To: Facilities and Technology Committee

From: Rocky Medeiros, District Security Consultant

Date: May 22, 2019

Re: Emergency Communications Project

On January 8, 2019, the Board approved the District to upgrade its emergency communication system by installing emergency control radios at 15 sites throughout the District. The total amount approved for this project was $92,877.83. These emergency control radios will provide direct connectivity to the San Leandro Police Department's Dispatch Center in the event of an active shooter or other catastrophic event. This emergency communication system will be connected to the East Bay Regional Communication System that was established as the primary system for first responder organizations throughout the Bay Area. We have already purchased the radios in the amount of $52,334.39 from Motorola. This price includes installation and training. The District advised the Board that we would return at a later date to obtain approval to join the East Bay Regional Communications System Authority (EBRCSA).

The District is now seeking approval to join the East Bay Regional Communication System Authority (EBRCSA) which is a requirement in order to be on a regional first responder communication network. EBRCSA is a Joint Powers Authority (JPA) that controls and manages the infrastructure of the East Bay Regional Interoperable Communications System in Alameda County and Contra Costa County. The costs associated with joining the EBRCSA is in two parts. Part 1 includes a one-time membership fee (fee established by the JPA to join the system) and a one-time debt service fee (fee established to pay down the system's debt service). These one-time fees apply to each radio on the system. Part 2 includes a monthly per radio operating charge and is an annual on-going cost.

EBRCSA COSTS

One Time Cost

Membership Fee (15 radios @ $200) = $3,000

Debt Service Fee (15 radios @ $1,400) = $21,000

Total One Time Cost = $24,000

Annual On-Going Cost

Per Radio Operating Fee (15 radios @ $28.00 per month x 12 months) = $5,040

Total Annual On-Going Cost = $5,040

Total EBRCSA Costs for 2019 = $29,040.00

Action Requested: The District is seeking approval to join the EBRCSA by executing the East Bay Regional Communications System Authority's Project Operating Agreement and paying the required fees of $29,040.00 from the General Fund.

These fees combined with the initial radio purchase of $52,334.39 puts the total cost of the project thus far at $81,374.39. The District is awaiting cost estimates for radio/console programming. These costs are projected to be within the total project cost of $92,877.83.

EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

PROJECT OPERATING AGREEMENT

This PROJECT OPERATING AGREEMENT (the "Operating Agreement"), made and entered into as of June 1, 2019, (the "Effective Date"), is by and between the East Bay Regional Communications System Authority, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (the "Authority"), and the public agency set forth on the signature page hereof (the "User").

WITNESSETH:

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

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

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

Section 1.01. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Operating Agreement" means this operating agreement, dated as of January 1, 2019, including any amendments and supplements hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

OPERATION OF THE FACILITIES

Section 2.01. Operation of the Project: Title.

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

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

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

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

Section 2.02. Modification of Project.

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

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

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

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

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

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

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

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

Section 2.03. Bond Issuance.

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

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

Section 2.04. Term.

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

ARTICLE III

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

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

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

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

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

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

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

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

Section 3.02. Source of Payments: Budget and Appropriation.

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

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

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

Section 3.03. Reserved.

Section 3.04. Abatement of Payment of User Payments.

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

Section 3.05. Receipt and Deposit of User Payments.

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

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

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

ARTICLE IV

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 4.01. Compliance with Operating Agreement.

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

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

Section 4.02. Against Encumbrances.

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

Section 4.03. Against Sale or Other Disposition of Property.

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

Section 4.04. Against Competitive Project.

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

Section 4.05. Tax Covenants.

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

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

Section 4.06. Access to the Project.

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

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

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

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

Section 4.08. Payment of Claims.

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

Section 4.09. Compliance with Contracts.

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

Section 4.10. Insurance.

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

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

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

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

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

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

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

Section 4.11. Books and Accounts; Statements.

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

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

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

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

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

Section 4.13. Amount of Service and Operating Payments.

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

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

Section 4.14. Operation of Project.

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

Section 4.15. Reserved.

Section 4.16. Further Assurances.

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

Section 4.17. Eminent Domain Proceeds.

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

Section 4.18. Use of Eminent Domain.

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

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

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

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

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

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

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

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

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

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

Section 4.20. Representations, Covenants and Warranties of User.

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

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

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

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

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

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

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

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

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default.

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

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

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

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

Section 5.02. Remedies of the Authority.

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

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

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

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

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

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

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

Section 5.03. Non-Waiver.

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

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

Section 5.04. Remedies Not Exclusive.

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

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

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

Section 5.06. Trustee and Bond Owners to Exercise Rights.

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

ARTICLE VI

MISCELLANEOUS

Section 6.01. Prepayment.

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

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

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

Section 6.02. Benefits of Operating Agreement Limited to Parties.

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

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

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

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

Section 6.04. Waiver of Personal Liability.

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

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

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

Section 6.06. Partial Invalidity.

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

Section 6.07. Assignment.

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

Section 6.08. Net Contract.

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

Section 6.09. California Law.

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

Section 6.10. Notices.

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

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

User: San Leandro Unified School District
Kevin Collins, Ed.D
Assistant Superintendent
Business and Operations
835 E. 14th Street Suite 200
San Leandro, CA 94577
510-667-3504

Section 6.11. Effective Date.

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

Section 6.12. Execution in Counterparts.

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

Section 6.13. Amendments.

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

No such amendment shall adversely affect the rights, obligations, immunities or indemnities of the Trustee hereunder without the Trustee's written consent. The Authority shall obtain and cause to be filed with the Trustee an opinion of Bond Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment have been satisfied. Promptly following the effective date of any amendment or modification pursuant to this Section, the Authority shall mail written notice thereof to each rating agency which then maintains a rating on the Bonds.

Section 6.14. Business Days.

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

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

[Signature Pages to Follow.]

AUTHORITY:

East Bay Regional Communications System Authority

By: _____
Gregory J. Ahern, Chair

APPROVED AS TO FORM:

By: _____
Robin Donoghue, Attorney at Law

USER:

San Leandro Unified School District

By: _____
Kevin Collins, Ed.D
Assistant Superintendent, Business and Operations

ATTEST:

By: _____
[Name and Title]

APPROVED AS TO FORM:

By: _____
[Name and Title]

EXHIBIT A

SERVICE AND OPERATING PAYMENT AMOUNTS

AS OF FISCAL YEAR 2018-2019

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

Payment Category #1 – If the User prepays its Service Payment it will only be responsible for its Operating Payments.. The amount to prepay the Service Payment is $1,400.00 per radio placed in service. The Operating Payment for a User that has prepaid its Service Payment is estimated to be $28 per month per radio subscribed to the Project. The Authority will notify the User of the amount of the Operating Payment in January of the fiscal year preceding the fiscal year for such payment. Operating Payments will be due by August 31st of the fiscal year in which such payment is due.

Payment Category #2 – If the User does not prepay its Service Payment, it will be responsible for both the Service Payment and Operating Payment components of the User Payment. Such User will pay a combined User Payment that includes the Service Payment and Operating Payment components, with a combined payment of $43 per month for each radio it subscribes to the Project. The Authority will notify the User of the amount of the required User Payment in January of the fiscal year preceding the fiscal year for such payment. The User Payment will be due by August 31st of the fiscal year in which such payment is due.

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

User: _____

Amount of Prepayment of Service Payments (if applicable):

_____

Date of Prepayment of Service Payments (if applicable):

_____

Amount of Initial Payment (if applicable): _____

Date of Payment of Initial Payment (if applicable): _____

Radio count: _____

EXHIBIT B

PROJECT DESCRIPTION

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

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

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