

**ESCROW INSTRUCTIONS**

from the

**MARIN EMERGENCY RADIO AUTHORITY**

to

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,** as Escrow Agent

Dated for reference purposes as of February 1, 2010

## ESCROW INSTRUCTIONS

These Escrow Instructions, dated for reference purposes as of February 1, 2010 (the "Instructions"), are provided by the Marin Emergency Radio Authority (the "Authority") to The Bank of New York Mellon Trust Company, N.A., as escrow agent hereunder (the "Escrow Agent") and as trustee (the "1999 Trustee") pursuant to an indenture of trust, dated as of February 1, 1999, between the Authority and the Escrow Agent, as trustee (the "1999 Indenture"). The 1999 Indenture was executed in connection with the issuance of the Marin Emergency Radio Authority Revenue Bonds (Marin Public Safety and Emergency Radio System), originally issued in the principal amount of \$26,940,000, of which \$\_\_\_\_\_ remain outstanding (the "Prior Obligations") and which will be refunded from proceeds of the Authority's 2010 Refunding Revenue Bonds (Marin Public Safety and Emergency Radio System) (the "Bonds"). The Authority and The Bank of New York Mellon Trust Company, N.A., as trustee thereunder (the "Trustee") have executed that certain indenture of trust, dated as of February 1, 2010 (the "Indenture") in connection with the issuance of the Bonds. The Prior Obligations are secured by certain Revenues (as defined in the 1999 Indenture) of the Authority pursuant to the 1999 Indenture.

### RECITALS

A. Pursuant to the 1999 Indenture, the Authority authorized the issuance and delivery of the Prior Obligations. Payment of principal of and interest on the Prior Obligations is secured by a pledge of the Revenues, and certain other funds made available as provided in the 1999 Indenture.

B. The 1999 Indenture provides that the Authority may secure payment of the Prior Obligations prior to their due dates if there shall have been deposited with the Escrow Agent either (i) money in an amount which shall be sufficient, or (ii) non-callable direct obligations of the United States, or bonds or other obligations the principal of and interest on which are fully and unconditionally guaranteed by the United States of America ("Federal Securities") the principal of and interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Escrow Agent at the same time, shall be sufficient to pay when due the Prior Obligations until the maturity or prepayment date of the Prior Obligations.

C. A portion of the proceeds of the sale of the Bonds is being transferred to the Escrow Agent to be applied for the purpose of providing funds which will be sufficient, together with other available funds, to provide for the termination of the pledge of and lien created by the 1999 Indenture.

### **I. Instructions to the Escrow Agent.**

The Authority hereby directs and instructs the Escrow Agent as follows:

**1.1 Escrow Fund.** The Escrow Agent shall establish and hold in trust, separate and apart from other funds and accounts, a special account designated the "Escrow Fund." The

Escrow Agent shall administer such account as provided in these Instructions. Amounts in the Escrow Fund are irrevocably pledged and shall be applied solely for the purposes set forth in these Instructions. The Escrow Fund shall be maintained by the Escrow Agent until all of the Prior Obligations have been paid in accordance with their terms and these Instructions.

**1.2 Deposits to the Escrow Fund; Transfer of Funds.** The Escrow Agent shall deposit into the Escrow Fund the moneys transferred to it by the Authority in the amount of \$ \_\_\_\_\_, and shall transfer to the Escrow Fund the other amounts set forth in Schedule B hereto.

The Escrow Agent shall hold such amounts uninvested in the Escrow Fund.

**1.3 Payments with Respect to the Prior Obligations.**

A. The Escrow Agent shall transfer from the Escrow Fund, in immediately available funds, to the 1999 Trustee for deposit in the Interest Account and Redemption Account created by the 1999 Indenture on February 15, 2010, amounts sufficient to pay the principal and premium of all Prior Obligations maturing on or after February 15, 2010, along with the applicable prepayment premium. The Authority hereby irrevocably designates the Prior Obligations maturing on February 15, 2011 through 2016, inclusive, and on February 15, 2018 and February 15, 2021, for prior prepayment on February 15, 2010, and hereby irrevocably instructs the 1999 Trustee to give the mailed notice of redemption as provided in the 1999 Indenture.

B. Transfers from the Escrow Fund shall be made only from amounts held in the Escrow Fund. Under no circumstances shall the Escrow Agent otherwise transfer such amounts unless the Escrow Agent shall first have received: (i) an unqualified opinion from nationally recognized bond counsel to the effect that such transfer would not, in and of itself, (a) cause the Prior Obligations or the Bonds to become arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder in effect at the time of such proposed transfer or (b) adversely affect the conclusions expressed in the supplemental opinion of such firm rendered to the underwriter of the Bonds to the effect that upon making the deposits into the Escrow Fund the lien and pledge of the 1999 Indenture, as it applies to the Prior Obligations, was defeased (the "Defeasance Opinion"), and (ii) a certificate of \_\_\_\_\_ (the "Verification Agent") to the effect that such transfer would not adversely affect the conclusions expressed in its validation letter dated \_\_\_\_\_, 2010, concerning the sufficiency of amounts in the Escrow Fund for purposes of paying debt service and prepayment costs on the Prior Obligations (the "Verification Report"). For purposes of these Instructions, references to the Verification Agent shall mean the firm of such name, its successor entities, or such other firm of certified public accountants as shall be selected by the Authority.

**1.4 Release of Pledge.** By its acceptance of these Instructions, the Authority acknowledges that the provisions of Section 10.03 of the 1999 Indenture have been satisfied. Upon receipt of the Verification Report, and upon receipt of an opinion of Nossaman LLP, addressed to the Escrow Agent to the effect that the lien established by the 1999 Indenture is discharged and the pledge and lien upon the Revenues is terminated in accordance with the terms

of the 1999 Indenture, the Escrow Agent hereby acknowledges and confirms that as to the Prior Obligations the lien established by the 1999 Indenture is discharged and the pledge and lien upon the Revenues is terminated in accordance with the terms of the 1999 Indenture.

**1.5 Excess Funds to Authority.** Upon the written request of the Authority, the Escrow Agent shall pay over to the Authority from time to time any funds held by the Escrow Agent in the Escrow Fund upon written request of the Authority, provided that the Escrow Agent shall not transfer any such funds from the Escrow Fund unless it shall first have received: (i) an unqualified opinion from nationally recognized bond counsel to the effect that such payment to the Authority would not, in and of itself, (a) cause the Prior Obligations or the Bonds to become arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder in effect at the time of such proposed payment or (b) adversely affect the conclusions expressed in the Defeasance Opinion; and (ii) a certificate of the Verification Agent to the effect that such payment would not adversely affect the conclusions expressed in the Verification Report.

## **II. Irrevocability.**

These Instructions shall be irrevocable and may not be amended or modified unless for the purpose of (A) curing any ambiguity or omission relating to these Instructions or of curing, correcting or supplementing any defective provision contained herein; (B) adding to or supplementing the rights of the owners of the Prior Obligations; or (C) severing any portion of these Instructions deemed to be illegal and the Escrow Agent first shall have received: (i) an unqualified opinion from nationally recognized bond counsel to the effect that such amendment or modification is in compliance with the requirements of this Section II and would not, in and of itself, (a) cause the Prior Obligations or the Bonds to become arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder in effect at the time of such proposed amendment or modification or (b) adversely affect the conclusions expressed in the Defeasance Opinion; and (ii) a certificate of the Verification Agent to the effect that such modification or amendment would not adversely affect the conclusions expressed in the Verification Report.

Except as otherwise provided herein, the owners of the Prior Obligations shall have an express lien on all funds and amounts, and all earnings thereon and accretions thereto, on deposit in the Escrow Fund with the Escrow Agent in accordance with these Instructions until used and applied in accordance herewith.

## **III. Liability.**

The liability of the Escrow Agent and the 1999 Trustee for the payment of moneys as hereinabove set forth respecting the payment of the debt service on and the prepayment of the Prior Obligations shall be limited solely to the moneys on deposit with the Escrow Agent in the Escrow Fund pursuant to these Instructions available for such purposes. Neither the Escrow Agent nor the 1999 Trustee shall be liable for any loss whatsoever resulting from, nor be required to make up any deficiency with respect to, any investment made pursuant to these Instructions in compliance with the provisions hereof.

#### **IV. Investments.**

In the event that the Escrow Agent shall receive moneys into any of the funds and accounts held hereunder which are not immediately disbursed for payment of debt service on the Prior Obligations, the Escrow Agent shall hold such moneys for the benefit of the owners of the Prior Obligations . Any such moneys received shall be kept in the Escrow Fund uninvested or, upon the written direction of the Authority, which direction shall certify that the investments meet the requirements of this Section IV, invest in direct, non-callable obligations of the United States of America or non-callable bonds or other obligations the timely payment of the principal of and interest on which are fully guaranteed by the United States of America (“Permitted Securities”). The maturity date of any Permitted Security must be no later than the payment date on which funds are needed for payment of debt service on the Prior Obligations in accordance with these Instructions and as shown in the Verification Report. If Permitted Securities meeting the requirements of these Instructions are unavailable, or if the Authority fails to give the Escrow Agent instructions, the Escrow Agent shall hold such amounts uninvested.

All earnings on funds and amounts in the Escrow Fund shall be deposited in, deemed a part of, and invested in accordance with the terms of these Instructions applicable to, such Escrow Fund.

The Authority shall not direct the Escrow Agent to purchase securities at a price above the then prevailing fair market value of such security in order to artificially reduce the yield to the allowed yield. The Authority may direct the Escrow Agent at any time to hold the money involved uninvested or purchase United States Treasury Securities - State and Local Government Securities, to the extent available, bearing interest at a rate equal to or less than the allowed yield described in the Verification Report and maturing no later than the date on which such moneys are needed for payment of debt service on the Prior Obligations in accordance with these Instructions and as shown in the applicable verification letter of the Verification Agent.

Under no circumstances shall the Authority cause or direct any initial investment, subsequent investment or reinvestment of the securities or moneys in the Escrow Fund to be made in such a manner as to result in the loss of exclusion from gross income for federal income tax purposes of interest with respect to the Prior Obligations.

#### **V. Fees.**

The Authority shall pay to the Escrow Agent its fees for its services hereunder and reimburse the Escrow Agent for its reasonable expenses incurred hereunder. The Escrow Agent shall not have any lien whatsoever upon any of the moneys in the Escrow Fund, or otherwise deposited in accordance with these Instructions, for the payment of fees and expenses for services rendered by it hereunder.

The Authority covenants and agrees to indemnify and save the Escrow Agent and its officers, directors, agents and employees, harmless against any and all claims, losses, expenses (including reasonable attorney fees and disbursements) and liabilities which it may

incur arising out of or in the exercise and performance of its duties hereunder, but excluding any and all claims, losses, expenses and liabilities which are due to the negligence or willful misconduct of the Escrow Agent, its officers, directors, or employees. The obligations of the Authority under this Section V shall survive the removal or resignation of the Escrow Agent and payment of the Prior Obligations and the discharge of the 1999 Indenture as it relates thereto.

#### **VI. Defeasance.**

Upon deposit of the amounts set forth in Section 1.2 hereof, all obligations of the Authority under the 1999 Indenture and all security provided by the 1999 Indenture for the Prior Obligations shall cease and terminate, excepting only the obligations of the Authority to pay, or cause to be paid, principal of and premium, if any, and interest on the Prior Obligations from the deposit made by the Authority pursuant to Section 1.2 hereof, and the Authority's obligation to indemnify the 1999 Trustee pursuant to the 1999 Indenture. In the event of a deficiency in the funds and amounts in the Escrow Fund for purposes of paying the debt service on the Prior Obligations, the Authority shall be under no obligation to make up such deficiency, other than a deficiency resulting from an incorrect calculation by the Verification Agent.

#### **VII. Termination.**

These Instructions shall, except as set forth in Section V hereof, terminate and be of no further force and effect when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made, and all payments with respect to the Prior Obligations shall have been effected.

From and after February 15, 2010, any remaining moneys on deposit in the Escrow Fund established and held pursuant to these Instructions, except for amounts held by the Escrow Agent to pay the registered owners of Prior Obligations, after the payment of all amounts owed to the Escrow Agent under Section V hereof, shall be remitted by the Escrow Agent to the Authority without further claim therefor.

#### **VIII. Invalidity; Applicable Law.**

If any one or more of the provisions of these Instructions should be determined by a court of competent jurisdiction to be contrary to law, such provisions shall be deemed and construed to be severable from the remaining provisions herein contained and shall in no way affect the validity of the remaining provisions of these Instructions. These Instructions shall be construed and governed in accordance with the laws of the State of California.

#### **IX. Binding Effect; Successors.**

These instructions shall be binding upon and shall inure to the benefit of the parties hereto and the owners of the Prior Obligations and their respective successors and assigns. The owners of the Bonds shall have no lien whatsoever on moneys representing principal of or interest on the investments held by the Escrow Agent in accordance with these Instructions. Whenever in these Instructions any party is named or referred to, such reference shall be deemed to include such party's successors or assigns, and all instructions contained in these Instructions

to, by or on behalf of any party hereto shall bind and inure to the benefit of such party's successors and assigns whether so expressed or not.

#### **X. Counterparts.**

These Instructions may be executed, approved and acknowledged in several counterparts, all or any one of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

#### **XI. Duties of the Escrow Agent; Protection.**

The Escrow Agent shall perform only such duties as are specifically set forth in these Instructions.

The protections afforded the Trustee in article VIII of the 1999 Indenture shall apply to the Escrow Agent and such Section is incorporated herein by reference to apply to the Escrow Agent. The Escrow Agent may resign hereunder by providing 30 days written notice to the Authority. Any resignation of the Escrow Agent pursuant to Section XI hereof shall only be effective upon acceptance by a successor escrow agent.

The Escrow Agent shall not have any liability hereunder except to the extent of its own negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special indirect or consequential damages.

The Escrow Agent may consult with counsel of its own choice and the opinion of such counsel shall be full and complete authorization to take or suffer in good faith any action hereunder in accordance with such opinion of counsel.

The Escrow Agent shall not be responsible for any of the recitals or representations contained herein.

The Escrow Agent shall not be liable for the accuracy of any calculations provided as to the sufficiency of the moneys or Federal securities deposited with it to pay the principal, interest, or premiums, if any, on the Bonds.

Whenever in the administration of this Agreement the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Escrow Agent, be deemed to be conclusively proved and established by a certificate of an authorized representative of the Authority, and such certificate shall, in the absence of negligence or willful misconduct on the part of the Escrow Agent, be full warrant to the Escrow Agent for any action taken or suffered by it under the provisions of this Agreement upon the faith thereof.

IN WITNESS WHEREOF, the Authority has issued these Instructions, and the Escrow Agent and the Trustee have acknowledged and accepted these Instructions.

**MARIN EMERGENCY RADIO AUTHORITY**

By: \_\_\_\_\_  
Executive Director

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Escrow Agent and 1999 Trustee**

By: \_\_\_\_\_  
Authorized Officer

**SCHEDULE A**  
**[RESERVED]**

**SCHEDULE B**  
**DESCRIPTION OF TRANSFERRED INVESTMENTS**

- A. Transfer to Escrow Fund: \$\_\_\_\_\_;
- (i) From proceeds of the Bonds: \$\_\_\_\_\_;
  - (ii) From 1999 Reserve Fund: \$\_\_\_\_\_;
  - (iii) From 1999 Revenue Fund: \$\_\_\_\_\_.

B. All remaining amounts relating to the Prior Obligations shall be transferred to the Trustee for the Bonds for deposit in the Acquisition Fund established for the Bonds.

**SCHEDULE C**  
**PRIOR OBLIGATIONS TO BE PAID FROM THE ESCROW FUND**

<b><u>Maturity Date</u></b> <b><u>(February 15)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>
2010	\$1,205,000	5.00%
2011 <sup>(1)</sup>	1,265,000	5.00
2012 <sup>(1)</sup>	1,325,000	4.50
2013 <sup>(1)</sup>	1,385,000	5.00
2014 <sup>(1)</sup>	1,455,000	5.00
2015 <sup>(1)</sup>	1,530,000	5.00
2016 <sup>(1)</sup>	1,605,000	5.00
2018 <sup>(1)</sup>	3,450,000	4.75
2021 <sup>(1)</sup>	5,815,000	4.75

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(1) To be redeemed on February 15, 2010.