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MARIN EMERGENCY RADIO AUTHORITY

ITY
PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into this ____ day of July 2007, by and between the MARIN EMERGENCY RADIO AUTHORITY, hereinafter referred to as "MERA" and MICHAEL P. GARVEY, hereinafter referred to as "Garvey".

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RECITALS:

WHEREAS, MERA desires to acquire Executive Officer services for its organization; and

WHEREAS, Garvey warrants that he is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by MERA, the parties agree to the following:

1. **SCOPE OF SERVICES:**

Garvey agrees to provide all of the Executive Officer services described in Exhibit "A" attached hereto and by this reference made a part hereof. It is agreed MERA will provide clerical and financial services and will house physically the public records generated through these services. Garvey shall deliver any public records generated by his services under this Contract to MERA for maintenance by MERA. Further, MERA will provide an office and phone for temporary use by Garvey when he is working within Marin County.

2. **FEES:**

As the Executive Officer of the MERA, Garvey shall be paid the sum of \$175 per hour, with the total billings not to exceed \$3,500 in any one month without the prior written approval of the Chair of the MERA Board or his/her designee. Said fees shall remain in effect for the entire term of the Contract.

3. **PAYMENT:**

The fees for services under this Contract shall be due within thirty (30) calendar days after receipt by MERA of an invoice covering the service(s) rendered. Invoices shall be submitted on a monthly basis.

4. **INSURANCE:**

Garvey shall maintain a commercial, general liability insurance policy in an amount of One Million (\$1,000,000) Dollars. Where the services to be provided under this Contract involve or require the use of any type of vehicle by Garvey in

order to perform said services, Garvey also shall provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of Three Hundred Thousand (\$300,000) Dollars. Said policies shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis unless MERA specifically consents to a "claims made" basis. MERA shall be named as additional insured on the commercial general liability policy. The insurer shall supply a certificate of insurance with endorsements signed by the insurer evidencing such insurance to MERA and said certificate with endorsement shall provide for thirty (30) day advance written notice to MERA of any termination or reduction in coverage.

Nothing herein shall be construed as a limitation of Garvey's liability, and Garvey shall indemnify and hold MERA harmless and defend MERA against any and all claims, damages, losses and expense that may arise by reason of the Garvey's negligent actions or omissions. MERA agrees to timely notify Garvey of any negligence claim.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of the Contract.

5. **WORKER'S COMPENSATION:**

Garvey acknowledges that he is aware of the Labor Code of the State of California, which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Garvey certifies that he will comply with such provisions before commencing the performance of the work of this Contract. If Garvey uses any employees to complete the duties accepted by this Contract he will provide a copy of the certificates evidencing such insurance to MERA prior to their beginning service.

6. **NONDISCRIMINATORY EMPLOYMENT :**

Garvey and/or any permitted subcontractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Garvey and/or any permitted subcontractor are bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

7. **SUBCONTRACTING :**

Garvey shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of MERA except for any subcontract work identified herein.

8. **ASSIGNMENT:**

The rights, responsibilities and duties under this Contract are personal to Garvey and may not be transferred or assigned without the express prior written consent of MERA.

9. **LICENSING AND PERMITS:**

Garvey shall maintain the appropriate licenses throughout the life of this Contract. Garvey also shall obtain any and all permits that might be required for the work to be performed under this Contract.

10. **BOOKS OF RECORD AND AUDIT PROVISION:**

Garvey shall maintain on a current basis complete books and records relating to his services under this Contract, including detailed documentation of the hours spent and costs incurred by Garvey. In addition, should Garvey hire employees to provide service under this Contract, he shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. Garvey will permit MERA to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Garvey that participated in this Contract in any way. Any audit may be conducted on Garvey's premises. Garvey shall refund any moneys found to be erroneously charged. If MERA ascertains that it has been billed erroneously by Garvey for an amount equaling 5% or more of this Contract, Garvey shall be liable for the costs of the audit in addition to any other penalty imposed.

11. **TERM OF CONTRACT:**

This Contract shall commence on November 6, 2006 and end on December 31, 2007, unless sooner terminated as provided in Section 13. This Agreement supersedes a previous Agreement for the Executive Officer that became effective on November 1, 2006.

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12. **TITLE:**

It is understood that any and all documents, information and reports related to the performance of this Contract prepared by and/or submitted to Garvey, shall be the property of MERA. Garvey may retain reproducible copies of drawings and copies of other documents. In the event of the termination of this Contract, for any reason whatever, Garvey promptly shall turn over all information, writing and documents to MERA without exception or reservation.

13. **TERMINATION:**

A. If Garvey fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, MERA may terminate this Contract by giving five (5)

calendar days written notice to Garvey, stating the reason for the termination.

- B. Garvey shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Garvey has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other party. Notice of termination shall be sent by registered or certified mail to the addresses in Section 20 of this Contract.
- D. In the event of termination not the fault of Garvey, Garvey shall be paid for services performed to the date of termination in accordance with the terms of this Contract.

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14. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performances of the services herein, Garvey, and his agents and employees, shall act in an independent capacity and as an independent Contractor and not as officers, employees or agents of MERA. Garvey solely shall be responsible to pay all required taxes, including but not limited to, all withholding taxes, and workers' compensation.

15. AMENDMENT:

This Contract may be amended or modified only by written Contract of both parties.

16. JURISDICTION AND VENUE:

This Contract 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.

18. INDEMNIFICATION:

Garvey agrees to indemnify, defend, and hold MERA harmless from any and all liabilities and damages, including but not limited to, litigation costs and attorney's fees, which arise directly or indirectly from or are related to Garvey's willful misconduct or negligent performance of this Contract.

MERA agrees to indemnify, defend, and hold Garvey harmless from any and all liabilities and damages, including but not limited to, litigation costs and attorney's fees, which arise directly or indirectly from or are related to MERA's willful misconduct or negligent performance of this Contract.

19. COMPLIANCE WITH APPLICABLE LAWS:

Garvey shall comply with any and all federal, state and local laws affecting the services covered by this Contract.

20. NOTICES:

Notices shall be given to MERA at the following location:
Gregory Stepanicich
44 Montgomery St - Suite 3800
San Francisco, CA 94104-4811

Notices shall be given to Garvey at the following address:
Michael P. Garvey
60 Walton Street
San Carlos, CA 94070-2013

IN WITNESS WHEREOF, the parties hereunto have executed this Contract on the date first above written.

**APPROVED AS TO FORM:
GENERAL COUNSEL**

**APPROVED BY:
MARIN EMERGENCY RADIO AUTHORITY:**

By _____

By: _____

President, Board of Directors

MICHAEL P. GARVEY:

EXHIBIT "A"

**SCOPE OF SERVICES
MERA-GARVEY EXECUTIVE OFFICER CONTRACT**

Under the Direction of the Board of Directors:

1. Prepare Board agendas and staff reports on recommended actions.
2. Coordinate with the General Counsel, Project Engineer, and Environmental Consultant, on the various site and construction issues related to completion of the MERA radio system.
3. Prepare, recommend and administer the MERA's annual budget.
4. Administer the Motorola Contract for construction of the system.
5. Authorize MERA bill payments through the County Department of Public Works.
6. Monitor bond proceeds and interest earnings through Trustee and County Auditor/Controller.
7. Invoice member agencies for their share of annual operating funds.
8. Invoice member agencies for their share of annual bond payments.
9. Assemble and deliver to the County appropriate records and files for the public record archives.
10. Negotiate lease of backbone facilities.
11. Represent the Board in dealings with media, member agencies, other governmental agencies, residents, the Grand Jury, and Bond Trustees.
12. Coordinate legal actions initiated on behalf of the MERA or filed against the MERA.
13. Coordinate potential condemnation proceedings.
14. Coordinate annual audit.
15. Monitor member payments to ensure receipt of all funding.
16. Ensure that all Fair Political Practices Commission filings are made.
17. Schedule and attend meetings of the Board and its committees, as requested.
18. Prepare a report by April 1, 2007 that outlines remaining major projects and suggests the optimal structure and operating procedures for MERA's future.
19. Prepare a report, jointly with the interim Executive Director of MTA, outlining how MGSA, MTA and MERA can better coordinate service.
20. Manage the recruitment of the permanent Executive Director.