

# LICENSE AGREEMENT

This License Agreement ("**Agreement**") is entered into as of February 1, 2017, ("**Effective Date**") by and between the East Bay Regional Park District, a California special district ("District"), whose address is 2950 Peralta Oaks Court, P.O. Box 5381, Oakland, California 94506-0381, and Contra Costa County ("**County**"), a political subdivision of the State of California, with an office at 255 Glacier Drive, Martinez, CA 94521. The District and the County are each sometimes referred to herein as a "**Party**" and together as the "**Parties**."

## **RECITALS**

- A.** The District acquired Tilden Regional Park from East Bay Municipal Utility District ("**EBMUD**") by deed, dated July 1, 1940. The deed requires the District to use the property only for park, recreation, environmental purposes, and public use associated therewith.
- B.** On May 13, 1969, EBMUD agreed to allow a portion of Tilden Park, on the southerly portion of Bald Peak ("**Vollmer Peak**" or "**Premises**"), as shown in **Exhibit A** attached hereto and incorporated herein by this reference, to be used as a telecommunication site for public agencies. The District is authorized to use, and to license the use of, the Premises to other governmental agencies exclusively for the purpose of operating, managing, and maintaining a California multiple radio/microwave communications system for use by public agencies only ("**Licensed Purposes**").
- C.** The Premises are accessible by means of the existing access road ("**Access Road**") which leads from the intersection of Grizzly Peak Boulevard and South Park Drive at the entrance to East Bay Regional Corp Yard to the Premises. The District owns the Access Road in fee title.
- D.** The County has operated, maintained, and managed a sixty-foot telecommunications tower ("**Tower**") and related telecommunications facilities and appurtenant structures ("**Related Facilities**"), on the Premises, and has used the Access Road to access the Premises. The Tower and Shelter are shown in **Exhibit B** attached hereto and incorporated herein by this reference. The County also has used six racks within a District-owned telecommunications equipment shelter ("**Shelter**") located on the Premises, as more particularly described in **Exhibit D** attached hereto and incorporated herein by this reference.
- E.** The County licenses the use of its Tower and the Related Facilities to the District and other public agencies under separate licenses (each a "**Tower License**") between the County and each public agency. The District licenses the use of the Shelter to each public agency that desires to maintain ancillary equipment in the Shelter.
- F.** The County desires to continue to license from District, and District desires to continue to grant to the County a license to: use of the Premises for operation, maintenance, and management of the Tower; use of certain rack space in the Shelter; and use of the Access Road.

## **AGREEMENT**

**NOW, THEREFORE,** for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**I. GRANT OF LICENSES.** In consideration for County's performance of its obligations under this Agreement, the District hereby grants to the County the following licenses (together "**Licenses**"):

- A. A non-exclusive license to occupy and use the Premises, as shown on **Exhibit A**, for the operation, maintenance, and management of the Tower and Related Facilities, including the right, subject to the requirements of Section 3, below, to grant to other public agencies Tower Licenses to occupy and use the Tower for the Licensed Purposes.
- B. A non-exclusive license to occupy and use the Shelter, and for the exclusive use of six (6) racks within the Shelter, as more particularly described in **Exhibit D**.
- C. A non-exclusive license to use the Access Road, to access the Premises.

**2. PARTIES' OBLIGATIONS.**

- A. The County shall not use the Premises in any manner that is inconsistent with the stated Licensed Purposes. No other use of the Premises is permitted.
- B. The County shall be responsible for the operation, maintenance, and management of the Tower and Related Facilities on the Premises.
- C. The District and the County agree to manage and maintain the Premises in accordance with the terms of **Exhibit C** attached hereto and incorporated herein by this reference.
- D. As partial consideration for the Grant of Licenses in Section I, above, the County shall provide space on the Tower for the District's telecommunications equipment at no charge to the District.
- E. The District shall be solely responsible for the operation, maintenance, and management of the Access Road.
- F. The County shall provide copies of all third party Tower Licenses to the District.

**3. CONSENT REQUIRED.**

- A. Before the County grants a new Tower License, the County shall provide the District information concerning the agency that desires to license space on the Tower from the County, and the location and description of the equipment to be installed on the

Tower. This information will be reviewed by the District and EBMUD. The County shall be responsible for forwarding this information to EBMUD.

- B. Within 30 days after the District's receipt of the information specified in Section 3.A., above, the District shall notify the County in writing whether the District consents to the new Tower License. The District shall not withhold consent for any new Tower License that is consistent with the Licensed Purposes. If the District does not provide the written notice within the above 30-day period, the new Tower License shall be deemed consented to by the District. The County shall provide a copy of the new Tower License to the District within 30 days of execution.
- C. The requirements of this Section 3 only apply to new Tower Licenses first granted after the Effective Date of this Agreement. The requirements of this Section 3 shall not apply the renewal or extension of a Tower License. However, the County shall notify District of any such renewals and extensions and provide copies thereof with 30 days of execution.

#### 4. **TERM.**

- A. Term. The term ("**Term**") of this Agreement shall be for five (5) years commencing on the Effective Date and shall expire on January 31, 2022 ("**Expiration Date**"), unless this Agreement is terminated earlier. The Term of this Agreement may be extended as provided in Section 4(B), below.
- B. Extend the Term. Unless the District provides the County notice of nonrenewal at least 365 days before the Expiration Date, the County's Public Works Director may extend the Term of this Agreement by up to three additional successive five-year periods, one at a time, by providing advance written renewal notice to the District at least 180 days before the Expiration Date. The County's Public Works Director's renewal notice shall cause the Term to extend for an additional five years, and the Expiration Date shall become the last day of that five-year period. If the District provides notice of nonrenewal as provided herein, the Agreement may not be extended and shall expire on the Expiration Date, unless sooner terminated in accordance with Section 24.
- C. No Right to Extend if in Default. Notwithstanding Section 4(B), above, if the County is in Material Breach of any of its obligations under this Agreement, as defined in Section 19, below, at the end of the initial Term or any of the extended terms, the County may not extend the term of this Agreement unless and until it cures the breach and obtains the District's consent.

#### 5. **FEES.**

- A. Fees.
  - I. License Fees. Each month during the term of this Agreement, the County shall pay the District a monthly license fee of \$400 (each payment a "**License**

**Fee**” and collectively “**License Fees**”) per rack, for each of the six (6) racks in the Shelter that are licensed to the County hereunder. The County may install additional racks only with the District’s consent, and any additional racks shall be subject to the License Fee.

2. Road Fees. For the 12-month period following the Effective Date, and for each 12-month period thereafter during the term of this Agreement, the County shall pay the District \$500 per 12-month period (each a “**Road Fee**” and collectively “**Road Fees**”) for use of the Access Road.

B. Payments.

1. License Fees. The County shall pay the District the License Fees for the first month during the Term of this Agreement within 30 days after the Effective Date of this Agreement. For each subsequent month during the Term of this Agreement, the County shall pay the District the License Fees for that month by the 15th day of that month.
2. Road Fee. The County shall pay the District the Road Fee for the first 12-month period following the Effective Date within 30 days after the Effective Date. For each subsequent 12 month period, the County shall pay the District the Road Fee for that 12-month period no later than 30 days before the first day of that 12-month period.
3. Place of Payment. The County shall send its License Fees payments and Road Fee payments to the East Bay Regional Park District, at P.O. Box 5381, Oakland, California 94605-0381, Attention – Finance.

- D. Adjustment of the License Fee. On February 1, 2018, and on each February 1 thereafter during the term of this Agreement, the License Fee specified in Section 5(A)(1), above, shall increase based on the percentage increase, if any and not to exceed three percent (3%), in the Consumer Price Index for all Urban Consumers for the San Francisco, Oakland, San Jose, California area, published by the United States Department of Labor, Bureau of Labor Statistics during the 12-month period that ends on the December 30th immediately prior to the February 1 on which the increase, if any, will be effective. If the License Fee will increase on February 1 as provided herein, the District shall provide the County notice of the increase by the January 15 immediately before that February 1.

6. **UTILITIES.** The County shall furnish, at its sole cost and expense, all utilities required to operate the Premises, including, without limitation, gas, electricity, water, and telephone service and all connection charges.

7. **DISTRICT'S RIGHTS.** The District expressly reserves the right to use the Premises for the District's operations, and to construct, reconstruct, and maintain existing or additional facilities or improvements on the Premises that do not unreasonably interfere with the County's use of the Premises under this Agreement. The County shall ensure that its use of



the Premises as provided herein does not interfere with the present or future operations of District.

**8. USE OF ROAD FEES; MAINTENANCE OF ROAD.**

- A. Use of Road Fees. The District shall separately account for all Road Fees paid by the County under this Agreement. The District shall not use Road Fees for any purpose other than to repair the Access Road as specified in Section 8(B), below.
- B. The District shall be solely responsible for the repair and regular maintenance of the Access Road. However, if, during the term of this Agreement, the Access Road is damaged by landslide, washout, subsidence, earthquake, or other force majeure, the District may use Road Fees paid hereunder, and not previously expended, to pay the District's direct cost to repair the Access Road. If those repair costs exceed the amount of the Road Fees on deposit with the District, the District may charge the County an additional amount as its proportional share of the repair costs, not to exceed \$5,000 per calendar year.

The County will pay its proportional share of Access Road repair costs within 30 days after receipt of a written demand for payment from the District that includes the total amount spent by the District to repair the Access Road.

- 9. **PRIOR APPROVAL FOR WORK PERFORMED.** The County agrees that prior to repair, removal or alteration of the District's existing Shelter and communications equipment, details of the proposed scope of work must be submitted in advance and in writing to District for review and approval. The County will reimburse District for any reasonable costs incurred by District in reviewing the County's work plan and for District's inspection of construction activities. The County shall comply with all of the terms of any encroachment permits issued by District.
- 10. **CONDITION OF PREMISES.** The County shall, at all times and at County's sole cost and expense, keep its equipment located on the Premises in good condition and repair, reasonable wear and tear excepted, including making replacements when necessary and removing inoperable, obsolete or abandoned equipment without delay. If the County fails to promptly make any repairs that are necessary to remedy a dangerous condition on the Premises, the District shall give written notice of its intention to make such repairs. If the County does begin making the required repair within 30 days after receipt of District's notice, the District may make such repairs and shall be reimbursed by the County for any and all reasonable costs incurred by District in performing such repairs including administrative overhead.
- 11. **FREQUENCY COMPATIBILITY.** The County shall provide for complete frequency compatibility for all radio transmitting equipment currently existing on the Tower, and for any installed on the Tower after the Effective Date. If an entity that maintains equipment on the Tower notifies the County that an interference problem exists, the County shall be responsible for determining the cause of, and resolving, the interference problem. If the County is unable to resolve an interference problem within 30 days after receiving notice of

the problem, the County shall require the equipment causing the interference problem to be taken out of service until the interference problem is corrected to the complete satisfaction of the user or users of the Tower that encountered an interference problem. The County shall require all persons and entities operating equipment under Tower Licenses to comply with the requirements of the Federal Communications Commission, including those requirements related to radio-frequency emissions.

**12. COMPLIANCE WITH LAWS.** The County shall comply with all applicable ordinances, rules, and regulations of local, state and federal governmental authorities pertaining to the County's activities on the Premises. If the County is required to obtain any permits or other approvals from any federal, state, or local agency, the District shall cooperate with the County's efforts to obtain those permits or other approvals.

**13. RULES.** The County shall ensure that its employees, contractors, and agents comply with the following District rules:

- A. No alcoholic beverages may be consumed on District property, including the Premises.
- B. The County shall use the Access Road to access the Premises and shall not travel any other road on District property or open fields except in cases of emergency or with the prior authorization of the Park Supervisor (510) 544-2711.
- C. The County may use the Access Road during regular park hours, between the hours of 5:00 a.m. and 10:00 p.m. on each day. However, if the County, in its sole discretion, determines that an emergency exists at the Premises, the County may use the Access Road to respond to the emergency regardless of the time of day.
- D. The County shall observe a reasonable speed limit on District's property.
- E. The County shall not smoke, use matches, or have open fires on District property.
- F. The County shall comply with District's Ordinance 38, a copy of which can be accessed via the District website <http://www.ebparks.org/>, which is incorporated herein by reference.

**14. NONDISCRIMINATION.** In the performance of its obligations under this Agreement, the County shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, gender, sexual orientation, age, or national origin.

**15. HAZARDOUS MATERIALS.**

- A. Condition of the Premises. The District represents and warrants that it has conducted no site investigation(s) for Hazardous Materials (as defined in Section 15(C), below) and has no knowledge of any Hazardous Materials existing on or about the Premises in violation of any applicable law. The County represents and warrants to the District that the County will not generate, store, or dispose of any Hazardous

Materials on, under, or about the Premises in violation of any Hazardous Substance Laws (as defined in Section 15(C), below). If the County causes or contributes to a release of Hazardous Materials to the air, soil, surface water, or groundwater in, on, under, or adjacent to the Premises in violation of applicable Hazardous Substance Laws, the County shall do all of the following in accordance with all applicable laws: immediately report the release to the District as well as to appropriate government agencies; promptly clean up the Hazardous Materials so released; and restore the Premises to its condition as it existed prior to the release. The County shall defend, indemnify, and hold harmless the District from any losses, costs, claims, damages, penalties, and liabilities, including all costs of investigation, testing, remedial planning, and implementation and monitoring, arising from or caused by any release or migration of Hazardous Materials caused or contributed to by the County.

- B. Clean Up. If any cleanup, repair, detoxification, or other similar action is required by any governmental or quasi-governmental agency as a result of the storage, release, or disposal of Hazardous Materials by District, its officers, employees, agents, or contractors, at any time, or by any prior owner, possessor, or operator of any part of the Premises, and such action interferes with the County's ability to occupy or use the Premises for more than 24 hours, as determined by the County, the County's sole remedy shall be a credit against future License Fees to be paid by the County under Section 5, in the amount of 1/30<sup>th</sup> of the monthly License Fees for each day, or portion thereof, of the above-described interference. After the first 24 hours of the above-described interference, the County shall also be entitled to terminate this Agreement upon not less than thirty (30) days advance written notice to the District.
- C. Definitions. For the purposes of this Section 15, "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances, including but not limited to petroleum and petroleum by-products, by any law or statute now or after this date in effect in California, and in the regulations adopted and publications promulgated pursuant to those laws (all collectively referred to herein as "Hazardous Substance Laws").
- D. Survival. Notwithstanding anything to the contrary contained herein, the provisions of this Section 15 shall survive the expiration or termination of this Agreement.

## **16. INDEMNIFICATION & LIABILITY FOR LOSSES.**

- A. Indemnification. The County shall indemnify, defend, and hold harmless the District, its directors, officers, employees, agents, and invitees (each of which is an "Indemnitee") from and against any and all claims, demands, losses, costs, expenses, and liabilities for damages, including attorney's fees and costs ("Claims"), that arise out of the County's operation or performance under this Agreement including but

not limited to the County's construction, occupation, use, operation, and maintenance of the Premises, the Tower, and the Related Facilities. However, the County shall not be required to indemnify, defend, or hold harmless any Indemnatee from and against any Claim that arises from the sole negligence or intentional or willful misconduct of that Indemnatee.

- B. Assumption of Risk. The District shall have no responsibility to safeguard County equipment and property located on the Premises, or County employees, officers, agents, and contractors, for loss, damage, injury, or death. The County agrees to assume all such risk and hereby releases the District from all claims and recourse against District, including the right of contribution, for all loss or damage or expenses incurred by reason of death or injury to, or damage to property of, the County, its officers, employees, and agents. The County releases the District from any liability relating to, or in any way connected to, the County's use and access upon and across the District's property and the County's activities and use of the Premises, regardless of fault of the District. However, notwithstanding the foregoing, in accordance with California law, the County's assumption of risk and releases under this Section 16(B) shall not apply to any losses, damages, or expenses resulting from the intentional and willful misconduct or gross negligence of the District, its officers, or its employees, for which the District shall remain liable to the County, its officers, employees, agents, and contractors.

17. **INSURANCE.** The County has elected to be insured for its motor vehicle and general liabilities exposures through a self-insurance program.

18. **ASSIGNABILITY.** The County shall not voluntarily assign, transfer, sublet, or otherwise transfer or encumber, all or any part of the County's interest in the Licenses granted hereunder. Any attempt by County to assign this Agreement shall be void and of no effect.

19. **DEFAULT FOR MATERIAL BREACH.** The occurrence of any one or more of the following shall constitute a "**Material Default**" of this Agreement by the County:

- A. The County's vacating or abandonment of the Premises.
- B. The failure of the County to make any required payment of a License Fee, or any other payment required to be made by the County hereunder, within thirty (30) days after receipt of written demand for payment from District, which may be given by the District at any time after the date payment is due under this Agreement.
- C. The failure of the County to perform and of its obligations under this Agreement and the County's failure to cure said default within thirty (30) days after receipt of written notice thereof from the District. If the nature of the County's default is such that more than thirty (30) days are reasonably required for cure the default, then the County shall not be in default if, within thirty (30) days after receipt of notice from the District, the County begins taking reasonable steps to cure the default and thereafter diligently prosecutes such cure to completion.



- D. The failure of the County to comply with any lawful written order or directives relating to the Premises from any governmental entity within the time set forth in such order, and after the County's exhaustion of all appeal rights and administrative remedies.
- E. If any petition is filed by the County under any section or chapter of the Federal Bankruptcy Code, as it may be amended from time to time, and such petition is not dismissed within ninety (90) days thereafter; if the County becomes insolvent or makes a transfer in fraud of creditors; if the County makes a general arrangement or general assignment for the benefit of creditors; or if a receiver, custodian, or trustee is appointed for any of the assets of the County located at the Premises and the appointment is not vacated within ninety (90) days thereafter.
- F. The discovery by the District that the County has provided the District with false financial information.

**20. REMEDIES.** In the event of a Material Default by the County, as defined in Section 19, above, the District may take any or all of the following actions:

- A. Terminate this Agreement and the Licenses granted hereunder, in accordance with Section 25(A)(1), below, in which case the County shall remove the Tower, Related Facilities, and all County Property from the Premises, and return the Premises to a neat and clean condition.
- B. Recover unpaid License Fees and Road Fees then owed by the County through and including the date this Agreement terminates, and any other amounts necessary to compensate District for the County's failure to perform its obligations under this Agreement, including but not limited to retaking possession of the Premises, making such repairs as necessary to return the Premises to a good condition, and in removing all persons and property from the Premises in accordance with law.
- C. The Parties agree that the District's remedies under this Section 20 are in addition to all remedies available to the District in law or equity.

**21. WAIVER.** The waiver by District of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same term, covenant, or condition. If the County fails to pay any License Fees or the Road Fee in the manner required by this Agreement but the District later accepts said payment, that acceptance will be deemed a waiver of the County's failure to pay. Otherwise, the District's acceptance of License Fees or Road Fees shall not constitute a waiver of a breach of any other term, covenant, or condition herein contained.

**22. RELOCATION AND REMOVAL.**

- A. Relocation from the Premises. If the District requires the Premises for other District purposes, it shall make reasonable efforts to consult with the County to identify other District property that would be suitable for use by the County for its

telecommunications purposes. If the County elects to move its Tower and Related Facilities to that other location: the District shall not have any obligation to pay any cost and expense related to that relocation; and the Parties shall amend this Agreement to identify the new location, which shall become the "Premises," and to remove any and all obligations of the County related to the former Premises and to make such other changes as deemed necessary. If other suitable District property cannot be identified, or if the County elects not to move its Tower and Related Facilities to other District property, then the District may terminate this Agreement in accordance with Section 25(A)(2), below.

- B. Waiver of Relocation Benefits under State and Federal Law. In the event that the District requires the County to relocate from the Premises under Section 22(A), above, the County hereby specifically waives any rights to, and releases District from any obligation to provide, relocation benefits and relocation payments to which the County would otherwise be entitled under California or federal relocation laws. The County shall hold the District harmless from and indemnify the District against any and all liability cost and expense suffered or incurred by the District and arising in connection with any such rights or claim asserted by the County.

- 23. CONDEMNATION.** If any part of the Premises is condemned for a public use and the remainder of the Premises is suitable for occupation and use by the County as herein authorized: this Agreement shall remain in effect; and the Licenses herein granted shall remain in effect only as to the remainder of the Premises after title to the part taken vests in the condemner. If all of the Premises is condemned, or if a substantial portion of the Premises is condemned and is no longer suitable for County's occupation and use as herein authorized, the Licenses granted herein and this Agreement shall terminate as of the date title to the Premises, or substantial portion thereof, vests in the condemner. In any condemnation proceeding to acquire the Premises, or any portion thereof, the County shall be entitled to all compensation awarded for damages to, or loss of, the County improvements, and for lost income caused by the taking, if any; and the District shall be entitled to all other damages including without limitation lost income and compensation for damages to real property owned by the District, including damages to the Premises and real property on which the County's improvements are located.

**24. TERMINATION.**

- A. District's Right to Terminate.

1. In the event of a Material Breach, as specified in Section 19, above, the District may immediately terminate this Agreement upon 180 days advance written notice to the County. During that 180-day period, the County shall be entitled to continue to occupy and use the Premises solely for the purpose of removing the Tower and Related Facilities from the Premises and returning the Premises to a neat and clean and natural condition.
2. Except as otherwise specified in Section 25(A)(1), above, the District shall not be entitled to terminate this Agreement within the first five (5) years



following the Effective Date. After the expiration of the first five (5) years following the Effective Date, and provided this Agreement has not already expired, the District may terminate this Agreement by providing the County at least three (3) years advance written notice. If the District elects to terminate this Agreement, before the Expiration Date, the County shall remove the Tower, Related Facilities, and all other County property from the Premises, and return the Premises to a neat and clean and natural condition.

- B. County's Right to Terminate. At any time during the term of this Agreement, the County may, at its sole discretion, terminate this Agreement by providing the District at least one hundred eighty (180) days advance written notice. If the County elects to terminate this Agreement under this Section 25(B), before the termination date the County shall remove the Tower, Related Facilities, and all other County property from the Premises, and return the Premises to a neat and clean and natural condition.
- C. Effect of Termination or Expiration. Except as expressly provided herein, on the date this Agreement terminates or expires, the Licenses herein granted shall terminate, and the terms and conditions herein contained shall no longer be of any force or effect.
- D. Refund of License Fees. Within 30 days after the termination or expiration date of this Agreement, the District shall refund to the County:
1. All License Fees paid by the County for any months following the month in which the termination date occurs, if any; and
  2. A proportion of the License Fees paid for the month in which the termination date occurs, based on the following formula:

$$\frac{[(\text{License Fees paid for current month}) / (\text{Number of days in current month})] \times (\text{number of days during the period from and including the day after the termination date, through and including the last day of the current month})}{30} = \text{Amount of refund to County}$$

25. **HOLD OVER.** Any holding over by the County after the expiration or termination of this Agreement, with the written consent of District, shall be construed to be a tenancy from month to month on the same terms and conditions specified herein so far as applicable. Notwithstanding anything to the contrary contained herein, including in Section 25(B), during any hold over tenancy, the Licenses herein granted shall continue to remain in effect until the hold over tenancy is terminated. Either Party may terminate any hold over tenancy on thirty (30) days written notice to the other Party.
26. **REMOVAL OF COUNTY'S EQUIPMENT BY DISTRICT.** If, after the termination or expiration of this Agreement, the County fails to remove the Tower, Related Equipment, and other County property from the Premises as required herein, the removal work may be performed by District, and the County shall pay the District, within 30 days after receiving a

demand for payment, all of the District's direct costs, plus an additional amount of 20% of those costs for administrative overhead.

**27. INDEPENDENT CAPACITY.** The County is a licensee and the District is a licensor hereunder, but the County and the District are otherwise independent of one another. Nothing in this Agreement creates, nor shall it be construed as creating, a joint exercise of powers agency, partnership, or joint venture of the County and the District. The County retains the sole discretion to perform its obligations under this Agreement, and to exercise its rights under the Licenses herein granted. The County is solely responsible for the employment, direction, compensation, and discharge of all persons employed by or engaged by the County in the performance of its obligations under this Agreement, or the exercise of its rights under the Licenses herein granted.

**28. NOTICES.** Any notice required or desired to be given or served hereunder shall be deemed properly given if it is personally delivered, sent by registered U.S. Mail, or sent by overnight delivery with delivery to be made on the next business day, with postage prepaid, addressed to:

**For District:**

East Bay Regional Park District  
2950 Peralta Oaks Court  
P.O. Box 5381  
Oakland, California 94605  
Attention: Business Services

**For County:**

Contra Costa County Public Works Dept.  
Attn: Principal Real Property Agent  
255 Glacier Drive  
Martinez, California 94553

With a copy to:

District Counsel  
2950 Peralta Oaks Court  
P.O. Box 5381  
Oakland, California 94605

Either Party may designate other persons or addresses to which notices must be given under this Agreement by providing written notice to the other Party in the manner set forth in this Section. Each notice given hereunder shall be deemed given, and received by the other Party: on the same day if delivered in person; on the next business day following the date of mailing if delivered by overnight delivery; and on the fifth day following the date of mailing if mailed by registered U.S. Mail.

For day to day operations, the contact at the District shall be the Business Services Manager, 510-544-2513; and the contact for the County shall be leasing agent, 925-313-2132.

**29. EXISTING CONDITION.** This Licenses granted hereunder are granted subject to all existing liens, encumbrances, conditions, and restrictions of record affecting the Premises and are also subject to all existing rights, rights of way, licenses, leases, reservations, and easements by whomsoever held, in and to the Premises that predate the Effective Date of this Agreement.

30. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior written and verbal representations or understandings between the parties. This Agreement also supersedes the "**Communication License**," dated July 1, 1997, between the County and the District, which is hereby terminated and of no further force or effect.
31. **SEVERABILITY.** If any provision of this Agreement is determined by a Court to be invalid or unenforceable with respect to any Party, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.
32. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement as of the Effective Date hereof.

**East Bay Regional Park District "District"**

By: \_\_\_\_\_  
Robert E. Doyle, General Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
District Counsel

**Contra Costa County "County"**

By: \_\_\_\_\_  
Julia R. Bueren, Director of Public Works

**RECOMMENDED FOR APPROVAL:**

By:   
Karen A. Laws  
Principal Real Property Agent

By:   
David L. Silva  
Supervisory Real Property Agent

**APPROVED AS TO FORM:**

Sharon L. Anderson, County Counsel

By:   
Stephen Siptroth  
Deputy County Counsel

## EXHIBIT A





**EXHIBIT B**



Tilden Volmer Peak License Agreement Exhibit

## **EXHIBIT C**

A) Site Management. County shall provide management for the Premises, including but not limited to the following:

- i) County shall negotiate and administer all Tower Licenses for the use of the Tower on the Premises, and the District shall negotiate and administer all licenses for users of the Shelter on the Premises. Any new licenses or renewal of existing licenses shall be applied for and approved in writing by both the District, County, and East Bay Municipal Utility District prior to execution.
- ii) County shall coordinate space on the Premises for housing combination radio or microwave transmitter receiver equipment, including interference calculations for electronic equipment and antennas, inspection of equipment for damage and safety hazards, battery maintenance, and analysis of interference and compatibility problems with existing equipment. District agrees that in the event of harmful interference or degradation to radio operations, County may require that the interfering signal be suspended upon notice by County to applicable sub licensee pending resolution of such interference or degradation and shall not resume such operation without agreement by the FCC or the County.
- iii) County shall coordinate space on the towers for antennas, including any required structural considerations, repairs or replacement of the towers as required.
- iv) County shall provide, inspect, maintain and repair the emergency generator and electrical system.
- v) All current users of the Shelter and Tower are listed in Exhibit "D". No other users of the Premises will be allowed without prior written approval by the District and the East Bay Municipal Utility District.
- vi) County shall keep all equipment on the Premises in good working condition in accordance with acceptable "industry standards" when the standards of the following codes, if applicable, are met: National Electrical Code (NEC), Electronic Industries Association (EIA), National Electrical Manufacture's Association (NEMA), Institute of Electrical and Electronic Engineers (IEEE), Federal Communications Commission (FCC), and National Electric Safety Code (NESC).
- vii) County agrees that no facilities shall be constructed or any alterations made at the Premises without District's prior written consent, which consent shall not be unreasonably withheld.



- B) Maintenance. County shall be responsible for the maintenance of the tower and all improvements thereon and the emergency generator, and shall be solely responsible for all expenses incurred in connection with its use of the licensed property.

The County and the District agree to perform the following:

- i) District shall keep the roof and exterior of the building in good order, condition, and repair and shall maintain the structural integrity of the building, except County shall maintain the exterior doors and their fixtures, closer and hinges, and all locks and key systems in the demised Premise.
- ii) County shall keep and maintain the interior of the Premises in good order, condition, and repair, including the lighting and electrical systems. District shall repair damage to the interior caused by failure to maintain the exterior in good repair, including damage to the interior caused by roof leaks and/or interior and exterior wall leaks.
- iii) County shall maintain the grounds including weed abatement and general cleanup within a 100 yard radius of the enclosure fence. County will use only the District's Pest Management Department approved materials that may be used at the Premises.
- iv) County agrees to cooperate with District to protect the lands of District from destruction by erosion, fire, or improper use, and to protect the flora and fauna within the park. The provisions of this license shall at all times be interpreted so as to accomplish such objectives.
- v) County shall pay all costs of construction done by it or caused to be done by it on the licensed facility as permitted by this license. County shall keep the licensed facility free and clear of all mechanic liens resulting from construction done by or for County.

**EXHIBIT D**

<b>CUSTOMERS ON VOLLMER PEAK</b>	
<b>2015</b>	
	<b><u>Number of Racks</u></b>
East Bay Regional Communications System Authority	4
BART	1.0
Cal Trans	4.0
CHP	9.0
EBMUD	0.5
EBRPD	3.0
Golden Gate Bridge Dist.	5.0
	26.50
<b>AGENCIES BELOW ARE DIVISIONS OF CONTRA COSTA COUNTY</b>	
Con Fire - CFD	1.3
CWS - Community Warning System - Sheriff	1
EMS - Emergency Medical Services - Health Svcs.	0.5
Flood Control - Public Works	0.3
Lamorinda Public Works	0.5
Sheriff	1
SRVFD - San Ramon Valley Fire District	0.5
<b>CONTRA COSTA COUNTY SUB-LEASE</b>	
Alameda County	0.9
	6