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# MASTER DESIGN ENGINEERING SERVICES AGREEMENT

This Master Design Engineering Services Agreement ("Agreement"), effective this March 1, 2020 is by and between Marin Emergency Radio Authority, a California joint exercise of powers agency ("Client"), and AECOM Technical Services, Inc., a California corporation ("AECOM"); each also referred to individually as ("Party") and collectively as ("Parties").

## RECITAL

**WHEREAS** Client has a need, from time-to-time, to access design engineering services involving multiple tasks for a single project or multiple tasks in support of multiple projects; and

**WHEREAS** AECOM is willing to provide such design engineering services to Client under the terms and conditions set forth herein based on the particulars of each task.

In consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

## 1. SCOPE OF SERVICES

1.1 AECOM shall perform the services set forth in one or more specific task orders ("Task Orders"). **EXHIBIT A**, incorporated herein by reference, is the preferred form for such use.

1.2 The individual Task Orders will normally include the description of the project ("Project"); the scope of services to be performed under the specific Task Order ("Services"); the schedule for the performance of the Services ("Project Schedule"); deliverables to be provided under the Services ("Deliverables"); special terms and conditions unique to the specific Task Order ("Special Terms and Conditions"); and the designation of the primary representatives for each Party relating to the specific Task Order.

1.3 Nothing in this Agreement provides a guaranty that the Client will issue, or that AECOM will accept, any Task Orders. AECOM's decision to decline any Task Order shall be at its exclusive discretion and shall not be construed as a breach of this Agreement. Agreed upon Task Orders will require the signatures of both Parties.

1.4 It is the expressed intent of the Parties that this Agreement shall be made available to affiliates of AECOM. For the purposes of this Agreement, as it applies to each Task Order, the term "AECOM" shall mean either AECOM as defined above or the affiliate identified in the Task Order. The applicable Task Order shall clearly identify the legal name of the affiliate accepting the Task Order. All rights and responsibilities of AECOM under a Task Order executed by an AECOM affiliate shall belong exclusively to the affiliate.

## 2. TERM OF AGREEMENT

2.1 Upon execution by the Parties, this Agreement shall have the effective date as set forth above and shall remain in force for a period of two years, unless sooner terminated as provided herein or extended in writing by the Parties.

2.2 If this Agreement is terminated for any reason, no new Task Orders may be issued, but any existing Task Orders shall remain in full force and subject to this Agreement until the Services under the respective Task Orders have been completed.

2.3 Individual Task Orders may be terminated on the same basis as this Agreement.

**3. COMPENSATION AND PAYMENT** AECOM shall be paid for the performance of the Services in accordance with ATTACHMENT 2 of the Task Order ("Compensation and Payment"), incorporated herein by reference and attached hereto.

**4. NOTICE** Legal notice shall be given (i) by delivery in person, (ii) by a nationally recognized next day courier service, or (iii) by United States Postal Service, registered mail, postage prepaid and return receipt requested. Notices shall be effective upon actual delivery to the other Party at the applicable addresses set forth below:

**TO CLIENT:**
**Marin Emergency Radio Authority**
c/o Town of Corte Madera
300 Tamalpais Drive
Corte Madera, CA 94925
Attn: Maureen Cassingham, Executive Officer

**TO AECOM:**
**AECOM**
2000 K Street NW, Suite 800
Washington, DC 20006
Attn: Mike Soderman, Project Manager

Claims-related notices shall be copied to:
AMER-DCSProjectClaimNotices@aecom.com

or to which address the receiving Party may from time to time give notice to the other Party. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal to accept or inability to deliver. Claims-related notices need to include the AECOM project name and number found in this Agreement as well as contact information of the person submitting the notice.

**5. AECOM'S RESPONSIBILITIES**

5.1 AECOM shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same locality under comparable circumstances. The full extent of AECOM's responsibility with respect to the Services shall be to perform in accordance with the above standards and to remedy any material deficiencies or defects in the Deliverables at AECOM's own expense, provided that AECOM is notified by Client, in writing, of any such deficiency or defect within a reasonable period after discovery thereof, but in no event later than 90 days after AECOM's completion or termination of the Services. AECOM MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED.

5.2 AECOM will endeavor in good faith, as needed, to obtain from the appropriate authorities their interpretation of applicable codes and standards and will apply its professional judgment in interpreting the codes and standards as they apply to the Project at the time of performance of the Services. Notwithstanding the above, the Parties agree that, as the Project progresses, such codes or standards may change or the applicability of such codes or standards may vary from AECOM's original interpretation through no fault of AECOM and that additional costs necessary to conform to such changes or interpretations during or after execution of the Services will be subject to an equitable adjustment in the Compensation and Project Schedule.

5.3 AECOM shall be responsible for its performance and that of AECOM's lower-tier subconsultants and vendors. However, AECOM shall not be responsible for health or safety programs or precautions related to Client's activities or operations or those of Client's other contractors and consultants or their respective subcontractors and vendors ("Contractors"). AECOM shall have no responsibility for the

construction work to be performed ("Work"), including without limitation (i) construction means, methods, techniques, sequences or procedures; (ii) direction of Contractors' personnel; (iii) quality control of the Work, (iv) selection of construction equipment; (v) coordination of Contractors' work; (vi) placing into operation any plant or equipment; or (vii) Contractors' failure to perform the Work in accordance with any applicable construction contract. AECOM shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client, Contractors or others at the project site ("Project Site") other than AECOM's employees, subconsultants and vendors. So as not to discourage AECOM from voluntarily addressing health or safety issues while at the Project Site, in the event AECOM does identify such issues by making observations, reports, suggestions or otherwise, AECOM shall have no authority to direct the actions of others not under AECOM's responsibility and control and shall have no liability, responsibility, or affirmative duty arising on account of AECOM's actions or forbearance.

5.4 Notwithstanding anything contained in this Agreement, AECOM shall have no responsibility for the discovery, presence, handling, removal, transportation, storage or disposal of, or exposure of persons to hazardous materials in any form related to the Project. AECOM shall not be responsible for Client's pre-existing site conditions or the aggravation of those preexisting site conditions to the extent not caused by the negligence or willful misconduct of AECOM.

5.5 In the event that the Services include construction observation or similar field services, AECOM's responsibility shall be limited to determining general conformance with AECOM's design. Visits by AECOM to the Project Site and observations made by AECOM shall not relieve the Contractors of their obligation to conduct comprehensive inspections of the Work sufficient to ensure conformance with the intent of the construction contract documents, and shall not relieve the Contractors of their responsibility for means, methods, techniques, sequences and procedures necessary for coordinating and completing all portions of the Work and for all safety precautions incidental thereto.

5.6 Any opinions of probable construction costs provided by AECOM represent AECOM's good faith professional judgment in light of its experience, knowledge and the information reasonably available to AECOM at the time of preparation of the opinion. However, since AECOM has no control over the market, economic conditions or the bidding procedures, AECOM, its directors, officers, employees and subconsultants do not make any guarantees or warranties whatsoever, whether express or implied, with respect to such opinions and accept no responsibility for any loss or damage arising therefrom or in any way related thereto. Third parties relying on such opinions do so at their own sole risk.

## 6. CLIENT'S RESPONSIBILITIES

6.1 Client shall provide in writing Client's full requirements and criteria for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

6.2 Client shall furnish to AECOM all applicable information and technical data in Client's possession or control reasonably required for the proper performance of the Services. AECOM shall be entitled to rely without independent verification upon the accuracy and completeness of information and data provided by Client or obtained from generally accepted sources within the industry, except to the extent such verification by AECOM is expressly required as a defined part of the Services. AECOM shall not be responsible for defects in its Services attributable to its reliance upon or use of information provided by Client.

6.3 Client shall arrange for access and make all provisions necessary for AECOM to enter upon public and/or private property as required for AECOM to properly perform the Services. Client shall disclose to AECOM any known or suspected hazards at the Project Site which may pose a threat to human health, property or the environment.

6.4 If any document or inquiry requires Client to approve, comment, or to provide any decision or direction with regard to the Services, such approval, comment, decision or direction shall be provided within a reasonable time within the context of the Project Schedule, or if not identified in the Project Schedule, within a reasonable time to facilitate the timely performance of the Services.

**7. INDEPENDENT CONTRACTOR** Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or create a relationship of employer/employee or principal/agent between Client or Client's Contractors and AECOM.

**8. CONFIDENTIALITY**

8.1 AECOM shall treat as confidential information and data delivered to it by Client or developed in the performance of the Services that are specified in writing by Client to be confidential ("Confidential Information"). Confidential Information shall not be disclosed to third parties by AECOM without the consent of Client, except to the extent reasonably believed necessary by AECOM for its proper performance of the Services, for a period of 5 years following completion or termination of this Agreement.

8.2 Notwithstanding the above, these restrictions shall not apply to Confidential Information which (i) is already known to AECOM at the time of its disclosure; (ii) becomes publicly known through no wrongful act or omission of AECOM; (iii) is communicated to a third party with the express written consent of Client and is not subject to restrictions on further use or disclosure; (iv) is independently developed by AECOM; or, (v) is required by Law to be disclosed; provided that the information required for disclosure shall remain Confidential Information as to all other persons or entities pursuant to the terms of this Agreement, and provided further that AECOM shall promptly provide Client with written notice of such requirement.

8.3 Upon termination of this Agreement or upon Client's written request, AECOM shall return the Confidential Information to Client or destroy the Confidential Information in AECOM's possession or control. Notwithstanding the above, AECOM shall not be required to destroy Confidential Information held electronically in email, archive or back-up systems in accordance with general systems archiving or backup policies or required for preservation by law, regulation, audit, data retention or corporate archival purposes or per regulatory, judicial or governmental order. All such retained Confidential Information shall be kept confidential by AECOM subject to and in accordance with the terms of this Agreement.

**9. DATA RIGHTS**

9.1 All right, title and interest in and to any Deliverables, and excluding any AECOM Intellectual Property, shall be assigned by AECOM to Client upon full payment for the Deliverables. Client acknowledges and agrees that AECOM is the author of, and retains all rights, title and interest in all other intellectual property, including work papers, templates, details, designs, drawings, plans, renderings, analyses, calculations, models, software, macros, applications, specifications, processes, procedures, interim or draft documents, methodologies, know-how, and any other instruments of service: (a) belonging to AECOM or its consultants prior to the effective date of this Agreement; (b) developed by AECOM or its consultants outside the scope of, or not exclusively pursuant to, this Agreement; (c) licensed by AECOM or its consultants from a third-party; and (d) included within the Deliverables but which are generic, generally applicable to or standard in AECOM's business (collectively, "AECOM Intellectual Property"). To the extent the Deliverables contain, or Client's receipt of the Services requires the use of AECOM Intellectual Property, and to the extent of AECOM's ownership and control thereof, AECOM hereby grants to Client, upon full payment for the Deliverables and Services, a limited, non-exclusive, non-assignable, royalty-free license to use and sublicense said AECOM Intellectual Property, solely and to the extent necessary, to achieve the purposes stated in ATTACHMENT 1 of the Task Order.

9.2 Nothing in this Agreement shall be construed to prohibit AECOM or its consultants from using for other purposes, clients or projects the skills, knowledge and experience gained by AECOM or its consultants in the performance of the Services and provision of the Deliverables pursuant to this Agreement, provided that AECOM and its consultants do not use Client's Confidential Information.

9.3 AECOM, in developing solutions, testing hypotheses, or documenting designs, may employ advanced technologies for simulation, information modeling, generative design, and the development of project documentation ("Technical Tools"). While these Technical Tools may result in digital files and/or simulations or models ("Datasets"), when not specifically defined within this Agreement, these Datasets will not constitute a Deliverable or portion thereof. Rather, the Technical Tools and Datasets will be a byproduct of AECOM's internal processes and will be AECOM's sole proprietary information. Notwithstanding

anything to the contrary in this Agreement, any ownership and data rights provisions will not apply to such Technical Tools and Datasets and AECOM will remain the sole owner of such Technical Tools and Datasets.

9.4 Client understands and accepts that the Services and Deliverables provided by AECOM pursuant to this Agreement are intended by AECOM for the sole use by Client for the specific purpose stated in ATTACHMENT 1 of the Task Order. Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless AECOM and its consultants and their directors, officers, employees, agents, representatives, affiliated and parent companies ("AECOM Indemnitees"), against any and all claims, suits, causes of action, damages, losses, costs, expenses and liabilities (including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings or claims), including reasonable attorneys' fees and costs of defense, to which AECOM or any of the AECOM Indemnitees may become subject as a consequence of any use or modification of, reliance upon, or transmission to a third party of, said Services, Deliverables, or AECOM Intellectual Property, by Client outside the scope of this Agreement without the express, written permission by AECOM.

**10. RECORD DRAWINGS** Client shall direct the Contractors to provide AECOM with updated red-line documentation which accurately and completely reflects any changes between the original design and the final construction. Record drawings to be delivered by AECOM to Client as a part of the Services ("Record Drawings") reflect the design provided by AECOM as modified by such updated information. Consistent with AECOM's defined Services, AECOM shall not have an obligation to independently validate such information related to the actual construction. AECOM makes no warranty or guarantee with regard to the accuracy or completeness of the information provided by the Contractors and third parties and shall bear no responsibility for any errors or omissions arising from or related to any defects or deficiencies in such information.

## 11. ELECTRONIC FILES

11.1 Electronic files to be delivered under this Agreement contain information to be used for the production of contract documents for the Project and are provided solely as an accommodation to Client. The official Contract Documents of Record ("Contract Documents") are those documents produced by AECOM which bear seals and/or signatures. Unless otherwise expressly set forth in the Services, the electronic files delivered under this Agreement are not Contract Documents.

11.2 The electronic files were created to supplement the official Contract Documents. Due to the possibility that files of this nature can be modified, either unintentionally or otherwise; or that the information contained in these files can be used in a manner for which they were not originally intended; or that electronic data may be corrupted by electronic transmission, AECOM makes no representation that the files, after delivery, will remain an accurate representation of the source data in AECOM's possession, or are suitable for any other purpose or use.

11.3 All indications of AECOM's and AECOM's subconsultants' involvement, including but not limited to seals and signatures, shall be removed from each electronic display and shall not be included in any prints produced therefrom.

11.4 If a third-party license is required to access or use electronic files, Client acknowledges its responsibility at its own expense to obtain all applicable hardware and software needed to legally access the electronic files.

## 12. CERTIFICATIONS

12.1 For purposes of this Agreement, "certification" means to state or declare a professional opinion based on the standard of performance set forth in Section 5.1 above.

12.2 AECOM shall not be required to execute certificates that would (i) result in AECOM having to certify, guarantee or warrant the existence of conditions whose existence AECOM cannot reasonably ascertain under the existing Services; (ii) require knowledge, services or responsibilities beyond the Services; or (iii)

require AECOM to make a certification that would exceed what may reasonably be expected from firms of similar experience and expertise providing services of a similar nature. In addition, Client agrees not to make resolution of any dispute with AECOM or payment of any amount due to AECOM in any way contingent upon AECOM executing such certificates.

12.3 A professional's certification in no way relieves other parties from meeting their respective requirements imposed by contract or other means, including commonly accepted industry standards and practices. If required as a part of its Services, AECOM will provide a written report stating whether, in AECOM's professional opinion and based on periodic site visits, the construction work complies generally with the Contract Documents.

**13. CHANGED SITE CONDITIONS** The unexpected discovery of hazardous materials, hazardous wastes, pollutants, contaminants or concealed obstructions or utilities that could not reasonably have been anticipated from information reasonably available to AECOM may constitute a changed site condition. To the extent that such changed site condition materially increases the health and safety risks associated with the Services or requires AECOM to perform services materially different or materially in excess from those set forth in the Services, AECOM may, at its sole discretion, elect to suspend and/or terminate the related Services and shall be paid for the related Services up through the date of such termination. To the extent that the changed site conditions materially impact the cost, level of effort or schedule of the Services, an equitable adjustment shall be made to the Services.

**14. MATERIALS AND SAMPLES** Any items, substances, materials or samples removed from the Project Site for testing, analysis, or other evaluation will be returned to the Project Site unless otherwise agreed to by the Parties in writing. Client recognizes and agrees that AECOM is acting as a bailee and at no time assumes title to said items, substances, materials or samples.

**15. COMPLIANCE** The Parties shall comply with applicable treaties, compacts, statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and other requirements of governmental or judicial entities that have jurisdiction over the Services ("Law").

**16. FORCE MAJEURE** Neither Party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of Hazardous Materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party. AECOM shall be entitled to an equitable adjustment to the Project Schedule and compensation in the foregoing circumstances.

**17. INSURANCE**

17.1 AECOM will maintain the following insurance coverages and amounts:

17.1.1 Workers Compensation insurance as required by Law;

17.1.2 Employer's Liability insurance with coverage of $1,000,000 per each accident/employee;

17.1.3 Commercial General Liability insurance with coverage of $2,000,000 per occurrence/aggregate;

17.1.4 Automobile Liability insurance with coverage of $1,000,000 combined single limit; and

17.1.5 Professional Liability insurance with coverage of $2,000,000 per claim/aggregate.

**18. INDEMNITY**

18.1 AECOM agrees to indemnify Client, its officers, directors and employees, from third party claims for loss or damage, exclusive of defense obligations, for bodily injury or property damage ("Claims"), to the proportional extent caused by AECOM's negligence or willful misconduct.

18.2 If the Services include AECOM's performance during the construction phase of the Project, Client shall require Client's Contractors working on the Project Site to include AECOM, its directors, officers and employees in any indemnity and in any insurance benefits that the Contractors are required to provide to Client relating to their work.

**19. CONSEQUENTIAL DAMAGES WAIVER** NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS AND EMPLOYEES BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF USE OR INTERRUPTION OF BUSINESS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND AECOM HEREBY RELEASES CLIENT AND CLIENT HEREBY RELEASES AECOM FROM ANY SUCH LIABILITY.

**20. RISK ALLOCATION & RESTRICTION OF REMEDIES** THE PARTIES HAVE EVALUATED THE RESPECTIVE RISKS AND REMEDIES UNDER THIS AGREEMENT AND AGREE TO ALLOCATE THE RISKS AND RESTRICT THE REMEDIES TO REFLECT THAT EVALUATION. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT AGREES TO RESTRICT ITS REMEDIES UNDER EACH TASK ORDER AGAINST AECOM, ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, ("AECOM COVERED PARTIES"), SO THAT THE TOTAL AGGREGATE LIABILITY OF THE AECOM COVERED PARTIES SHALL NOT EXCEED $250,000 OR THE ACTUAL PAID COMPENSATION UNDER SUCH TASK ORDER, WHICHEVER IS GREATER. THIS RESTRICTION OF REMEDIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. CLAIMS MUST BE BROUGHT WITHIN ONE CALENDAR YEAR FROM PERFORMANCE OF THE SERVICES UNLESS A LONGER PERIOD IS REQUIRED BY LAW.

## 21. DISPUTE RESOLUTION

21.1 Either Party may initiate a dispute resolution by providing written notice to the other Party setting forth the subject of the claim, dispute or controversy and the requested relief. The recipient of such notice shall respond within 5 business days with a written statement of its position and a recommended solution to the claim.

21.2 If the Parties cannot resolve the dispute through negotiation, either Party may refer the claim, dispute or controversy to a panel ("Panel") consisting of a designated senior representative from each Party ("Representative"), who shall have the authority to resolve it. The Representatives shall not have been directly involved in the Services and shall negotiate in good faith. No written or verbal representation made by either Party in the course of any Panel proceeding or other settlement negotiations shall be deemed to be a Party's admission. If the representatives are unable to resolve the dispute within 15 business days, either Party may pursue its respective legal and equitable remedies.

21.3 A Party's failure to abide by the foregoing dispute resolution procedures prior to that Party's filing of a lawsuit shall result in the dismissal of said lawsuit until the provisions of Articles 21.1 and 21.2 have been met.

## 22. GOVERNING LAW

This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the state where the Project is located, (the "State") without giving effect to any laws, rules or provisions of the State that would cause the application of the laws rules or provisions of any jurisdiction other than the State.

## 23. TERMINATION

23.1 This Agreement may be terminated for convenience by either Party upon 30 days advance written notice. Upon termination, AECOM will be paid for all Services performed up through the termination date.

23.2 This Agreement may be terminated for cause by either Party if the other Party materially fails to perform its obligations under this Agreement, does not commence correction of such non-performance within 10 business days of receipt of written notice and/or fails to diligently complete such correction thereafter. The respective rights and obligations of the Parties predating such termination shall survive termination of this Agreement.

## 24. ASSIGNMENT AND SUBCONTRACTING

24.1 Neither Party may assign this Agreement without the written consent of the other Party, which unconsented-to assignment shall be void ab initio.

24.2 Notwithstanding Section 24.1 above, the Parties recognize that AECOM has affiliated companies that have specialized expertise, necessary certifications/registrations or other capabilities that may make use of such affiliates more suitable for the performance of all or part of the Services. AECOM shall be entitled without additional consent to assign this Agreement or performance of the Services, in whole or in part, to any of AECOM's subsidiaries or affiliates upon written notice to Client.

**25. PARTIES IN INTEREST** Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties, any right or remedy under or by reason of this Agreement. The provisions of this Agreement shall bind and inure solely to the benefit of the Parties and their respective successors and permitted assigns.

**26. WAIVER** Either Party may in writing waive any provisions of this Agreement to the extent such provision is for the benefit of the waiving Party. No waiver by any Party of a breach of any provision of this Agreement shall be construed to be a waiver of any subsequent or different breach.

**27. SEVERABILITY AND SURVIVAL** Articles 4 (Notice), 5 (AECOM's Responsibilities), 6.2 (Reliance on Data), 8 (Confidentiality), 9 (Data Rights), 10 (Record Drawings), 11 (Electronic Records), 12 (Certifications), 14 (Materials and Samples), 17 (Insurance), 18 (Indemnity), 19 (Consequential Damages Waiver), 20 (Risk Allocation), 21 (Dispute Resolution), 22 (Governing Law), 24 (Assignment and Subcontracting), 25 (Parties in Interest) and 27 (Severability and Survival) shall survive termination of this Agreement. To the extent any provision of this Agreement violates any law, or is otherwise invalid or unenforceable, said provision shall be deemed automatically so revised to the limited extent necessary to make that provision legal and enforceable and, to the fullest extent permitted by law, consistent with Parties' original intent.

**28. PREPARATION OF THE AGREEMENT** Each Party has had the opportunity to avail itself of legal advice and counsel. The Parties hereto agree that neither one of them shall be deemed to be the drafter or author of this Agreement, and in the event this Agreement is subject to interpretation or construction by a court of law or panel of arbitration, such court or panel shall not construe this Agreement or any portion hereof against either Party as the drafter of this Agreement.

**29. SIGNATURES** Each Party warrants that the person executing this Agreement has the necessary authority to do so on behalf of the respective Party. This Agreement may be executed in one or more

counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

## 30. ORDER OF PRECEDENCE

Executed amendments to this Master Design Engineering Services Agreement
Master Design Engineering Services Agreement, Article 31
Master Design Engineering Services Agreement, Articles 1 through 30 and 32
Executed Task Orders
Other contract documents

Client may use its standard business forms (such as purchase orders) to administer any agreement between AECOM and Client, but use of such forms shall be for convenience purposes only, and any handwritten or typed provision in conflict with the terms of this Agreement, including these Terms and Conditions, and all pre-printed terms and conditions contained in or on such forms shall be deemed stricken and null and void.

## 31. SPECIAL TERMS & CONDITIONS

**Exhibit B is hereby incorporated into this Agreement. To the extent that the terms of Exhibit B conflict with this Agreement, the terms of Exhibit B shall apply.**

**Article 1.4 shall be revised as follows:** It is the expressed intent of the Parties that this Agreement shall be made available to affiliates of AECOM. For the purposes of this Agreement, as it applies to each Task Order, the term "AECOM" shall mean either AECOM as defined above or the affiliate identified in the Task Order. The applicable Task Order shall clearly identify the legal name of the affiliate accepting the Task Order. All rights and responsibilities of AECOM under a Task Order executed by an AECOM affiliate shall belong exclusively to the affiliate. AECOM shall not use affiliates without written notice to Client and acceptance of the same by Client in the form of mutual execution of the applicable Task Order.

**Article 9.4 shall be revised as follows:** Client understands and accepts that the Services and Deliverables provided by AECOM pursuant to this Agreement are intended by AECOM for the sole use by Client for the specific purpose stated in ATTACHMENT 1 of the Task Order. Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless AECOM and its consultants and their directors, officers, employees, agents, representatives, affiliated and parent companies ("AECOM Indemnitees"), against any and all claims, suits, causes of action, damages, losses, costs, expenses and liabilities (including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings or claims), including reasonable attorneys' fees and costs of defense, to which AECOM or any of the AECOM Indemnitees may become subject as a consequence of any willful misconduct or gross negligence in the use or modification of, reliance upon, or transmission to a third party of, said Services, Deliverables, or AECOM Intellectual Property, by Client outside the scope of this Agreement without the express, written permission by AECOM.

**Article 18.1 shall be revised as follows:** AECOM agrees to indemnify Client, its officers, directors and employees, from third party claims for loss or damage, exclusive of defense obligations, for bodily injury or property damage ("Claims"), to the proportional extent caused by AECOM's negligence or willful misconduct. AECOM shall reimburse Client for all reasonable attorney's fees associated with the defense of such Claims, to the proportional extent the defense was a result of AECOM's negligence or willful misconduct.

**Article 20 shall be revised as follows:** THE PARTIES HAVE EVALUATED THE RESPECTIVE RISKS AND REMEDIES UNDER THIS AGREEMENT AND AGREE TO ALLOCATE THE RISKS AND RESTRICT THE REMEDIES TO REFLECT THAT EVALUATION. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT AGREES TO RESTRICT ITS REMEDIES UNDER EACH TASK ORDER AGAINST AECOM, ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, ("AECOM COVERED PARTIES"), SO THAT THE TOTAL AGGREGATE LIABILITY OF THE AECOM COVERED PARTIES SHALL NOT EXCEED $300,000. ~~$250,000 OR THE ACTUAL PAID COMPENSATION UNDER SUCH TASK ORDER, WHICHEVER IS GREATER.~~ THIS RESTRICTION OF REMEDIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. CLAIMS MUST BE BROUGHT WITHIN ONE CALENDAR YEAR FROM PERFORMANCE OF THE SERVICES UNLESS A LONGER PERIOD IS REQUIRED BY LAW.

**32. ENTIRE AGREEMENT** This Agreement contains all of the promises, representations and understandings of the Parties and supersedes any previous understandings, commitments, proposals or agreements, whether oral or written. This Agreement shall not be altered, changed, or amended except as set forth in a written amendment to this Agreement, duly executed by both Parties.

**AECOM Technical Services, Inc.**

Signature

AARON ADELMAN
Printed Name

Vice President
Printed Title

2/28/2020
Date

Address 303 E. Wacker Dr.
Suite 1400
Chicago IL 60601

**CLIENT:** MARIN EMERGENCY RADIO AUTHORITY

Signature

MAUREEN CASSINGHAM
Printed Name

EXECUTIVE OFFICER
Printed Title

2-27-20
Date

Address C/O Town of Corte Madera
300 Tamalpais Drive
Corte Madera, Ca. 94925

(End of page)

AECOM Project Name: _____
AECOM Project No.: _____
Task Order No.: _____

# EXHIBIT A

## SAMPLE TASK ORDER FORM

This Task Order No. ____ ("Task Order"), with an effective date of _____, 20__, is issued under the Master Design Engineering Services Agreement ("Agreement") dated _____, 20____ by and between _____ ("Client") and _____a _____ corporation. ("AECOM"); each also referred to individually as ("Party") and collectively as ("Parties").

The Parties agree as follows:

1. Upon execution by the Parties, this Task Order is hereby incorporated by reference into the Agreement.

2. The following Attachments are hereby incorporated into this Task Order by reference:

   **Attachment 1** Task Order Services, Schedule and Deliverables
   **Attachment 2** Task Order Compensation

3. **Project Managers** The respective project managers of the Parties shall be (please print) and are to be included in any Notice under Article 4 of the Agreement as it relates to this Task Order:

   **AECOM:**

| | |
|---|---|
| Name | |
| Title | |
| Phone Number | |
| Email Address | |

   **Client:**

| | |
|---|---|
| Name | MARIN EMERGENCY RADIO AUTHORITY |
| Title | MAUREEN CASSINGHAM, EXECUTIVE OFFICER |
| Phone Number | (415) 927-5050 |
| Email Address | mlc1948@aol.com |

4 All other terms and conditions of the Agreement remain unchanged.

5 Each Party represents that the person executing this Task Order has the necessary legal authority to do so on behalf of the respective Party.

**AECOM Technical Services, Inc.**

Signature

Printed Name

Printed Title

Date

Address

**CLIENT:** MARIN EMERGENCY RADIO AUTHORITY

Signature

MAUREEN CASSINGHAM
Printed Name

EXECUTIVE OFFICER
Printed Title

2-27-20
Date

Address c/o Town of Corte Madera
300 Tamalpais Drive
Corte Madera, Ca. 94925

(End of page)

AECOM Project Number: _____
AECOM Project Name: _____
Task Order No.: _____

## Attachment 1

## Task Order Services, Schedule and Deliverables (Sample)

1. Project Description:

2. Services:

3. Schedule:

4. Deliverables:

5. Task Order Special Terms and Conditions Only Applicable to this Task Order:

(End of page)

AECOM Project Number: _____
AECOM Project Name: _____
Task Order No.: _____

## Attachment 2

## Compensation and Payment (Sample)

**1. COMPENSATION** The Services set forth in **Attachment 1** will be compensated on the following basis:

[ ] Advance retainer of [$ *Numerical Amount*] The advance retainer is to be applied to the final invoice. Any remainder will be returned to Client within 30 days of receipt of final payment.

[ ] Time & Material - See Section 2.1 for Hourly Labor Rates

[ ] Time and Materials with a Not-to-Exceed ("NTE") amount of ($ *Numerical Amount*). The Hourly Labor Rates (if applicable) are as in Section 2.1 below. Reimbursable expenses are included in the overall NTE cap.

[ ] Lump Sum [$]:

| Milestone/Deliverable & Date | Payment Amount |
|---|---|
| | $ *Numerical Amount* |

[ ] Cost Plus Fixed Fee: [Cost $ *Numerical Amount* and Fee $ *Numerical Amount*]

[ ] Other:

| |
|---|
| |

**2. RATE SCHEDULE** Compensation shall be based on the following Hourly Labor Rate Schedule:

| |
|---|
| |

2.1 **HOURLY LABOR RATE SCHEDULE**

| | |
|---|---|
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |

2.2 **OTHER HOURLY LABOR RATE CATAGORIES** If additional labor categories are authorized during the performance of this Agreement, compensation for each additional category will be negotiated at the time the additional Services are authorized.

2.3 **ANNUAL HOURLY LABOR RATE ADJUSTMENTS** The Hourly Labor Rate Schedule is adjusted each calendar year to reflect updated labor cost categories. Labor cost of Services authorized in subsequent calendar years will be based on the applicable Hourly Labor Rate Schedule for those years.

**3. REIMBURSABLE EXPENSES** Reimbursable expenses are actual expenditures made by AECOM for goods, travel expenses and vendor services in support of the performance of the Services and will be billed at the actual cost to AECOM plus ten percent (10%) to cover related administrative costs.

**4. CHANGE ORDERS** The Parties may at any time and by written agreement make changes in the Services, Project Schedule, Compensation and/or terms and conditions of this Task Order.

**5. INVOICING** AECOM will invoice Client on a monthly basis unless otherwise set forth herein.

**6. PAYMENT**

6.1 If payment is based on a NTE, once AECOM reaches the NTE, AECOM will stop further Services pending a Change Order to adjust the budget and schedule for the continued performance of the Services.

6.2 Timely payment is a material term of this Agreement. Client shall pay all undisputed portions of AECOM's invoices within 30 days of receipt without holdback or retention. The Client shall notify AECOM within fourteen (14) days of the receipt of the invoice of any disputed items. Such notice must be accompanied by a detailed description of any disputed items and include supporting documentation as well as references to the provision(s) of this Agreement which permit a holdback or retention. If such notice is not provided within fourteen (14) days, the Client waives its rights to dispute the invoice. Undisputed amounts remaining unpaid 30 days after the invoice date shall bear interest at the rate of 1.5% per month on the unpaid balance and AECOM may suspend the Services pending receipt of such payment. In addition, AECOM retains its unrestricted rights under Article 23 (Termination) of the Agreement.

6.3 If the Project is suspended by Client for more than 30 days, AECOM shall be paid for all Services performed prior to the effective date of suspension within 30 days of such suspension. Upon resumption of the Project, AECOM shall be entitled to an equitable adjustment in cost and schedule to compensate AECOM for expenses incurred as a result of the interruption and resumption of the Services.

6.4 To the extent that completion of the Services is delayed beyond the original scheduled completion date and such delay is not the fault of AECOM, an equitable adjustment shall be made to AECOM's Compensation and Project Schedule.

6.5 Except as otherwise specifically provided herein, Client shall pay or reimburse AECOM, as appropriate, for all categories of taxes other than income tax, including without limitation, sales, consumer, use, value added, gross receipts, privilege, and local license taxes related to the Services.

6.5 Client shall make payments to AECOM using one of the following methods:

6.5.1 AECOM LOCKBOX:

AECOM Technical Services, Inc.
1178 Paysphere Circle
Chicago, IL 60674

6.5.2 ELECTRONIC FUNDS TRANSFER/ACH PAYMENT:

Account Name: AECOM Technical Services, Inc.
Bank Name: Bank of America

Address1: Building D
Address2: 2000 Clayton Road
City/State/Zip: Concord, CA 94520-2425
Account Number: 5800937020
ABA Routing Number: 071000039

6.5.3 WIRE TRANSFER:

Account Name: AECOM Technical Services, Inc.
Bank Name: Bank of America
Address: 100 West 33rd St
City/State/Zip: New York, NY 10001
Account Number: 5800937020
ABA Routing Number: 026009593
SWIFT Code: BOFAUS3N

6.5.4 Questions related to payment can be sent to:

AECOM Cash Applications Supervisor by phone at (804) 515-8490 or by email at cashappsremittance@aecom.com

(End of page)

# Exhibit B

## AECOM Technology Solutions Terms and Conditions

**1. Warranty.** AECOM shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same locality under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Project. The full extent of AECOM's responsibility with respect to the Services shall be to perform in accordance with the above standards and to remedy any material deficiencies or defects in the Deliverables at AECOM's own expense, provided that AECOM is notified by Client, in writing, of any such deficiency or defect within a reasonable period after discovery thereof, but in no event later than 90 days after AECOM's completion or termination of the Services.

EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN, AECOM DOES NOT WARRANT THE SERVICES PERFORMED HEREUNDER OR THE ACCURACY OR CORRECTNESS OF THE RESULTS OF THE SERVICES, AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO,IMPLIED WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; 7) TITLE; 8) MARKETABILITY; 9) PROFITABILITY; 10) SUITABILITY; AND/OR 11) ANY TYPE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

**2. Limited License to Use Customer Data.** Client provides AECOM a limited, royalty-free, fully-paid up, non-exclusive, non-transferable license to process Client Data in the United States as necessary to provide services to Client as described in the Scope of Work. "Client Data" means any and all information, data, materials, works, expressions, or other content, any that are (a) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of Client related to this Agreement, or (b) collected, downloaded, or otherwise received by AECOM for Client pursuant to this Agreement. All output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any Client Data are themselves also Client Data.

**3. Ownership of AECOM Materials.** AECOM, or a third-party with whom AECOM has contracted, are and will remain the sole and exclusive owner/s of all right, title, and interest in and to the intellectual property, including templates, designs, software, applications, processes, procedures, or other instruments of service, used in association with this Agreement ("AECOM Intellectual Property").

**4. No Implied Rights.** Except for the limited license expressly provided in Article 2, nothing contained in this Agreement shall be construed as granting AECOM or any third party any right, title, or interest to any Client Data. In addition, nothing in this Agreement shall be construed as granting Client or any third party any right, title, or interest in or to any AECOM Intellectual Property whether by implication, estoppel, or otherwise.

**5. Indemnification by Client.** Client shall indemnify, defend, and hold harmless AECOM and each of its affiliates, and subsidiaries, and their respective officers, directors, employees, agents, successors, and assigns (AECOM Indemnified Parties) from and against all losses incurred by AECOM Indemnified Parties to the extent that such losses that arise out of or result from any claim that any Client Data is unlawful or actually does or threatens to infringe or misappropriate any Intellectual Property Rights or other rights of any third party, provided however, that Client shall have no liability or obligation with respect to any Action or Losses to the extent that such Action or Losses arise out of or result from any unauthorized access to or use, disclosure, or other Processing of Client Data, including Personal Information, by or on behalf of Provider, or through or enabled by the Provider Systems, whether authorized by Provider, due to a security breach, or otherwise.

**6. Effect of Termination.** Upon termination or expiration of this Agreement, subject to the continuing rights, licenses, and obligations of the other Party under this Agreement, all authorizations and licenses granted hereunder will immediately terminate and Client shall cease all activities concerning all uses of the expired or terminated Services and related AECOM-provided materials.