms and/or phrases, which includes without limitation the terms and/or phrases "including," "such as" or similar words or phrases that follow any general or specific term, phrase, statement or matter may not be construed to limit the term, phrase, statement or matter to the stated terms, statements or matters, or the listed items that follow the inclusive term or phrase, whether any non-limitation language or disclaimers, such as "including, but not limited to" and/or "including without limitation" are used or not. Rather, the stated term, phrase, statement or matter will be interpreted to refer to all other items or matters that could reasonably fall within such term, phrase, statement or matter given its broadest interpretation.

v. References in this Agreement to "days" mean calendar days, unless specifically provided otherwise. A "business day" means a day other than a Saturday, Sunday or a bank or City of Antioch holiday. If the last day in any period to give notice, reply to a notice or to undertake any other action occurs on a day that is not a business day, then the last day for giving notice, replying to the notice or undertaking any other action will be the next business day.

vi. Unless expressly provided otherwise, references in this Agreement to codified statutes and regulations will be interpreted to refer to such statutes and regulations as the same may be duly amended, recodified or superseded.

vii. Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all their correlated forms (e.g., the definition for "indemnify" applies to "indemnity," "indemnification," etc.)

b. Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

c. Binding Effect. Each Party represents and warrants that said Party has full power and authority, and the person(s) executing this Agreement have full power and authority, to execute and deliver this Agreement, and that this Agreement constitutes a valid and binding obligation of each Party, enforceable in accordance with its terms. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.

d. No Third-Party Beneficiary. This Agreement is made solely and specifically between and for the benefit of the Parties, and their respective successors and assigns and no other party shall have any rights, interest or claims or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

e. Quiet Enjoyment. Lessor covenants that Lessee, on timely paying the correct Rent or Holdover Rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

f. Time for Performance. Time is of the essence under this Agreement and in the performance of every term, covenant and obligation contained herein.

g. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of laws. Sole venue for any action arising out of or connected with this Agreement shall reside exclusively in the Superior Court of the County of Contra Costa (“**Court**”). All Parties to this Agreement agree to be subject to the jurisdiction of the Court, and waive all claims whatsoever that would defeat the jurisdiction of the Court to hear and adjudicate any action arising out of or connected with this Agreement.

h. Attorneys’ Fees. The prevailing Party in any final or non-appealable decision on the merits arising hereunder may be entitled to its reasonable attorneys’ fees and costs, including reasonable witness and associated fees, in the sole discretion of the Court. With respect to any provision in this Agreement providing for payment of attorneys’ fees, such fees shall be deemed to include reasonable fees incurred through any applicable appeal process and shall include, but not be limited to, fees attributable to legal services provided by any in-house counsel and staff to the prevailing or indemnified Party. For purposes of this Agreement, the services of attorneys and their staff shall be valued at only the average rates for independent legal counsel prevailing in the City of Antioch, California.

i. Survival. Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

j. Recording. Lessor may elect to have either this Agreement or a short form memorandum hereof recorded if Lessor deems necessary for compliance with the requirements of California Government Code § 37393 and Lessee shall cooperate with Lessor by executing, acknowledging, recording and delivering such copy of this Agreement or memorandum of Agreement at Lessee’s sole cost and expense. Except as provided in the foregoing sentence or as may be otherwise provided within this Agreement, Lessee shall have no right to record any other documents or instruments against Lessor’s title to the Property without Lessor’s prior written consent which may be withheld, conditioned or denied by Lessor for any or no reason in Lessor’s sole discretion. Upon termination or expiration of this Agreement or any Holdover Term, Lessee, at its sole cost and expense, shall execute and cause to be recorded a legally-sufficient document to release and terminate all of Lessee’s rights in the Property in favor of Lessor, and provide Lessor with the recorded original (“**Release and Termination of Agreement**”). In addition, Lessee hereby appoints Lessor its irrevocable agent for the sole purpose to cause a Release and Termination of Agreement to be created and recorded in the event that Lessee fails to perform the obligations required herein and after written notice from Lessor. The Parties specifically recognize that Lessor has the specific power coupled with the interest in the Property to do all those things set out in and pursuant to this section after thirty (30) days’ written notice to Lessee.

k. Entire Agreement; Amendments. This Agreement constitutes the entire agreement and understanding between the Parties regarding Lessee’s lease of the Premises and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There

are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by authorized representatives of both Parties.

l. Compliance with Laws. The Parties shall at all times comply with all federal, state, and local laws and statutes, rules and regulations, and judicial or administrative tribunal orders that in any manner affect the performance of this Agreement. The Parties intend this section to include, without limitation, any law that requires a license or nondiscriminatory employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin, or other prohibited basis.

m. Government Claims. Any Claim for money damages by Lessee against Lessor hereunder shall be subject to Section 3-13.01 of the City of Antioch Municipal Code, and the California Government Code §§ 810 *et seq.*

n. False Claims Act. Lessee agrees that any Claim submitted to Lessor must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Lessee acknowledges that if a false claim is submitted to Lessor by Lessee, it may be considered fraud and Lessee may be subject to criminal prosecution. Lessee acknowledges that the False Claims Act, California Government Code §§ 12650 *et seq.*, applies to this Agreement and provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If Lessor seeks to recover penalties pursuant to the False Claims Act, it is entitled to seek to recover its litigation costs, including attorney's fees. Lessee acknowledges that the filing of a false claim may subject Lessee to an administrative debarment proceeding as the result of which Lessee may be prevented to bid on any public work or improvement for a period of up to five (5) years.

o. Waivers.

i. No provision of this Agreement shall be deemed to have been waived by a Party unless the waiver is in writing and signed by the Party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the Parties in the implementation or administration of the terms of this Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Agreement.

ii. Any waiver by either Party of any provision of this Agreement shall not be deemed to constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver

p. Lessor Statutory Remedy. The Lessor has the remedy described California Civil Code Section 1951.4 (Lessor may continue this Agreement in effect after Lessee's breach and abandonment and recover Rent as it becomes due, if Lessee has the right to sublet or assign, subject only to reasonable limitations).

q. No Relocation Assistance. This Agreement does not create any right in Lessee to receive any relocation assistance or payment for any reason under the California Relocation Assistance Law (California Government Code §§ 7260 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601 *et seq.*), as either may be amended or superseded, or any similar Laws upon or after any termination. To the extent that any such laws may apply, Lessee waives, releases and relinquishes forever any and all Claims that it may have

against Lessor for any compensation from Lessor except as provided in Section 19 (Condemnation).

r. Estoppels. Lessee, at any time and from time-to-time on not less than thirty (30) days' notice from Lessor, shall execute, acknowledge and deliver to Lessor or its designee, an estoppel certificate which states: (1) that Lessee has accepted the Premises (or, if Lessee has not done so, that Lessee has not accepted all or any part of the Premises and specifying the applicable portions of the Premises and reasons for non-acceptance); (2) the Commencement Date, Effective Date and expiration date for this Agreement; (3) that this Agreement is unmodified and in full force and effect or, if modified, the manner in which this Agreement is modified; (4) whether any defenses then exist against the enforcement of any of Lessee's obligations under this Agreement (and if so, specifying the same); (5) whether any of Lessor's obligations under this Agreement are outstanding (and if so, identifying any Lessor obligations that Lessee believes that Lessor has failed to meet); (6) the dates, if any, to which Rent has been paid; (7) the number and identity of all sublicensees, if any, on the Premises, and the dates on which such sublicensees commenced and terminated their use or occupancy on the Premises; and (8) any other information that may be reasonably required by any such persons.

s. Brokers. The Parties represent to each other that neither has had any contact, dealings or communications with any broker in connection with this Agreement, whose commission, if any, would be paid pursuant to a separate written agreement between such broker and such Party with which such broker contracted. If any broker perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, Lessee shall indemnify Lessor from all Claims brought by the broker. The representations and indemnification obligations in this section shall survive the expiration or earlier termination of this Agreement.

t. Submission of Agreement. The submission of this Agreement to the Parties or the City Council of the City of Antioch for consideration does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by both of the Parties' respective authorized representatives.

u. Execution; Counterparts. The Parties warrant and represent to each other that the person who executes this Agreement on their behalf has the full power and authority to enter this Agreement, and that any approvals or authorizations necessary to enter this Agreement have been obtained. This Agreement may be executed simultaneously or in one or more counterparts. If the Parties elect to execute this Agreement in one or more counterparts, Lessee shall execute first, Lessor shall execute second, each executed counterpart will be deemed to be an original, but all counterparts taken together will constitute one and the same agreement.

*****SIGNATURES ON NEXT PAGE*****

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below and acknowledge that this Agreement is effective as of the Effective Date set forth above.

Lessor:

City of Antioch, a California municipal corporation

By: _____

Bessie Marie Scott
City Manager

Date: _____

ATTEST:

By: _____

Melissa Rhodes
City Clerk

APPROVED AS TO FORM:

By: _____

Derek P. Cole
Interim City Attorney

Lessee:

East Bay Regional Communications System Authority, a California joint powers authority

By: _____

Print Name: Jon King _____

Print Title: Board Chair _____

Date: _____

[Lessee to insert its internal site and/or contract identification information, if any]

EXHIBIT “A”

DESCRIPTION OF PROPERTY

The Property of which Premises are a part is described as follows:

[insert legal description]

[Lessee to insert its internal site and/or contract identification information, if any]

EXHIBIT “B”

DESCRIPTION OF PREMISES, ACCESS ROUTE AND UTILITY ROUTE

[insert legal description and/or survey]

EXHIBIT “C”

LESSEE’S COMMUNICATION FACILITY

Construction drawings dated [insert], rev. [insert], appear behind this cover ([#] additional pages).