

COMMUNICATIONS SITE LEASE AGREEMENT

This Communications Site Lease Agreement (the “Agreement”) is entered into the _____ day of _____, 20____ by and between the MUIR BEACH COMMUNITY SERVICES DISTRICT (“Lessor”) and the MARIN EMERGENCY RADIO AUTHORITY (“MERA” or “Lessee”).

Recitals

WHEREAS, MERA is a joint exercise of powers authority duly organized and operating pursuant to Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, and pursuant to the Joint Powers Agreement, dated February 28, 1998 by and among the members (the “JPA”); and

WHEREAS, MERA’s purpose is to plan, finance, implement, manage, own and operate a multi-jurisdictional and County-wide public safety and emergency radio system (the “System”); and

WHEREAS, Lessor is the record owner of that certain real property identified as Marin County Assessor Parcel Number 199-262-11, adjacent to the Muir Beach Overlook, Muir Beach, California and more particularly described in Exhibit “A” hereto (“the Property”); and

WHEREAS, MERA desires to lease a portion of Lessor’s property to install and operate certain communications facilities and related equipment and improvements (the “Communications Facility”) for MERA’s Next Gen Project (“the Project”); and

WHEREAS, Lessor and MERA desire to enter into this Agreement to provide space for the Communications Facility that will become part of the System and be located on Lessor’s property.

NOW, THEREFORE the parties hereto agree, in consideration of the mutual covenants and obligations, to the terms and conditions hereinafter set forth as follows:

1. Leased Property.

Lessor is the owner of the Property. The parties hereto acknowledge that other licenses, leases or easements for communication and other purposes may currently exist on the Property. Lessor hereby leases to MERA and MERA hereby leases from Lessor, space on that portion of the Property (the “Lease Space”) depicted in Exhibit “B”, together with the access rights described hereinafter in paragraph 6.

2. Use.

A. Lessor grants to MERA, subject to the rights and privileges of current tenants on the Property and other grantees of rights therein, the right and privilege to use the Lease Space for any lawful activity in connection with the System, including the transmission and reception of radio communication signals on various frequencies, and the construction, maintenance, and operation of the Communication Facility.

B. Lessor will not grant or permit to be granted, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property (or adjacent property owned, controlled or managed by Lessor or any affiliate of Lessor), if such use may in any way adversely affect or interfere with the Communication Facility, the operations of MERA, or the rights of MERA under this Agreement.

C. Lessor will not use, nor will Lessor permit its affiliates, employees, tenants, licensees, invitees or agents to use, any portion of the Property (or any adjacent property owned, controlled or managed by Lessor or its affiliates) in any way which interferes with the operations of MERA or the rights of MERA under this Agreement. Lessor will cause such interference to cease within twenty-four (24) hours after receipt of notice of such interference from MERA. In the event any such interference does not cease within the aforementioned remediation period, the parties acknowledge that the public will suffer irreparable injury, and therefore, MERA will have the right, in addition to any other rights that it may have at law or in equity, for Lessor's breach of this Agreement, to elect to enjoin such interference.

D. Lessor shall provide the following radio frequency emission best management practices on the Property:

(i) Post a NOTICE, CAUTION, or WARNING sign, as needed to advise persons when they are entering an area on the Property in which the radio frequency emissions exceed safety standards established by the Federal Communications Commission (FCC).

(ii) Post radio frequency guideline signage, which complies with FCC guidelines, at each access point to the Property.

(iii) Control access to the Property in a manner that prevents access by the general public.

(iv) Inspect the Property to ensure compliance with FCC radio frequency emission safety standards after the addition or modification of any equipment on the Property or any other change to the radio frequency environment on the Property.

E. MERA shall provide Lessor with signage required at the Property for posting in D(i) or D(ii) above. If MERA adds or modifies any equipment on the Property, MERA shall pay for and coordinate any inspection of the Property to ensure compliance with FCC radio frequency emission safety standards as required in D(iv) above. MERA shall ensure that in the Property, any person who, on behalf of MERA, is accessing an area in which the radio frequency emissions exceed levels considered safe for the general public, as established by the FCC: (i) wears a personal radio frequency exposure monitor; and (ii) has completed radio frequency safety awareness training, which includes knowledge of the use of personal protective equipment.

3. Equipment Installation and Operation.

A. MERA shall purchase, install, operate and maintain within the Lease Space, at its sole cost and expense, one 60-foot tall monopole tower supporting three communications antennas with associated cables, one microwave antenna with associated cables installed on the existing water tank, one backup generator with propane fuel tank, and one prefabricated equipment shelter containing various equipment racks with associated cables. Collectively, these components comprise the Communications Facility. The equipment described in this

Agreement may change from time to time due to a variety of factors. MERA shall not be required to secure further approvals from Lessor for changes to the Communications Facility, unless the changes are material, but shall comply with all applicable codes, regulations and laws regarding any installation, modification, or operation of the Communications Facility.

B. If there is a loss of electrical service at the Lease Space due to an emergency or other circumstance beyond the control of MERA, MERA may, at its expense, install and maintain a temporary transportable power generator and related transportable fuel storage tank at the Lease Space or on the Property adjacent to the Lease Space for a period not to exceed thirty (30) days or the period necessary for the utility company to restore electric service to the Lease Space, whichever is greater.

4. Term and Option to Extend.

A. Commencement Date and Term. Subject to CEQA Compliance, as described below, this Agreement shall be effective upon full execution (the “Effective Date”). The term of this Agreement shall be ten (10) years and shall commence on the date that MERA commences construction of the Communication Facility (the “Commencement Date”). MERA shall be permitted to occupy the Lease Space and commence construction of the Communication Facility as of the Effective Date, including the right to enter the Lease Space for the purpose of making appropriate engineering and surveys, inspections, soil test borings and other reasonable, necessary tests.

B. Extension of Agreement. MERA shall have the right to extend the term hereof for two (2) additional ten (10) year periods, subject to all of the provisions of this Agreement, provided MERA is not in default hereunder at the time it seeks to exercise the right to extend. MERA shall notify Lessor in writing of its intention to exercise extension rights at least ninety (90) days prior to expiration of the term.

C. CEQA Compliance. MERA represents, and Lessor acknowledges, that MERA must comply with the California Environmental Quality Act (“CEQA”), Public Resources Code Section 21000, *et seq.* in connection with the Project and Communications Facility. It is understood by the parties that MERA’s compliance with CEQA is a condition precedent to the effectiveness of this Agreement. Therefore, notwithstanding anything to the contrary in this Agreement, unless and until MERA approves the Project and certifies the related environmental impact report, MERA shall not be obligated under this Agreement in any manner.

5. Rent Payments.

Effective as of the Commencement Date of this agreement, MERA shall pay Lessor rent in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) each month for the term of the Agreement. Lessor shall present MERA an invoice for rent. Rent payments shall be paid in advance on the first day of each month and made payable to the Muir Beach Community Services District and sent to Lessor as described in Section 8 below. Rent shall be increased upon each anniversary of the Commencement Date at the rate of four (4%) percent of the rent then in effect under this Agreement.

6. Access and Utilities.

A. MERA is hereby granted access rights at all times (subject to the limitations, restrictions, covenants, conditions, leases, licenses and easements of record) for ingress and

egress to the Lease Space over, under, upon, and across the Property, as required for the construction, erection, installation, operation, maintenance, repair, replacement and removal of MERA's facilities and related equipment, improvements and other necessary appurtenances and for power lines and any other utilities used in connection with MERA's facilities. MERA shall have the right, subject to receiving prior written approval from Lessor, to improve at MERA's expense, ingress and egress to access the Lease Space for MERA's necessary and required use of the Lease Space.

B. MERA shall have the right to enter the Property for the purpose of making necessary inspections and engineering surveys, and other tests reasonably necessary to determine the suitability of the Lease Space for the Communications Facility and for the purposes of preparing for the construction of the Communications Facility. MERA shall repair any damage to the Property caused by any tests performed and shall return the Property to the condition that existed prior to any tests.

C. Lessor agrees not to restrict entry to the Lease Space by authorized MERA employees, agents, contractors and sub-contractors.

D. MERA shall pay for all utilities necessary to operate its equipment.

7. Holding Over.

Should MERA, with Lessor's written consent, continue to utilize the Lease Space or any portion thereof after the expiration of the last ten (10) year term, MERA shall continue to do so subject to all terms and conditions of this Agreement.

8. Notice.

All notices, demands, or payments are deemed to be given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid United States mail, and addressed to the respective parties as follows;

LESSOR:

Muir Beach Community Services District
19 Seacape Drive
Muir Beach, CA 94965

LESSEE:

Marin Emergency Radio Authority
c/o Town of Corte Madera
300 Tamalpais Drive
Corte Madera, CA 94925
Attention: Executive Officer

The address to which any notice, demand or payment may be given to either party may be changed by written notice.

9. Indemnification.

With respect to the Property and except for the sole negligence of willful misconduct of the Lessor or its agents, employees or contractors, MERA shall indemnify, hold harmless and defend Lessor from any and all claims, obligations, liabilities, costs, demands, damages,

expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of the MERA's gross negligence or willful misconduct with respect to the MERA's access, use or occupancy of the Property. MERA shall not be liable for any loss or damage to persons or property sustained by Lessor or other persons, which may be caused by theft or by any act or neglect by any other lessee, licensee, tenant or occupant of the Property, or by any third parties. The indemnity obligations hereunder survive the termination of this Agreement.

With respect to the Property and except for the sole negligence or willful misconduct of MERA or its agents, employees or contractors, Lessor shall indemnify, hold harmless, and defend MERA from any and all claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of the Lessor's gross negligence or willful misconduct with respect to the Lessor's access, use or occupancy of the Property. Lessor shall not be liable for any loss or damage to persons or property sustained by MERA or other persons, which may be caused by theft or by any act or neglect by any other lessee, licensee, tenant or occupant of the Property, or by any third parties. The indemnity obligations hereunder survive the termination of this Agreement.

10. Termination; Removal of Communications Facility.

A. In the event that MERA no longer requires the use of the Lease Space, MERA shall have the right to terminate this Agreement upon no less than six (6) months written notice to Lessor. Lessor may elect to terminate this Agreement and require MERA to remove its Communications Facility, upon no less than twelve (12) months written notice to MERA. However, in the event that MERA determines it cannot relocate its Communications Facility to an alternate location within twelve (12) months, then MERA may holdover on the Property under the terms of the Agreement for a period not to exceed an additional six (6) months.

B. Upon the expiration of the term of this Agreement or its termination as provided for herein by either party, MERA shall at its sole cost remove the Communications Facility and restore the LEASE Space to its original condition existing as of the Commencement Date.

11. Insurance.

During the term of this Agreement MERA shall, at its expense, obtain and keep in force a policy of comprehensive public liability insurance with limits not less than five hundred thousand (\$500,000) dollars per injury and one million (\$1,000,000) dollars per occurrence and a policy of fire insurance sufficient to cover actual replacement cost of the Communications Facility without deduction for depreciation (or a "Certificate of Coverage" in the amount of five hundred thousand (\$500,000) dollars to one million (\$1,000,000) dollars from an excess liability pool of California Joint Powers Risk Management Authority).

12. Fixtures.

Lessor agrees that no part of the fixtures and equipment constructed, erected or placed by MERA on the Lease Space shall be considered as being fixed to or a part of Lessor's real property, it being the specific intention of Lessor to agree that the Communications Facility erected or placed by MERA on the Lease Space shall be and remain the property of MERA. At the expiration or termination of this Agreement, MERA shall remove, at its sole expense, from the Lease Space any and all fixtures and equipment of every kind constructed and erected

thereon except for underground conduit and foundations that may require significant excavation and restoration of soil and vegetation.

13. Assignment.

MERA shall not voluntarily or by operation of law assign, transfer, license, or otherwise transfer or encumber all or any part of its interest in this Agreement without Lessor's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, MERA shall have the right to assign this Agreement, or lease the Lease Space to any governmental entity that controls, is controlled by, or is under common control with MERA, or to any governmental entity resulting from merger or consolidation with MERA, provided that such assignee assumes in full all of MERA's obligations under the Agreement.

14. Hazardous Materials.

MERA understands that Lessor has undertaken no investigation of the Lease Space with respect to whether or not the Lease Space has been used for the generation, storage, treatment or disposal of hazardous materials (as defined in "14 A through 14 E" below) and, with this qualification, Lessor represents that it has no present knowledge that the Lease Space has been so used in connection with hazardous materials.

MERA shall not use, store, or bring onto the Property or Lease Space any hazardous materials except in accordance with all federal, state and local laws and regulations. In the event of leakage or spillage from any of MERA's equipment or any vehicle under the control or custody of MERA or any contractor or agent for MERA, MERA shall at its own expense promptly clean the Lessor's Property and Lease Space to the reasonable satisfaction of Lessor, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state, or local environmental regulations incurred by Lessor or MERA as a direct consequence of MERA's use of the Property or the Lease Space shall be borne by MERA, including any fines and judgments levied against Lessor. MERA agrees that in the event that MERA uses, stores, or brings onto the Property or Lease Space any hazardous materials and such act(s) result(s) in damage or injury to the Property or Lease Space, or to Lessor, Lessor's employees, agents, or contractors, MERA shall, at its own expense, indemnify and hold Lessor or any of Lessor's employees, agents, or contractors harmless as a result of the damage or injury, including, without limitation to, promptly cleaning Lessor's Property to the reasonable satisfaction of Lessor, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state or local environmental regulations incurred as the result of the above-mentioned acts by the MERA shall be borne by the MERA, including any fines and judgments levied against either party.

Lessor agrees that in the event that Lessor uses, stores, or brings onto the Property or Lease Space, any hazardous materials and such act(s) result(s) in damage or injury to MERA, or any of MERA's employees, agents, or contractors, Lessor, shall at its own expense, indemnify, defend, and hold MERA, or any of MERA's employees, agents, or contractors harmless as a result of the damage or injury, including, without limitation to, promptly cleaning MERA's Lease Space to the reasonable satisfaction of MERA, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state or local environmental regulations incurred as the result of the above-mentioned acts by Lessor shall be borne by Lessor, including any fines and judgments levied against either party.

As used in this section, hazardous materials shall mean:

- A. “Hazardous substances” and “pollutants and contaminants” as defined in CERCLA, 42 USC Sections 9601 (14) and (33) and regulations issued pursuant thereto, or their successors;
- B. “Extremely hazardous substances, hazardous chemicals” and “toxic chemicals” as defined in the Emergency Planning and Community Right to Know Act, 42 USC Sections 11002 (a), 11021(e), and 11023 (c), and regulations issued pursuant thereto, or their successors;
- C. “Hazardous chemicals” within the meaning of OSHA’s Hazard Communication Rules, 29 CFR Section 1910.1200, or their successors;
- D. Any such materials regulated under state or local environmental laws and regulations similar to the foregoing federal authorities listed in A-C above, or their successors; and
- E. Any materials not covered by, or exempted from, the sources listed in paragraphs A-D above or their successors, that may nevertheless pose a threat to human health or welfare or to the environment including, without limitation, petroleum, including crude oil or any fraction thereof, and radon.

15. Damage or Destruction.

If during the term hereof, MERA’s fixtures and equipment or any part thereof or any improvement constructed by MERA on or within the Lease Space are damaged or destroyed from any cause whatsoever, other than the Lessor’s gross negligence or willful misconduct, MERA may at its sole discretion, but having no obligation to do so and notwithstanding any and all third party liability, repair, restore or rebuild the same in accordance with its condition prior to such damage or destruction. In the event MERA determines it is not in the public’s interest to repair the Communications Facility, it may elect to terminate this Agreement upon providing Lessor thirty (30) days advance written notice of its intention to do so.

16. Merger.

This Agreement contains all the agreements of the parties hereto and no prior agreements or understandings shall be effective or binding for any purpose.

17. Amendment or Modification.

This Agreement may be amended or modified only by the mutual written consent of both parties hereto.

18. Time is of the Essence.

Time is of the essence with respect to the performance of every provision of this Agreement in which time or performance is a factor.

19. Condemnation.

If a condemning authority takes all of the Property or a portion thereof sufficient to render the Lease Space unsuitable for MERA’s use, MERA shall terminate the Lease as of the date when possession is delivered to the condemning authority. In any condemnation proceeding MERA shall be entitled to make a claim against the condemning authority for just compensation including the value of MERA’s Communications Facility, moving expenses, prepaid rent, business dislocation expenses, bonus value of this Agreement and any other amounts recoverable under condemnation law. Sale of all or a portion of the Lease Space to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

20. Applicable Law.

This Agreement which is governed by the laws of the State of California applies to and binds the successors, and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

LESSOR:

MUIR BEACH COMMUNITY SERVICES DISTRICT

_____ Date: _____

_____ Date: _____

LESSEE:

MARIN EMERGENCY RADIO AUTHORITY

APPROVED AS TO FORM:

Executive Officer

MERA Counsel

Date: _____

EXHIBIT A

Legal Description of the Property

All that certain property located in the County of Marin, State of California described as follows:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF THAT CERTAIN PARCEL OF LAND QUITCLAIMED FROM THE U. S. A. TO THE COUNTY OF MARIN BY DEED RECORDED JANUARY 5, 1961 IN BOOK 1426 OF OFFICIAL RECORDS AT PAGE 463, SAID POINT BEING DISTANT THEREON SOUTH 43° 51' EAST 24.675 FEET FROM THE NORTHERLY CORNER OF SAID PARCEL; RUNNING THENCE ALONG SAID LINE SOUTH 43° 51' EAST 105.325 FEET; THENCE NORTH 46° 09' EAST 187.65 FEET TO A POINT ON THE SOUTHERLY LINE OF SEACAPE DRIVE, AS SAID DRIVE IS SHOWN ON THE MAP OF SEACAPE, UNRECORDED; THENCE WESTERLY ALONG SAID SOUTHERLY LINES ON A CURVE TO THE LEFT WHOSE CENTER BEARS SOUTH 22° 58' 26" WEST A RADIUS 180 FEET THROUGH A CENTRAL ANGLE OF 35° 28' 26" FOR AN ARC DISTANCE OF 111.445 FEET, TANGENT TO THE PRECEDING CURVE SOUTH 77° 30' WEST 77.813 FEET, ON A CURVE TO THE LEFT TANGENT TO THE PRECEDING COURSE OF RADIUS 25 FEET THROUGH A CENTRAL ANGLE OF 74° 10' 24" FOR AN ARC DISTANCE OF 32.364 FEET TO A POINT OF REVERSE CURVATURE AND ON A CURVE TO THE RIGHT OF RADIUS 140 FEET THROUGH A CENTRAL ANGLE OF 10° 02' 45" FOR AN ARC DISTANCE OF 24.547 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

Depiction of the Lease Space

Attached Sheet 1 of 1