

**NEXT GENERATION RADIO SYSTEM IMPLEMENTATION AGREEMENT
BETWEEN THE MARIN EMERGENCY RADIO AUTHORITY AND
THE COUNTY OF MARIN**

THIS AGREEMENT entered into as of _____, 2015 by and between the County of Marin, a political subdivision of the State of California, hereinafter referred to as “County” and the Marin Emergency Radio Authority, hereinafter referred to as “MERA”, each a “Party”, and collectively referred to herein as “Parties”, effective July 1, 2015 (the “Effective Date”); and

WHEREAS, MERA is a 25 member Joint Powers Agency consisting of the City of Belvedere, Bolinas Fire Protection District, Town of Corte Madera, Town of Fairfax, Inverness Public Utility District, Kentfield Fire Protection District, City of Larkspur, County of Marin, Marin Community College District, Marinwood Community Services District, City of Mill Valley, Novato Fire Protection District, City of Novato, Town of Ross, Ross Valley Fire Department, Town of San Anselmo, City of San Rafael, City of Sausalito, Southern Marin Fire District, Town of Tiburon, Tiburon Fire Protection District, Central Marin Police Authority, Marin Transit, Marin Municipal Water District, Stinson Beach Fire Protection District, organized under California law for the purpose of constructing and operating a Countywide emergency radio system; and

WHEREAS, the County and MERA entered into that certain Amended and Updated Memorandum of Understanding to confirm their mutual desire to facilitate the future construction of a new replacement system (the “Next Gen System”) and to express their mutual intent to cooperate with one another to achieve that goal, including continuing the contractual relationship with the County Department of Public Works (the “DPW”) to provide certain technical, operations administration and engineering services in connection with implementation of the Next Gen System (the “Project”).

WHEREAS, on November 4, 2014, the voters of the County of Marin approved Measure A authorizing the County to levy and collect a special parcel tax to fund the costs of the Next Gen System.

WHEREAS, due to the magnitude of the Next Gen System project, MERA and County desire to clarify roles and responsibilities in providing the services in connection with implementing the Next Gen System.

WHEREAS, DPW has the capacity to provide system analysis and implementation services of which all are essential to the success of the Next Gen System; and

WHEREAS, MERA desires to obtain the services of DPW to implement the Next Gen System.

NOW, THEREFORE, IT IS AGREED by and between County and MERA;

1. RECITAL

That the above recital of facts is true and correct and is hereby incorporated into this agreement.

2. TO BE PROVIDED BY COUNTY

DPW shall provide MERA with the services described in Exhibit “A” (the “Services”), incorporated herein by reference.

3. TO BE PROVIDED BY MERA

MERA shall provide DPW with any pertinent data and records in the possession of

MERA related to the performance of DPW's duties under this Agreement.

4. MUTUALLY AGREED:

The Parties budgeted \$2,000,000 for the DPW Staff Services, which does not include reimbursement to the County for contracts the County enters into in connection with this Project. If DPW or the MERA Executive Officer anticipates that the cost of the Services will exceed such amount, both MERA and County will cooperatively re-assess the Services and consider modifying the Services or providing additional funding to address the anticipated shortfall, if deemed appropriate.

5. AMENDMENT:

This Agreement may only be amended or modified by written agreement by the Parties.

6. INDEMNIFICATION:

Each Party agrees to indemnify, defend, and hold the other Party harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees which it may incur as a consequence of this Agreement and from any and all claims and losses to anyone who may be injured or damaged by reason of either Party's willful misconduct or negligent performance of this Agreement.

7. COMPLIANCE WITH APPLICABLE LAWS:

Each Party shall comply with any and all federal and state laws.

8. FEES:

The fees for furnishing the Services are set forth in Exhibit "B", and incorporated herein by reference, and shall not exceed the amount therein specified, unless a higher amount is agreed to by both Parties in writing. The amount of the fees may be amended by a written agreement between the Parties.

9. PAYMENT:

The County will invoice MERA for the Services on a monthly basis. The payment of fees under this Agreement shall be due within thirty (30) calendar days of receipt of County's invoice to MERA.

10. TERM OF AGREEMENT:

The term of this Agreement shall begin on the Effective Date and shall terminate on the date that is the earlier of June 30, 2019 or the date on which MERA provides written notice to DPW that the Project is complete and has been accepted by MERA. Upon mutual written agreement between the Parties, the Agreement may be renewed for successive one year periods. Either Party can terminate this agreement at any time by providing ninety (90) days written notice to the other Party. County shall be compensated for all services performed during the term of the Agreement, including the notice period.

11. RELATIONSHIP BETWEEN DPW AND MERA:

DPW, the MERA Executive Officer and MERA Deputy Executive Officer will work together to diligently complete the Project. It is understood DPW shall be responsible for the quality and cost of the Services, and that the MERA Executive Officer or MERA Deputy Executive Officer is not authorized to direct Services.

It is further understood that MERA, in consultation with DPW, shall retain control over the long-term and overall objectives for the Project and that DPW shall provide the Services in a manner consistent with such objectives, including those pertaining to the successful, on budget, and timely completion of the Project.

Except as provided below, DPW may enter into a contract for the Project without MERA approval. DPW must obtain prior approval from MERA's Governing Board (or its designee) to enter into any of the following contracts: (1) wireless communications consulting services contract, (2) Project management consulting services contract, (3) Project vendor contract, which shall include two phases of services and after the first phase, the Project vendor shall produce a detailed design review and detailed budget, subject to MERA approval, and (4) any additional contract for services in an amount that exceeds \$1,000,000.

The MERA Executive Officer is tasked with providing oversight and reporting to the MERA Governing Board, MERA Executive Board, and the Next Gen Project Oversight Committee on the nature, quality, and costs of the Services. While neither the MERA Executive Officer nor MERA Deputy Executive Officer is authorized to direct Services, the MERA Deputy Executive Officer is tasked with being the primary Next Gen System staff liaison between MERA and DPW, including providing supporting and scheduling activities for the Next Gen Project Oversight Committee of MERA, and certain related subcommittees, as well as media relations and other tasks assigned by the MERA Executive Officer.

DPW shall cooperate with the MERA Executive Officer and MERA Deputy Executive Officer in their performance of the tasks described in the preceding paragraph, including but not limited to providing any information reasonably requested by the MERA Executive Officer or MERA Deputy Executive Officer.

12. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California.

13. CONDITIONS

The term, covenants and conditions of this Agreement shall apply to and bind the successors or assigns of the Parties hereto.

14. NOTICES

Any notice, demand, request, consent, approval or communication that either Party desires or is required to give to the other Party, shall be in writing and either served personally or sent by prepaid, first-class mail. Any such notice, demand, etc., shall be addressed to the other Party at the address set forth herein below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

MERA: Executive Officer
Marin Emergency Radio Authority
c/o Novato Fire Protection District
95 Rowland Way
Novato, CA 94945

County: Public Works Director
Marin County Public Works Department
3501 Civic Center Drive, Room 304
San Rafael, CA 94903-5223

[remainder of page intentionally left blank]

IN WITNESS whereof, the Parties hereto have executed this Agreement as of the day and year first written above.

Attest:

County of Marin

Clerk

By _____
President, Board of Supervisors

Approved as to Form

County Counsel

Attest

Marin Emergency Radio Authority

Secretary

By _____
President, Governing Board

Approved as to Form

General Counsel

EXHIBIT "A"
SERVICES TO BE PROVIDED BY COUNTY

DPW will provide the services described below:

- a. Provide Next Gen System implementation (the "Project") management services.
- b. Request proposals for, award, and administer a wireless communications consulting services contract, Project management consulting services contract, and Project vendor contract (the "Project Contracts").
- c. Prepare by the end of the first phase of the Project vendor contract a detailed design review and budget for the Project, subject to the approval of MERA's Governing Board (or its designee).
- d. Perform all activities required to fulfill MERA's obligations as the lead agency under the California Environmental Quality Act.
- e. Obtain any and all permits required for the Project.
- f. Facilitate the acquisition by MERA of all leases or other real property interests required for the Project. Such services may include negotiating agreements with landowners and assisting in transactions that are commonly referred to as a "friendly condemnation," but do not include a condemnation, which is opposed by the property owner and proceeds to trial. Assistance with respect to any "friendly condemnation" shall be done in conjunction with separate legal counsel for MERA.
- g. Attend all Project meetings.
- h. Invite designated MERA staff to all Project meetings.
- i. Provide written monthly status reports on the Project to the Next Gen Oversight Committee regarding contracts entered into, adherence to project budget, and on-time performance, including milestone checks.
- j. Respond to requests from MERA for Project related information.
- k. Maintain complete and accurate records with respect to the Project and other such information required by MERA that relate to the performance of services under this Agreement. Records shall be maintained in sufficient detail to permit an evaluation of services.
- l. Inform MERA in writing within seven (7) days of material deficiencies or discrepancies in work related to the Project, as reasonably determined by DPW.
- m. Cooperate and coordinate with MERA in all activities covered by this Agreement and any other agreements related to the Project.

EXHIBIT "B"
COMPENSATION OR FEES TO BE PAID TO COUNTY

1. MERA shall reimburse COUNTY for project costs, including project management services, professional consulting services, construction and equipment. Total cost for the project is not to exceed \$40,000,000.

2. Fees for the Services delivered under this Agreement are as follows:

County will provide Services based on "time and material" to be billed at the following hourly rates:

DPW staff services (estimated budgeted cost \$2,000,000)

Operations Officer	\$217.37*
Communications Maintenance	\$165.24*
Senior Accounting Assistant	\$ 98.49 *
Other County Staff	Actual hourly costs, including benefits

Consultant and Vender Services, including professional services, goods and trade services, and construction (all costs to be reimbursed)

Vendor or Consultant invoices	Actual Costs
Material	Actual Costs

*hourly rates may be adjusted annually on July 1 of each year, commencing July 1, 2016, to reflect the annual increase during the preceding twelve-month period ending in October as published in October of each year in the "Consumer Price Index for all Urban Consumers in the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area" by the U.S. Department of Labor Statistics. The adjustment shall be rounded to the nearest five cent increment. February of each year County shall forward to MERA the proposed CPI increase for the next July 1.