

COMMUNICATIONS SITE LEASE AGREEMENT

This Communications Site Lease Agreement ("Agreement") is entered into the _____ day of _____, 2016 by and between GLENN A. PARKS ("Lessor") and the MARIN EMERGENCY RADIO AUTHORITY ("MERA" or "Lessee").

Recitals

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

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

WHEREAS, Lessor is the record owner of that certain real property described below and located at 28375 State Route 1, Tomales, California; and

WHEREAS, MERA desires to lease a portion of Lessor's property to install and operate certain communications facilities (the "Communications Facility") adjacent to existing Verizon Wireless communication facilities; and

WHEREAS, Lessor and MERA desire to enter into a Lease Agreement to provide, in part, space for the Communications Facility that will become part of the System and be located on Lessor's owned property described below.

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

1. Leased Property.

Lessor are the owners of that certain real property located within the unincorporated area of the County of Marin, State of California, identified as Assessor's Parcel No. 100-050-42, and more particularly described in Exhibit "A" hereto ("the Property"). The parties hereto acknowledge that other licenses, leases or easements for communication and other purposes may currently exist on the Property. Lessor hereby Leases to MERA and MERA hereby Leases from Lessor, space on that portion of the Property depicted in Exhibit "B", together with the rights of ingress and egress and utilities described hereinafter in paragraph 6 (the "Lease Space").

2. Use.

Lessor grants to MERA, subject to the rights and privileges of current tenants on the Property and other grantees of rights therein, the right and privilege to use the Lease Space for any lawful activity in connection with the provision of a public safety, fire protection and emergency radio system, including, the transmission and reception of radio communication signals on various frequencies, the construction, maintenance, and operation of the MERA facilities described below. Lessor further agrees not to grant a right to any other party for use of the Property or permit any other party to use the Property if such use would in any way affect or

interfere with MERA's use of the Lease Space, or interfere with MERA's facilities, except for uses permitted under previous licenses, leases or easements on the Property. Lessor agrees to cooperate with MERA, at MERA's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for MERA's intended use of the Lease Space for its Communications Facility.

3. Equipment Installation and Operation.

MERA shall purchase, install and maintain within the Lease Space, at its sole cost and expense, one (1) eighty (80') foot tall monopole, two (2) whip style twelve (12') foot tall antennas located at the top of the monopole and midway up the monopole, two (2) four (4') foot in diameter microwave dishes located at a height of less than thirty (30') feet on the monopole, an equipment building approximately ten (10') x twenty (20') feet, a propane powered backup generator and propane tank, collectively these components comprise the Communications Facility. The equipment listed may change from time to time due to a variety of factors. MERA shall not be required to secure further approvals from Lessor for changes to the installed equipment but shall comply with all applicable codes, regulations and laws regarding any installation or modification of said equipment.

4. Term and Option to Extend.

A. Commencement Date and Term. The term of this Agreement shall be ten (10) years and shall commence (the "Commencement Date") on the first day of the first month following the later of: (1) MERA provides notice to Lessor 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, and (2) the conditions precedent in paragraph C below have been satisfied. MERA shall be permitted to occupy the Lease Space and commence construction of the Communication Facility on the Commencement Date. Prior to the Commencement Date, and following full execution of this Agreement, MERA shall have the right to enter the Lease Space for the purpose of making appropriate engineering and surveys, inspections, soil test borings and other reasonable necessary tests.

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

C. Conditions Precedent

- a. CEQA Compliance. MERA represents, and Lessor acknowledge, that MERA must comply with the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000, *et seq.* in connection with the Communications Facility. It is understood by the parties that MERA's compliance with CEQA is a condition precedent to the effectiveness of this Agreement. If MERA is unable to comply with CEQA for any reason, including, but not limited to, litigation, MERA shall not be obligated under this Agreement in any manner.
- b. Agreement for Utilities and Access. MERA represents, and Lessor acknowledges, that MERA and Verizon Wireless and its sublessees, if any, will share the use of the common access road (the "Common Access Road")

constructed by GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless, By Cellco Partnership, Its General Partner ("Verizon") and utilities for their respective sites. It is understood by the parties that MERA's rights granted herein for access and utilities are non-exclusive and independent from Verizon's rights. If MERA determines that it is necessary to enter into an agreement with Verizon, or any other party, for use of utilities or the Common Access Road and is unable to successfully negotiate such an agreement for any reason, MERA shall not be obligated under this Agreement in any manner.

5. Lease Fee Payments.

Effective as of the Commencement Date of this agreement, MERA shall pay Lessor rent in the amount of EIGHT HUNDRED FIFTY DOLLARS (\$850.00) each month for the term of the Agreement beginning on the Commencement Date of this Lease described above. Rent payments shall be made payable to Glenn Parks and sent to Lessor as described in Section 8 herein below. Rent shall be increased upon each anniversary of the Commencement Date at the rate of one (1%) percent of the rent then in effect under this Agreement.

6. Access and Utilities.

- A. MERA is hereby given seven (7) days a week, twenty-four (24) hour access rights, subject to the limitations, restrictions, covenants, conditions, leases, licenses and easements of record, for ingress and egress to the Lease Space over, upon, and across Lessor's owned property required for the erection, installation, maintenance, replacement and removal of MERA's facilities and related equipment and other necessary appurtenances and for power lines and any other utilities used in connection with MERA's facilities (the "Access Easement"). MERA shall have the right, subject to receiving prior written approval from Lessor, to improve ingress and egress in order to conform the access to the Lease Space for its necessary and required uses.
- B. MERA shall not be exclusively responsible for the maintenance and repair of the Common Access Road nor the cost thereof. MERA agrees to participate in the cost of maintenance and repair for the Common Access Road, on an equal basis among all parties granted access rights to the Common Access Road,. Notwithstanding any maintenance agreement for the Common Access Road, Lessor may maintain and repair the Common Access Road, provided, however, that Lessor must provide a cost estimate for any maintenance and repair along with the calculation for each party's portion, prior to the commencement of any maintenance and repairs. MERA shall have ten (10) business days to review and approve or disapprove said cost estimate and its share of the cost. In the event of a dispute between MERA and Lessor over the cost estimate or its share of the cost, MERA shall provide its own estimate and calculation of its share of the cost within fifteen (15) business days after receipt of Lessor's estimate. In the case of emergency repairs necessary to protect Lessor's property or adjacent property owners, Lessor retains the right to make emergency repairs without MERA consent.
- C. MERA shall have the right to enter the Property for the purpose of making necessary inspections and engineering surveys, and other tests reasonably necessary to determine the suitability of the Lease Space for MERA's facilities and for the

purposes of preparing for the construction of the MERA facilities. MERA shall repair any damage to the Property caused by any tests performed and shall return the Property to the condition that existed prior to any tests.

- D. MERA shall have access seven (7) days a week, twenty-four (24) hours a day to the Property for construction, installation, maintenance and repair of the Communications Facility within the Lease Space. Lessor agrees not to unreasonably restrict entry to the Lease Space by authorized MERA employees, agents, contractors and sub-contractors.

7. Holding Over.

Should MERA, with Lessor's written consent, continue to utilize the Lease Space or any portion thereof after the expiration of the last ten (10) year term, MERA shall continue to do so subject to all terms and conditions of this Agreement including, but not limited to, the yearly Rent increase rate of one (1%) percent as stated in paragraph 5.

8. Notice.

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

LESSOR:

Glenn Parks
P.O. Box 62
Tomales, CA 94971

LESSEE:

Marin Emergency Radio Authority
3501 Civic Center Drive, Room 325
San Rafael, CA 94903
Attention: Executive Director

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

9. Indemnification.

(a) With respect to the Property and except for the negligence or willful misconduct of Lessor or their agents, employees or contractors, MERA shall indemnify, hold harmless, and defend Lessor from any and all claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of the use of the Property by MERA, or MERA's officers, contractors, licensees, agents, employees, guests, invitees, or visitors. Lessor shall not be liable for any loss or damage to persons or property sustained by MERA or other persons, which may be caused by theft, or by any act or neglect of any other lessee, tenant or occupant of the Property, or by any Third Parties. The indemnity obligations hereunder survive the termination of this Agreement.

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

10. Termination.

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

11. Insurance.

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

12. Fixtures.

Lessor agrees that no part of the improvements constructed, erected or placed by MERA on the Lease Space shall be considered as being fixed to or a part of Lessor's real property, it being the specific intention of Lessor to agree that the Communications Facility erected or placed by MERA on the Lease Space shall be and remain the property of MERA. At the expiration or termination of this Agreement, MERA shall remove, at its sole expense, from the Lease Space any and all fixtures and improvements of every kind constructed and erected thereon except for underground conduit and foundations that may require significant excavation and restoration of soil and vegetation.

13. Assignment.

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

any governmental entity resulting from merger or consolidation with MERA, provided that such assignee assumes in full all of MERA's obligations under the Agreement.

14. Hazardous Materials.

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

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

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

As used in this section, hazardous materials shall mean:

- A. "Hazardous substances" and "pollutants and contaminants" as defined in CERCLA, 42 USC Sections 9601 (14) and (33) and regulations issued pursuant thereto, or their successors;
- B. "Extremely hazardous substances, hazardous chemicals" and "toxic chemicals" as defined in the Emergency Planning and Community Right to Know Act, 42 USC Sections 11002 (a), 11021(e), and 11023 (c), and regulations issued pursuant thereto, or their successors;

- C. "Hazardous chemicals" within the meaning of OSHA's Hazard Communication Rules, 29 CFR Section 1910.1200, or their successors;
- D. Any such materials regulated under state or local environmental laws and regulations similar to the foregoing federal authorities listed in A-C above, or their successors; and
- E. Any materials not covered by, or exempted from, the sources listed in paragraphs A-D above or their successors, that may nevertheless pose a threat to human health or welfare or to the environment including, without limitation, petroleum, including crude oil or any fraction thereof, and radon.

15. Damage or Destruction.

If during the term hereof, the Lease Space or any part thereof or any improvement constructed by MERA on the Lease Space shall be damaged or destroyed from any cause whatsoever, other than the Lessor's negligence or willful misconduct, MERA shall, at its sole cost and expense, repair, restore or rebuild the same in accordance with its condition prior to such damage or destruction or in accordance with any plans and specifications first approved in writing by Lessor after receiving all necessary third party approvals. In the event MERA determines it is commercially infeasible to repair the Communications Facility, it may elect to terminate this Agreement upon providing Lessor thirty (30) days advance written notice of its intention to do so.

16. Merger.

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

17. Amendment or Modification.

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

18. Time is of the Essence.

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

19. Removal of Improvements Upon Expiration of Term or Termination of Agreement.

Upon the expiration of the term of this Agreement or its termination as provided for herein by either party, MERA shall remove all improvements constructed, erected or placed by MERA on the Lease Space at its sole cost and restore the Lease Space and the Property to its original condition existing as of the Commencement Date save and excepting therefrom the common access road which shall not be the responsibility of MERA to remove and restore.

20. Condemnation.

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

21. Dispute Resolution.

It is the intent of the parties to provide an efficient, effective and inexpensive method to resolve any disputes concerning the interpretation or performance of this Agreement ("Disputes") when Disputes cannot be informally resolved. Upon written notice of a party of a dispute (the "Notice of Dispute"), each party shall designate within three (3) days one or more persons to meet with the designated representatives of the other party to consult and negotiate with each other in good faith a just and equitable solution satisfactory to both parties. If within fifteen (15) business days after delivery of the Notice of Dispute, the dispute cannot be settled through negotiation, the parties shall attempt in good faith to settle the dispute by mediation. The mediation shall be conducted in the manner mutually agreed upon by the parties and if no such agreement is reached within thirty (30) days after the Notice of Dispute, the mediation shall be administered by the American Arbitration Association under its Mediation Rules in effect on the date of the Notice of Dispute. If, within ninety (90) days after the Notice of Dispute the parties do not reach a mutually satisfactory resolution of the Dispute, the parties may pursue whatever legal remedies are available to them under the law.

22. Attorneys' Fees.

If any legal action is commenced between the parties to this Agreement, the party prevailing in that litigation shall be entitled to, in addition to any other relief that may be granted in the litigation, a reasonable sum as and for its attorneys' fees in that litigation that are determined by the court in that litigation or in a separate action brought for that purpose.

23. Applicable Law.

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

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

LESSOR:

Glenn A. Parks
Glenn A. Parks

Date: 5/10/16

LESSEE:

MARIN EMERGENCY RADIO AUTHORITY

APPROVED AS TO FORM:

Maureen Cassingham, Executive Officer

MERA Counsel

Date: _____

EXHIBIT A

Legal Description of the Property

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

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.

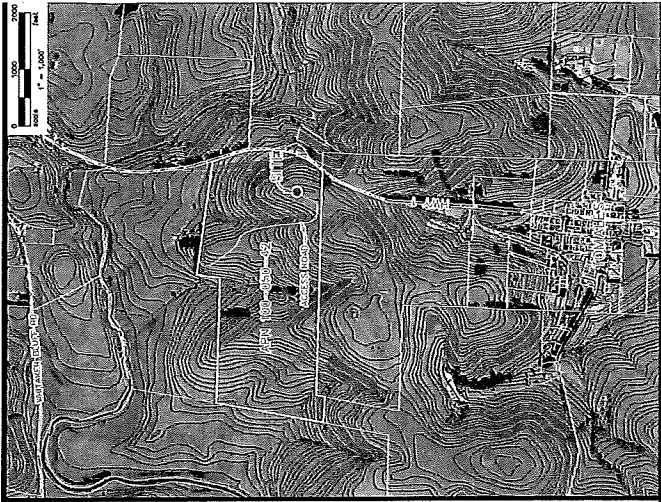
BEING a portion of lands conveyed by Charles J. Cunningham from David Bassett by deed dated September 1. 1915, recorded October 11, 1915 in Volume 174 of Deeds, Page 40.

EXHIBIT B

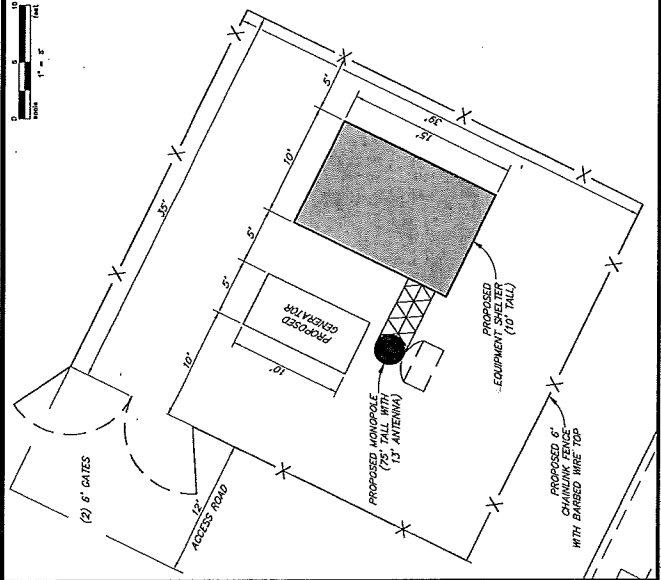
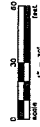
Depiction of the Lease Space

“Site Plan Exhibit Telecommunications Facility at Tomales, California
For
Marin Emergency Radio Authority
December 31, 2009”

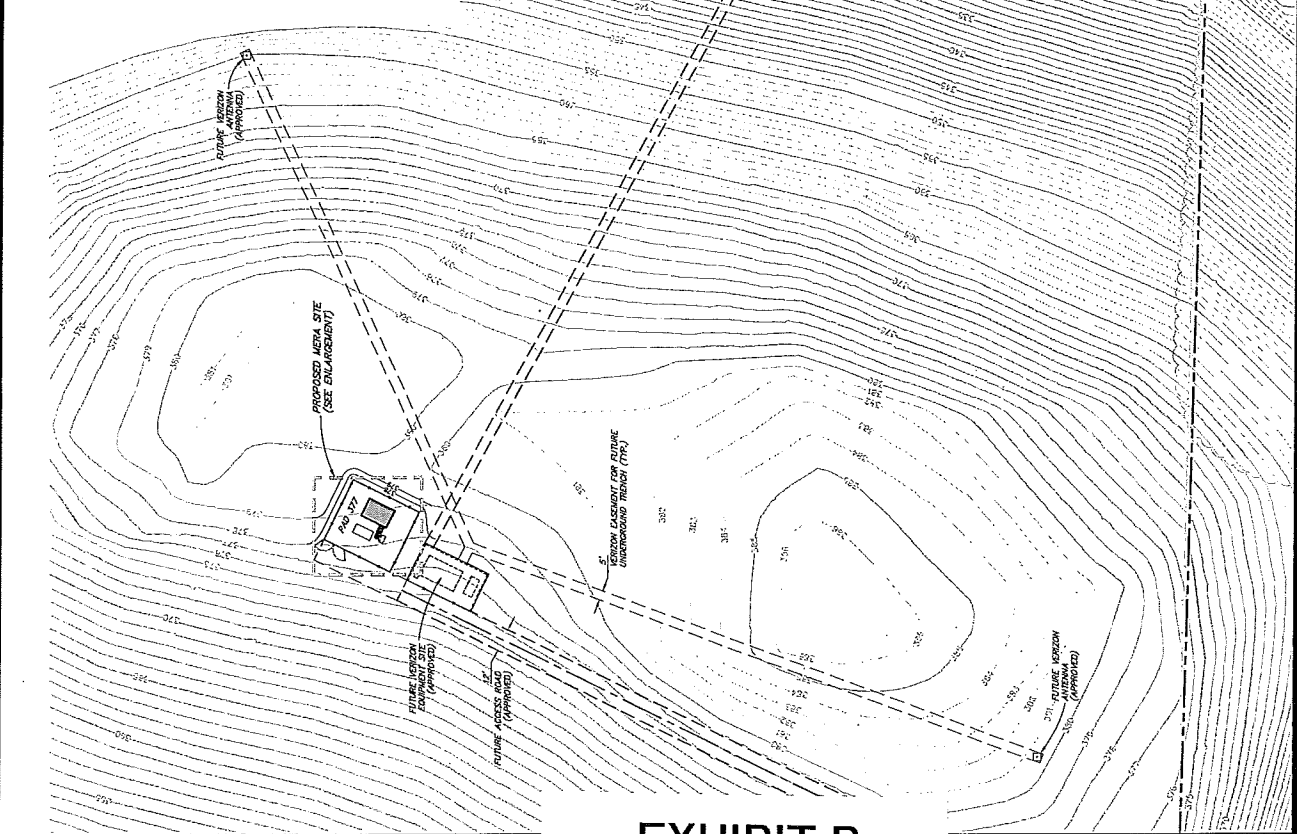
Attached Sheet 1 of 1



VICINITY



MEGA SITE ENLARGEMENT



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



Civil Engineers - Urban Planners - Landscape Architects
 15 Third Street, Sausalito, CA 94965
 Tel. (415) 452-4451 Fax. (415) 452-5912

PROJECT NO. 2004000000

SHEET 1 OF 1

EXHIBIT B