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MEMORANDUM **S.P. Joint Meeting 8/8/12** **Agenda Item D-2**

to: MERA Finance Committee Members,
Maureen Cassingham, Executive Officer

From: Jim R. Karpiak
MERA General Counsel

Date: July 31, 2012

Subject: MERA System Replacement Financing

This memo summarizes my suggestions at the July 18, 2012 Finance Committee meeting regarding a method for financing the replacement of the MERA system, and suggests next steps for moving a proposal through the MERA policy process.

MERA was established in 1998 primarily to finance the development of the current system, which cost approximately $27 Million. In 1999, MERA issued revenue bonds to finance the cost of constructing the system; the revenues for paying debt service on the bonds come from annual payments by member agencies pursuant to a project operating agreement.[1] Using a similar method to finance the replacement is problematic for several reasons given the significantly higher cost of the new system (estimated at $50 million): first, the bonds of the current system will not be paid off until 2021; second, the fiscal climate makes it difficult or impossible for member agencies to agree to make higher contributions; and third, it is not clear that marketable bonds could be issued without a new source of revenue to support their debt service payments.

California law provides various mechanisms for public agencies to raise revenues for particular purposes (e.g., various types of fees, assessments, taxes), however, the limitations of Proposition 218 and its progeny make it difficult to raise revenue for a special purpose without submitting the funding measure as a special tax to a vote of the electorate and receiving a 2/3 vote. A special tax can be levied as a parcel tax or a transaction and use tax (commonly known as a sales tax).

MERA itself, however, does not have the legal authority to levy a parcel tax or a sales tax. As a joint powers authority, MERA has no independent power to levy taxes, but instead must rely on the powers that are common among all of its members. Furthermore, not all of MERA's members have the power to levy parcel taxes or sales taxes. Thus any tax would have to be levied at the County level, assuming the County Board agrees to place it on the ballot and

[1]The bonds were refunded in 2010 and will not be paid until 2021.

the measure receives a 2/3ds vote of the electorate.[2] The consensus at the July 18 meeting was that a County sales tax would be politically disfavored, so a parcel tax, probably for consideration at the November 2014 election, is apparently the only practical option.

Assuming the tax passes, MERA could finance the new radio system in a manner similar to the structure of the existing MERA 2010 Refunding Revenue Bonds. Specifically, MERA and its member agencies could enter into an "operating agreement" pursuant to which MERA would acquire and operate the new radio system for the benefit of its member agencies and for which the member agencies would make annual payments. The primary source of the bond repayment would be the County's parcel tax revenues. For example, the County could agree to make annual payments to MERA in an amount sufficient to pay debt service on the bonds issued by MERA, with the County covenanting to first expend its parcel tax revenues for such payments.[3]

As we noted at the Finance Committee meeting, this structure reflects the discussion of an advisory committee, but has not yet been adopted as MERA policy. Given that there are a host of financial and legal decisions to be made for the tax, not to mention the educational process that will inevitably have to occur with MERA members and the public, it seems important to turn to the MERA policy process quickly before expending more time or funds on the proposal. I would therefore suggest the following steps:

1. Development of a formal proposal by the Joint Committee for consideration and approval by MERA's Executive Board at its fall meeting;

2. Consultation with County officials and MERA members once the Executive Board has acted; and

3. Consideration and approval of the proposal by MERA's Governing Board (probably at the December, 2012 meeting).

In the interim, it makes sense to continue planning and informal consultations with the County and MERA members, provided that everyone understands that the proposal is conceptual and advisory until the MERA Governing Board acts.

[2] Government Code Section 53978 appears to authorize the County to levy a parcel tax to fund the proposed new radio system; the ultimate determination will need to be made by the County Counsel, however.

[3] The issuance of bonds will ultimately require an opinion of bond counsel as to the validity of the bonds and the related pledge of revenues. MERA has had only preliminary consultations with MERA's bond counsel, Nossamen LLP, to date, and such consultation should continue as the specific decisions regarding structuring the tax and bond issues are made.