
RESTATED PROJECT OPERATING AGREEMENT

Dated as of February 1, 2010

Relating to:

**MARIN EMERGENCY RADIO AUTHORITY
PUBLIC SAFETY AND EMERGENCY RADIO SYSTEM**

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RESTATED PROJECT OPERATING AGREEMENT

This RESTATED PROJECT OPERATING AGREEMENT, made and entered into as of February 1, 2010 (the “Restated Agreement”), among the MARIN EMERGENCY RADIO 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 agencies set forth on the signature pages hereof (each a “Member” and collectively, the “Members”);

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 Members pursuant to a Joint Powers Agreement dated as of February 28, 1998, as amended (the “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 public safety radio system (the “Project”); and

WHEREAS, the Members of the Authority (or their predecessors in interest) have previously entered into that certain Project Operating Agreement, dated as of February 1, 1999 (the “Operating Agreement”) with the Authority, whereby the Authority owns and operates the Project for the benefit of the Members, and the Members agree to pay, on a pro rata basis, the cost of the Project (the “Service Payments”) and its annual operation (the “Operating Payments”) (collectively, the “Member Payments”); and

WHEREAS, the Authority has issued its Marin Emergency Radio Authority 1999 Revenue Bonds (Marin Public Safety and Emergency Radio System), in the original principal amount of \$26,940,000 (the “1999 Bonds”), which 1999 Bonds are secured by the Service Payments, for the purpose of providing money to acquire the Project; and

WHEREAS, the Authority has previously entered into that certain Loan Agreement with Citizens Business Bank (“Citizens”), dated as of February 1, 2007 (the “Loan Agreement”), for the purpose of funding certain improvements to the Project, and pursuant to which the Authority has issued its note to Citizens in the original principal amount of \$2,250,000 (the “2007 Note”), which 2007 Note is secured by Operating Payments; and

WHEREAS, Section 2.03 of the Operating Agreement provides that the Operating Agreement terminates upon payment or defeasance of the 1999 Bonds; and

WHEREAS, in order to allow the Authority to refund the 1999 Bonds through the issuance of refunding bonds (the “2010 Bonds”), to refund the 2007 Note at such time as acceptable economic conditions dictate, and obtain additional funding for improvements to the

Project, is necessary to execute this Restated Agreement to secure repayment of such obligations, the terms of which incorporate the provisions of the Operating Agreement, except as otherwise provided herein.

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the Authority and the Members agree as follows:

Section 1. Terms of this Restated Agreement.

Notwithstanding its termination upon defeasance of the 1999 Bonds, the terms and provisions of the Operating Agreement, except as otherwise altered herein, are hereby incorporated as the terms and provisions of this Restated Agreement.

Section 2. Revision of Section 1.01 of the Operating Agreement.

(a) The definition of “Bond Insurer” contained in Section 1.01 of the Operating Agreement is hereby replaced with the following:

“Bond Insurer” means any insurer of a series of Bonds, and their respective successors and assigns, but only with respect to the particular obligations insured by such Bond Insurer.

(b) The definition of “Bonds” contained in Section 1.01 of the Operating Agreement is hereby replaced with the following:

“Bonds” means the 2010 Bonds, any Additional Bonds, and any obligations issued to refund such Bonds or Additional Bonds in whole or in part.

(c) The definition of “Continuing Disclosure Agreements” contained in Section 1.01 of the Operating Agreement is hereby replaced with the following:

“Continuing Disclosure Agreements” means the obligation of the Authority under a continuing disclosure agreement, and the obligation of the Members pursuant to Section 4.20 or, as applicable, a continuing disclosure agreement, to provide ongoing disclosure with respect to the Bonds.

(d) The definition of “Indenture” contained in Section 1.01 of the Operating Agreement is hereby replaced with the following:

“Indenture” means the Indenture of Trust, dated as of February 1, 2010, entered into by the Authority with the Trustee relating to the 2010 Bonds, and any indenture entered into by the Authority with respect to Additional Bonds, or obligations issued to refund the 2010 Bonds or Additional Bonds, as amended or supplemented.

(e) The definition of “Insurance Policy” contained in Section 1.01 of the Operating Agreement is hereby replaced with the following:

“Insurance Policy” means a municipal bond insurance policy issued by a Bond Insurer unconditionally guaranteeing the regularly scheduled payment of principal of and interest on a series of Bonds when due.

(f) The definition of “Project” contained in Section 1.01 of the Operating Agreement is hereby replaced with the following:

“Project” means that certain public safety radio system originally financed with the proceeds of the 1999 Bonds and improved with proceeds of the 2007 Note, and the acquisition, construction, improvement, repair or modification of any portion of the Project and related equipment as determined by the Authority.

(g) The definition of “Service Payments” contained in Section 1.01 of the Operating Agreement is hereby replaced with the following:

“Service Payments” means the annual payments by each Member for the service provided by the Project in the applicable Operating Period and used by the Authority to pay principal of and interest on the Bonds, calculated as set forth in Section 4 hereof.

(h) The definition of “Trustee” contained in Section 1.01 of the Operating Agreement is hereby replaced with the following:

“Trustee” means any trustee appointed by the Authority pursuant to an Indenture, its successors and assigns, and any other corporation or association which may at any time be substituted in its place.

(i) The following definitions are hereby added to this Restated Agreement, in addition to the other defined terms contained in Section 1.01 of the Operating Agreement:

“Additional Bonds” means all obligations with a lien on Revenues on a parity with the 2010 Bonds, issued in accordance with the Indenture.

“Debt Service” means the principal of and interest due on the Bonds on the next succeeding February 15 and August 15 following the calculation date, plus the amount required to increase the Reserve Fund to the Reserve Requirement as provided in the Indenture.

“1999 Bonds” means the Marin Emergency Radio Authority 1999 Revenue Bonds (Marin Public Safety and Emergency Radio System).

“2010 Bonds” means the Marin Emergency Radio Authority 2010 Refunding Revenue Bonds (Marin Public Safety and Emergency Radio System), or such other designation as may be determined by the Authority, issued to refund the 1999 Bonds.

Section 3. Revision of Section 2.03 of the Operating Agreement.

Section 2.03 of the Operating Agreement is hereby replaced with the following provision:

“The term of this Restated Agreement shall commence on the date of delivery of the 2010 Bonds to the initial purchaser thereof, and terminate (subject to such other termination events as provided in this Restated Agreement) on the date on which no Bonds are Outstanding.”

Section 4. Revision of Section 4.20 of the Operating Agreement.

Section 4.20 of the Operating Agreement is hereby replaced with the following provision:

“The Authority shall comply with and carry out all of its duties under the Continuing Disclosure Agreement. In addition, each Member hereby covenants to provide the Authority, by physical or electronic delivery, and by not later than the March 1 immediately following the end of the Member’s Fiscal Year, commencing with Fiscal Year 2008/09, the audited financial statements of the Member for the Fiscal Year most recently ended, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board and reporting standards as set forth by the State Controller. If the Member’s audited financial statements are not available by such date, the Member shall provide unaudited financial statements, and the audited financial statements shall be filed with the Authority when they become available.

Notwithstanding any other provisions of this Restated Agreement, failure of the Authority or the Members to comply with the provisions of this Section 4.20 shall not be considered an Event of Default; provided, however, that the Trustee or Authority, as applicable, may take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.”

Section 5. Revision of Section 6.13 of the Operating Agreement.

Section 6.13 of the Operating Agreement is hereby replaced with the following provision:

“The Authority and the Members shall not amend this Restated Agreement without first obtaining (i) if an Insurance Policy is in effect, and so long as a Bond Insurer is not in default of its obligation under its Insurance Policy, the prior written consent of the Bond Insurer (except with respect to any amendment relating to the issuance of Additional Bonds), and (ii) an opinion of nationally recognized bond counsel to the effect that such amendment will not materially adversely affect the security of the Bond owners; provided, however, that the Members and the Authority may at any time amend or modify Exhibit A of this Restated Agreement to provide for the financing of additional components to the Project, in connection with the issuance of any Additional Bonds, or in any other respect whatsoever as the Authority and Members may deem necessary or desirable, provided that such modification or amendment

does not materially adversely affect the interests of the Bond Owners hereunder, without the consent of the Trustee, the Bond Insurer or any of the Bond Owners. In addition, the Members and the Authority may at any time amend or modify any of the provisions of this Restated Agreement with the prior written consent of the 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."

Section 6. Calculation of Service Payment.

The annual Service Payment of each Member shall be the amount determined by multiplying Debt Service by the percentage allocated to each Member as set forth in Exhibit A hereto. In the event a Member has prepaid its Service Payment as provided in Section 6.01 of this Restated Agreement, the Authority shall adjust the allocations set forth in Exhibit A so that the allocated percentage relating to such Member is distributed pro-rata to the remaining Members. Notwithstanding Section 6.13 of this Restated Agreement, such adjustment shall not require an amendment to this Restated Agreement, and the Authority shall provide written notice of such re-allocation to each Member, the Trustee and any Bond Insurer.

Section 7. Rights of Bond Insurer.

Anything in this Restated Agreement to the contrary notwithstanding, the rights and obligations of any Bond Insurer shall apply only with respect to the series of Bonds to which the Insurance Policy issued by such Bond Insurer applies, and only to the extent such Insurance Policy is in force and effect. The rights of such Bond Insurer to direct or consent to any actions under this Restated Agreement shall be suspended during any period in which such Bond Insurer is in default in its payment obligations under the related Insurance Policy and shall be of no force or effect in the event the Insurance Policy is no longer in effect.

Section 8. Representations, Covenants and Warranties of the Authority.

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

(a) Due Organization and Existence. The Authority is a joint powers authority duly organized and validly existing under the 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 Restated 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 Restated Agreement.

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

(c) 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 Restated 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 Restated Agreement or the financial conditions, assets, properties or operations of the Authority.

Section 9. Representations, Covenants and Warranties of the Members.

Each of the Members represents, covenants and warrants to the Authority as follows:

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

(b) Due Execution. The representatives of the Members executing this Restated Agreement are fully authorized to execute the same pursuant to official action taken by the governing body of the Members, and this Restated Agreement has been duly executed and delivered by the Members and constitutes the legal, valid and binding agreement of the Members, enforceable against the Members in accordance with its terms.

(c) 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 a Member after reasonable investigation, threatened against or affecting such Member or the assets, properties or operations of such Member which, if determined adversely to the Member or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Restated Agreement, or upon the financial condition, assets, properties or operations of the Member, and no Member is 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 Restated Agreement or the financial conditions, assets, properties or operations of the Members.

Section 10. Entire Agreement

This Restated Agreement constitutes the entire agreement between the parties. Except where altered by a specific provision of this Restated Agreement, all other terms and conditions of the Operating Agreement are incorporated herein.

Section 11. California Law.

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

Section 12. Effective Date.

Upon its execution and delivery, this Restated Agreement shall become effective immediately on the issuance and original delivery of the 2010 Bonds, and shall terminate as set forth herein.

Section 13. Execution in Counterparts.

This Restated 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.

IN WITNESS WHEREOF, the parties hereto have executed and attested the Restated Agreement by their officers thereunto duly authorized as of the day and year first written above.

MARIN EMERGENCY RADIO AUTHORITY

By: _____
Executive Director

CITY OF BELVEDERE

BOLINAS FIRE PROTECTION DISTRICT

By: _____
Title: _____

By: _____
Title: _____

TOWN OF CORTE MADERA

TOWN OF FAIRFAX

By: _____
Title: _____

By: _____
Title: _____

INVERNESS PUBLIC UTILITY DISTRICT

KENTFIELD FIRE PROTECTION DISTRICT

By: _____
Title: _____

CITY OF LARKSPUR

By: _____
Title: _____

COUNTY OF MARIN

By: _____
Title: _____

MARIN COMMUNITY COLLEGE
DISTRICT

By: _____
Title: _____

MARIN COUNTY TRANSIT DISTRICT

By: _____
Title: _____

MARIN MUNICIPAL WATER DISTRICT

By: _____
Title: _____

MARINWOOD COMMUNITY SERVICES
DISTRICT

By: _____
Title: _____

CITY OF MILL VALLEY

By: _____
Title: _____

CITY OF NOVATO

By: _____
Title: _____

NOVATO FIRE PROTECTION DISTRICT

By: _____
Title: _____

TOWN OF ROSS

By: _____
Title: _____

By: _____
Title: _____

ROSS VALLEY FIRE PROTECTION
AGENCY

By: _____
Title: _____

CITY OF SAN RAFAEL

By: _____
Title: _____

SOUTHERN MARIN FIRE PROTECTION
DISTRICT

By: _____
Title: _____

TOWN OF TIBURON

By: _____
Title: _____

TWIN CITIES POLICE AGENCY

By: _____
Title: _____

TOWN OF SAN ANSELMO

By: _____
Title: _____

CITY OF SAUSALITO

By: _____
Title: _____

STINSON BEACH FIRE PROTECTION
DISTRICT

By: _____
Title: _____

TIBURON FIRE PROTECTION DISTRICT

By: _____
Title: _____

EXHIBIT A
ANNUAL SERVICE PAYMENT ALLOCATION

<u>Member</u>	<u>Percentage of Service Payments</u>
City of Belvedere	0.772%
Bolinas Fire Protection District	0.601
Town of Corte Madera	1.575
Town of Fairfax	2.010
Inverness Public Utility District	0.565
Kentfield Fire Protection District	0.679
City of Larkspur	1.873
County of Marin	35.151
Marin Community College District	0.000
Marin County Transit District	1.180
Marin Municipal Water District	0.957
Marinwood Community Services District	0.856
City of Mill Valley	4.271
City of Novato	10.432
Novato Fire Protection District	4.894
Town of Ross	0.813
Ross Valley Fire Protection Agency	1.614
Town of San Anselmo	3.023
City of San Rafael	16.913
City of Sausalito	2.829
Southern Marin Fire Protection District	1.657
Stinson Beach Fire Protection District	0.615
Town of Tiburon	1.849
Tiburon Fire Protection District	1.090
Twin Cities Police Authority	<u>3.781</u>
TOTAL	100.000%