

**Recording Requested by and
When Recorded Mail to:**

Marin Agricultural Land Trust
PO Box 809
Point Reyes Station, CA 94956

APN: 100-050-42

(Above Space for Recorder's Use Only)

**REAL PROPERTY AGREEMENT AND
DECLARATION OF RESTRICTIONS ON LAND**

This Real Property Agreement and Declaration of Restrictions on Land ("Agreement and Declaration") is made on this _____ day of _____, 2016 by and among **Glenn A. Parks** ("Landowner"), the **Marin Emergency Radio Authority**, 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 its members ("MERA"), and **Marin Agricultural Land Trust**, a California nonprofit public benefit corporation ("MALT"), with reference to the following facts:

A. The Landowner is the owner of that certain real property situate in the County of Marin, State of California, comprised of approximately 198 acres and identified by the County Assessor as parcel number 100-050-42 and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Parks Property");

B. MERA has identified an approximately 0.031-acres (1,365 square feet) portion of the Parks Property as its preferred site for a portion of an emergency radio system. That site is more particularly described in **Exhibit B** attached hereto and incorporated herein by this reference (the "MERA Site").

C. The Parks Property, including the MERA Site, is subject to the terms, conditions, covenants, restrictions and affirmative rights and interests set forth and described in that certain Deed of Agricultural Conservation Easement in favor of MALT, recorded February 20, 2001 as Instrument Number 2001-0007371, Marin County Records (the “MALT Conservation Easement”).

D. MERA represents and warrants that it has full legal authority to exercise the power of eminent domain under California Government Code Section 6508 and has taken the steps prerequisite to its exercise of its power of eminent domain as to the MERA Site (as to the MALT Conservation Easement only) for the emergency radio system, including, without limitation, adoption by the MERA Governing Board of a Resolution of Necessity (Resolution 2016-__ adopted August 24, 2016). MERA represents and warrants that it has entered into a lease of the MERA Site with the Landowner, as of August 24, 2016.

E. It is the desire and intention of the parties to this Agreement and Declaration (1) to modify the MALT Conservation Easement to the extent it applies to the MERA Site as necessary to permit MERA to build and operate the emergency radio system and (2) to place certain other restrictions on the MERA Site, so that the MERA Site will be restricted to the uses described herein and so that each successive owner of the Parks Property and the MALT Conservation Easement will be benefited by the preservation of the value and character of the lands.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties to this Agreement and Declaration, and expressly for the benefit of, and to bind, their heirs, assigns and successors in interest in perpetuity, the parties agree as follows:

1. MERA shall use the MERA Site only for the construction, installation, operation, maintenance, monitoring and servicing (collectively referred to below as “Building and Operating”) of an emergency radio system on the MERA Site as such system is depicted in Exhibit C. When MERA has completed construction on the MERA Site, MERA shall take all reasonable steps to restore any affected areas of the Parks Property located outside the MERA Site as closely as reasonably practicable to its pre-construction condition. MERA shall operate, maintain, monitor and service such emergency radio system so as to minimize adverse consequences to

using the Parks Property for agricultural purposes. At all times, MERA and its agents, employees, and contractors shall use all due care and competence in the Building and Operating of the proposed emergency radio system on the Parks Property. With respect to the Parks Property, including the MERA Site, and except for the negligence or willful misconduct of MALT, or its agents, employees or contractors, MERA shall indemnify, hold harmless, and defend MALT 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 use of the Parks Property by MERA, or MERA's officers, contractors, licensees, agents, employees, guests, invitees, or visitors.

2. Unless otherwise mutually agreed between Landowner on one hand, and MERA on the other hand, MERA shall, immediately upon taking possession of the MERA Site, construct and maintain a livestock fence surrounding and enclosing the MERA Site. MERA shall maintain the fence and gates in a stock-tight condition at all times.

3. MERA shall not permit any persons to enter upon the MERA Site except for purposes of maintaining the MERA Site and/or Building and Operating the emergency radio system described in Section 1 hereof. MERA shall further limit vehicle use on the MERA Site to the minimum reasonably required for Building and Operating the emergency radio system. MERA shall repair any erosion or other damage that such vehicle use may cause. Anything in the foregoing provisions of this Section 3 to the contrary notwithstanding, MERA and Landowner acknowledge and agree that the Grantee as defined in the MALT Conservation Easement, its agents, employees, successors and assigns have rights of access and other rights under the MALT Conservation Easement and that the foregoing limitations on MERA's activities on the MERA Site shall not affect Grantee's or MALT's rights under that Easement.

4. MERA shall maintain the pasture-quality of the land surrounding the MERA Site, by removing noxious weeds (including but not limited to French broom, gorse and thistles) on the MERA Site. MERA shall accomplish such removal by manual or other methods consistent with the weed-control means being used by Landowner on the surrounding pastureland. In the event that Landowner has discontinued herbicide and pesticide use on their adjacent pasturelands, in preparation for seeking

organic designation for those pastures or for any other reasons, MERA shall not use or allow the use of pesticides or herbicides on the MERA Site.

5. MERA shall pay **\$13,100** on the “Commencement Date” to MALT to fund improvements that benefit the protected values of the MALT Conservation Easement, such as creek crossings and livestock watering facilities that will improve and protect soil and water quality on the Parks Property. “Commencement Date” is the first day of the first month following MERA providing notice that MERA has obtained all permits and approvals necessary for MERA to be legally entitled to construct a facility for providing a public safety and emergency radio system on the MERA Site.

6. The MALT Conservation Easement shall be modified as set forth in the Amendment of Deed of Agricultural Conservation Easement attached hereto as **Exhibit D** and incorporated herein by this reference.

7. If MERA ceases to use the MERA Site for the purposes described herein, the modifications to the MALT Conservation Easement to be made pursuant to this Agreement and Declaration shall terminate and all of the terms, conditions, covenants, restrictions and affirmative rights and interests set forth in the MALT Conservation Easement shall apply to the MERA Site.

8. Mutual Releases.

(a) Each of MERA and MALT, on behalf of itself and on behalf of its respective successors in interest, hereby mutually releases and forever discharges the other, and each of its trustees, successors, officers, board or legislative body members, departments, employees, engineers, contractors, partners, joint ventures, attorneys, insurers, shareholders, agents, and principals from any and all claims, demands, causes of action, damages, losses, or equitable or injunctive relief in any legal action known or unknown, which it had, may now have or may hereafter have, against the other arising out of or relating to any act or omission, event, cause or condition related to MERA’s adoption of a Resolution of Necessity for the acquisition of an interest in property from MALT.

Each of MERA and MALT acknowledges that it may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs or expense which may have

been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, each of MERA and MALT hereby acknowledges that this Agreement and Declaration has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that it may have under California Civil Code Section 1542, or under any statute or common law or equitable principle of similar effect as these may apply to the releases set forth in this Section 8(a). California Civil Code Section 1542 provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

MERA's Initials: _____

MALT'S Initials: _____

In conjunction with such waiver and relinquishment, each of MERA and MALT hereby acknowledges that it may hereafter discover claims and facts in addition to or different from those which it now knows or believes to exist, but nevertheless, each of MERA and MALT understands and agrees that it is the intention of each of MERA and MALT to hereby fully, finally, and forever settle and release the other from any and all disputes and differences, known or unknown, suspected or unsuspected, as to damages and claims as set forth in this Section 8(a).

(b) Anything in Section 8(a) to the contrary notwithstanding, each Party to this Agreement and Declaration acknowledges and agrees that nothing in this Section 8 is intended as, and nothing in this Section 8 shall be deemed to any extent to be, a waiver, release, or discharge of any claim, demand, cause of action, damage, loss, or right to equitable or injunctive relief in any proceeding at law or in equity that relates in any way to enforcement of the terms of this Agreement and Declaration or, without limiting the generality of the foregoing, to the rights of MALT to be held harmless, indemnified and defended by MERA as set forth in Section 1 of this Agreement and Declaration.

IN WITNESS WHEREOF, the parties to this Agreement and Declaration have executed this Agreement and Declaration on the date first above written.

Landowner

Glenn A. Parks

Marin Emergency Radio Authority

By: _____
Maureen Cassingham, Executive Officer

Marin Agricultural Land Trust
A California nonprofit public benefit corporation

By: _____
Jamison Watts, Executive Director

Exhibit A
Parks Property

Legal Description of the Property

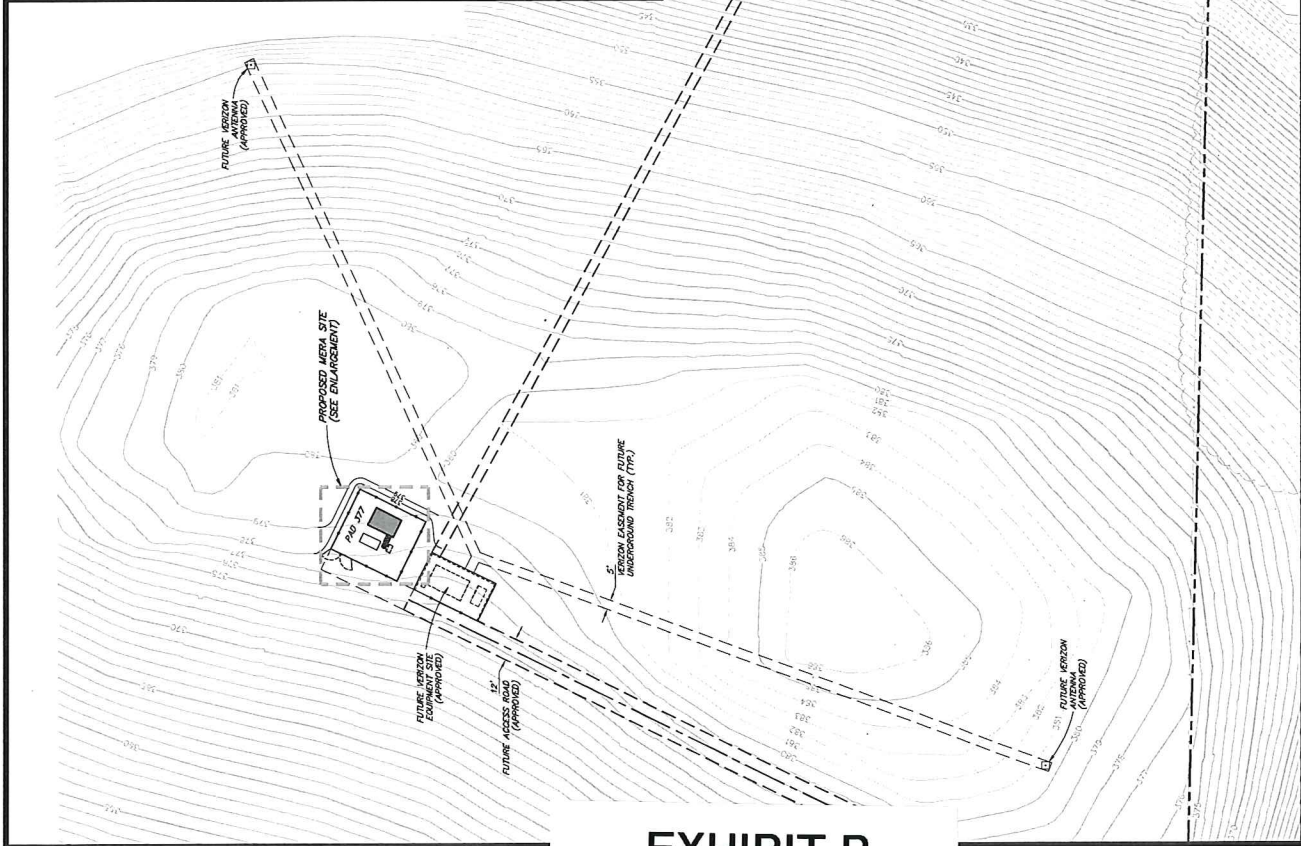
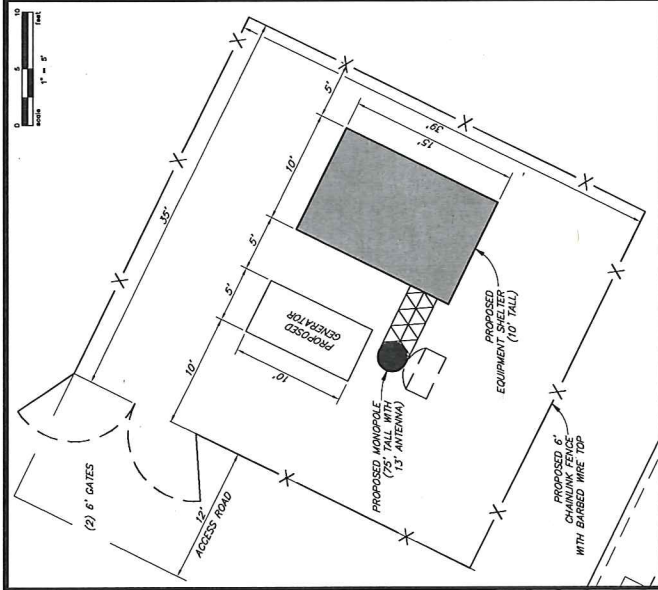
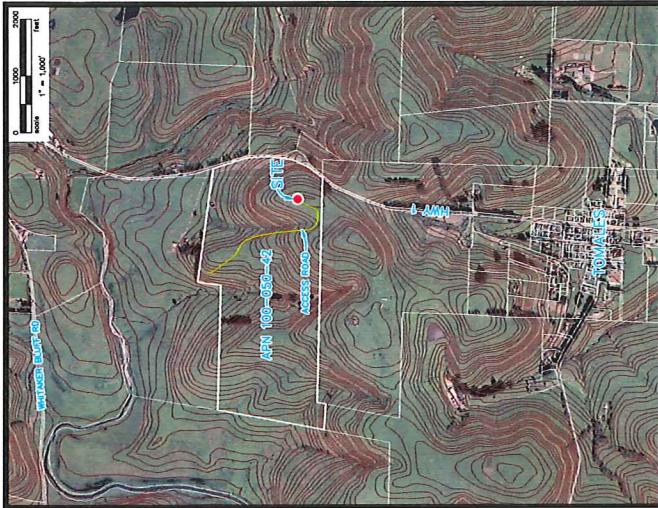
All that certain property located in the County of Marin, State of California described as follows:

COMMENCING at a point in the Westerly line of the County Road leading from Tomales to Valley Ford as said road existed January 24, 1924 distant Southeasterly 27 ½ feet from the intersection of the Southerly line of lands owned by Charles J. Cunningham, conveyed to him from David Bassett and his wife by deed dated September 1, 1920, recorded on September 3, 1920 in Volume 211 of Deeds Page 385a Marin County Records,; and the Westerly line of the said County Road; thence Westerly parallel with said Southerly line of the lands hereinbefore mentioned 995 feet, thence Southerly-00 feet, thence Easterly 1318 feet to the Westerly line of said County Road, thence Northwesterly along the Westerly line of the said County Road to the point of beginning.

BEING a portion of lands conveyed by Charles J. Cunningham from David Bassett by deed dated September 1, 1915, recorded October 11, 1915 in Volume 174 of Deeds, Page 40.

Exhibit B
MERA Site

[please see attached site plan]



VICINITY



MERA SITE ENLARGEMENT

SITE PLAN EXHIBIT
TELECOMMUNICATION FACILITY
 AT
TOMALES, CALIFORNIA
 FOR
MARIN EMERGENCY RADIO AUTHORITY
 DECEMBER 31, 2004

PREPARED BY:



CIVIL ENGINEERS • URBAN PLANNERS • LAND SURVEYORS • LANDSCAPE ARCHITECTS
 15 Third Street, Santa Rosa, CA 95401
 TEL (707) 546-6431 FAX (707) 543-5212

PROJECT NO. 20040400

SHEET / OF /

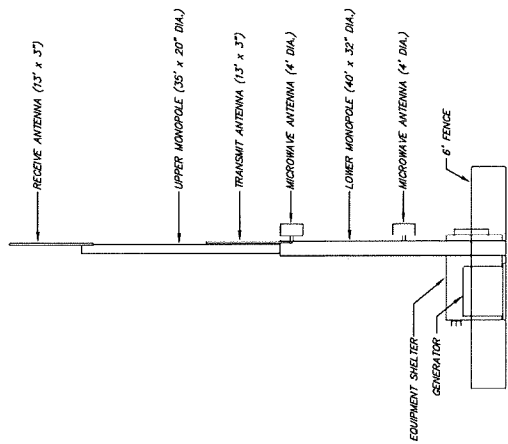
EXHIBIT B

Small text at the bottom right corner, likely a copyright or revision notice.

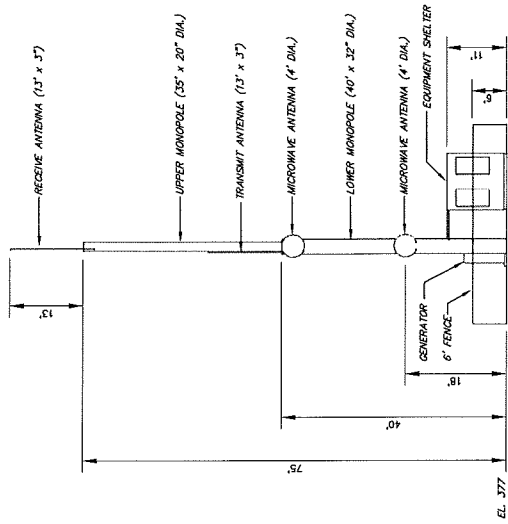
Exhibit C
MERA System

[please see attached plan]

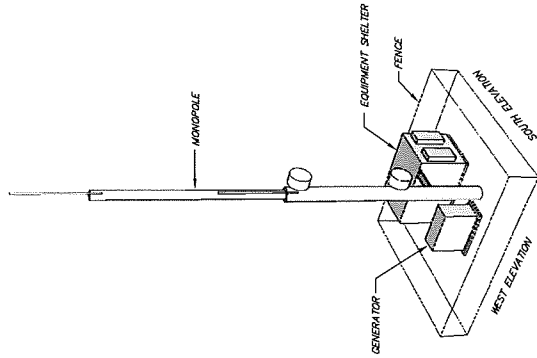
EXHIBIT C



WEST ELEVATION



SOUTH ELEVATION



SOUTHWEST ISOMETRIC



FACILITY ELEVATION EXHIBIT TELECOMMUNICATION FACILITY AT TOMALES, CALIFORNIA

OCTOBER 19, 2010



Civil Engineer • Urban Planner • Land Surveyor • Landscape Architects
15 Third Street, Santa Rosa, CA 95401
Tel: (707) 542-0611 Fax: (707) 542-0212

PROJECT No. 2009-0003

SHEET 2 OF 3
Copyright © 2010

Exhibit D
Amendment of Deed of Agricultural Conservation Easement

[please see attached]

Amendment of Deed of Agricultural Conservation Easement

This Amendment of Deed of Agricultural Conservation Easement (the “Amendment”) is made by Glenn A. Parks (“Parks”), Marin Agricultural Land Trust, a California nonprofit public benefit corporation (“MALT”), and the Marin Emergency Radio Authority 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 its members (“MERA”).

RECITALS:

A. Parks is the owner of that certain real property situate in the County of Marin, State of California, comprised of approximately 198 acres and identified by the County Assessor as parcel number 100-050-42 and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “Parks Property”);

B. MERA has identified an approximately 0.031-acres (1,365 square foot) portion of the Parks Property as its preferred site for a portion of a emergency radio system. That site is more particularly depicted in **Exhibit B** attached hereto and incorporated herein by this reference (the “MERA Site”).

C. The Parks Property, including the MERA Site, is subject to the terms, conditions, covenants, restrictions and affirmative rights and interests set forth and described in that certain Deed of Agricultural Conservation Easement in favor of MALT, recorded February 20, 2001 as Instrument Number 2001-0007371, Marin County Records (the “MALT Conservation Easement”).

D. MERA has full legal authority to exercise the power of eminent domain under California Government Code Section 6508 and has taken the steps prerequisite to its exercise of its power of eminent domain as to the MERA Site (as to the MALT Conservation Easement only) for the emergency radio system, including, without limitation, adoption by the MERA Governing Board a Resolution of Necessity (Resolution 2016-____ adopted August 24, 2016).

E. Parks has entered into an agreement with MERA, attached as **Exhibit C** and incorporated herein by this reference, to lease the MERA Site to

MERA for the purpose of building, operating, and maintaining an emergency radio system (“Lease”).

F. This Amendment is an amendment in lieu of condemnation intended by the parties to this Amendment to amend the MALT Agricultural Conservation Easement to the extent that it applies to the MERA Site (without amending or modifying in any respect the MALT Agricultural Conservation Easement as it applies to the Parks Property exclusive of the MERA site) as necessary to permit Parks to lease the MERA Site to MERA and to permit MERA to construct, install, operate, maintain, monitor and service an emergency radio system on the MERA Site as such system is specified and defined below.

AMENDMENT:

NOW THEREFORE, in consideration of the premises and of the mutual agreements of the parties set forth herein, the parties hereby agree as follows:

The MALT Agricultural Conservation Easement (the “Easement”) is hereby amended as follows, but only to the extent that it applies to the MERA Site:

1. MERA is hereby made a party to the Easement but only insofar as the Easement affects the MERA Site. MERA shall have no rights or obligations under the Easement with regard to the Parks Property exclusive of the MERA Site.
2. Except as set forth in Section 3 below, all of the terms, conditions, covenants, restrictions and affirmative rights and interests set forth in the Easement shall apply to the MERA Site as if MERA were one of the Grantors of the Easement to Grantee.
3. Any provision of the Easement to the contrary notwithstanding, the Easement and all of its terms, conditions, covenants, restrictions and affirmative rights and interests shall be deemed, and are hereby, amended to the extent necessary, and only to that extent, (without further consent or approval by Grantee or any other party to the Easement) (a) to permit Parks to lease the MERA Site to MERA pursuant to the Lease subject to the terms and conditions of this Amendment and (b) to permit the MERA, its successors and assigns to construct, install, operate, maintain, monitor and service an emergency radio system on the MERA Site as such system is depicted on **Exhibit B**.

4. Except as expressly set forth in Sections 1, 2 and 3 above, the Easement is not modified or amended in any way and it shall remain in full force and effect.

IN WITNESS WHEREOF, the parties to this Amendment have executed this Amendment on the date set forth below.

Dated: _____ 2016

Landowner

Glenn A. Parks

Marin Agricultural Land Trust

By _____
Jamison Watts, Executive Director

MARIN EMERGENCY RADIO AUTHORITY

By _____
Maureen Cassingham, Executive Officer