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**E.B. 11/14/12**

**Item B-1e**

PO Box 1350  
Carmel Valley, CA 93924

**PROPOSED CY2013**

PO Box 1077  
Camarillo, CA 93011-1077

## **AGREEMENT FOR MANAGEMENT AND ADMINISTRATIVE SERVICES**

This Agreement for Management Services (“Agreement”) is made and entered into as of the 1<sup>st</sup> day of January 2013, by and between the **Marin Emergency Radio Authority**, a municipal agency (“Authority”), and **Regional Government Services Authority** (RGS), a joint powers authority, (each individually a “Party” and, collectively, the “Parties”).

### **RECITALS**

THIS AGREEMENT is entered into with reference to the following facts and circumstances:

- A. That AUTHORITY desires to engage RGS to render certain services to AUTHORITY;
- B. That RGS is a management and administrative services provider and is qualified to provide such services to AUTHORITY; and
- C. That AUTHORITY has elected to engage the services of RGS upon the terms and conditions as hereinafter set forth.

### **TERMS AND CONDITIONS**

**Section 1. Services.** The services to be performed by RGS under this Agreement shall include those services set forth in **Exhibit A**, which is by this reference incorporated herein and made a part hereof as though it were fully set forth herein.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in **Exhibit A**.

**1.1 Standard of Performance.** RGS shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which RGS is engaged in the geographical area in which RGS practices its profession. RGS shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in RGS’s profession.

**1.2 Assignment of Personnel.** RGS shall assign only competent personnel to perform services pursuant to this Agreement. In the event that AUTHORITY, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, RGS shall consider reassigning such person or persons. RGS's Executive Director will notify AUTHORITY's Authority Manager in writing prior to assigning a different RGS employee to provide services other than the Initial RGS Staff identified on **Exhibit A.**

**1.3 Time.** RGS shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in above and to satisfy RGS's obligations hereunder in **Exhibit A.**

**Section 2. Term of Agreement and Termination.** Services shall commence on or about the date specified in Exhibit A and shall continue until the date anticipated in Exhibit A to terminate, at which time it may be extended by mutual consent of the Parties for up to one-year intervals until terminated. This agreement may be terminated by either Party, with or without cause, upon 30 days written notice. AUTHORITY has the sole discretion to determine if the services performed by RGS are satisfactory to the AUTHORITY, which determination shall be made in good faith. If the AUTHORITY determines that the services performed by RGS are not satisfactory, the AUTHORITY may terminate this agreement by giving written notice to RGS. Upon receipt of notice of termination by either Party, RGS shall cease performing duties on behalf of AUTHORITY on the termination date specified and the compensation payable to RGS shall include only the period for which services have been performed by RGS.

**Section 3. Compensation.** Payment under this Agreement shall be as provided in **Exhibit A.**

**Section 4. Effective Date.** This Agreement shall become effective on the date first herein above written.

**Section 5. Relationship of Parties.**

**5.1** It is understood that the relationship of RGS to AUTHORITY is that of an independent contractor and all persons working for or under the direction of RGS are its agents or employees and not agents or employees of AUTHORITY. AUTHORITY and RGS shall, at all times, treat all persons working for or under the direction of RGS as agents and employees of RGS, and not as agents or employees of the AUTHORITY. AUTHORITY shall have the right to control RGS only insofar as the results of RGS's services rendered pursuant to this agreement and assignment of personnel pursuant to Section 1.

- 5.2** RGS shall provide services under this Agreement through one or more employees of RGS qualified to perform services contracted for by AUTHORITY. Key staff of RGS who will provide services to the AUTHORITY are indicated in **Exhibit A**. The Executive Director will not reassign any of the staff indicated in **Exhibit A** without first consulting with the AUTHORITY. The Executive Director will consult with AUTHORITY on an as-needed basis to assure that the services to be performed are being provided in a professional manner and meet the objectives of AUTHORITY.
- 5.3** AUTHORITY shall not have the ability to direct how services are to be performed, specify the location where services are to be performed, or establish set hours or days for performance of services, except as set forth in **Exhibit A**.
- 5.4** AUTHORITY shall not have any right to discharge any employee of RGS from employment.
- 5.5** RGS shall, at its sole expense, provide for its employees providing services to AUTHORITY pursuant to this Agreement any and all benefits, such as worker's compensation, disability insurance, vacation pay, sick pay, or retirement benefits; obtain and maintain all licenses and permits usual or necessary for performing the services; pay any and all taxes incurred as a result of the employee(s) compensation, including estimated taxes, FICA and other employment taxes; and provide AUTHORITY with proof of payment of taxes on demand.

**Section 6. Insurance Requirements.** Before beginning any work under this Agreement, RGS, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by RGS and its agents, representatives, employees, and subcontractors. RGS shall provide proof satisfactory to AUTHORITY of such coverage that meets the requirements of this section and under forms of insurance satisfactory in all respects to the AUTHORITY. RGS shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be paid by RGS. RGS shall not allow any subcontractor to commence work on any subcontract until RGS has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to AUTHORITY. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 6.1 Workers' Compensation.** RGS shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed

directly or indirectly by RGS. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, RGS may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or RGS, if a program of self-insurance is provided, shall waive all rights of subrogation against the AUTHORITY and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement where the subject loss is not proximately caused by the actions of or failure to act by a AUTHORITY officer, agent or employee or any person or entity other than the parties to the agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after 15 days' prior written notice has been given to the AUTHORITY.

## **6.2 Commercial General and Automobile Liability Insurance.**

**6.2.1 General requirements.** RGS, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. RGS shall additionally maintain commercial general liability in an amount not less than TWO MILLION DOLLARS (\$2,000,000) aggregated for bodily injury, personal injury, and property damage. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**6.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG

0001 or GL 0002 (most recent editions) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9. No endorsement shall be attached limiting the coverage.

**6.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. AUTHORITY and its officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of RGS including the insured's general supervision of RGS; products and completed operations; premises owned, occupied, or used by RGS; and automobiles owned, leased, or used by RGS. The coverage shall contain no special limitations on the scope of protection afforded to AUTHORITY or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the AUTHORITY and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the AUTHORITY shall be called upon to contribute to a loss under the coverage.
- d. An endorsement shall state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits, except following reasonable notice to the AUTHORITY.

**6.3 Professional Liability Insurance.** Upon written request of AUTHORITY, RGS, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**6.3.1** Any deductible or self-insured retention shall not exceed \$1,000 per claim.

- 6.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after fifteen (15) days' prior written notice has been given to the AUTHORITY.
- 6.3.3** The following provisions shall apply if the professional liability coverages are written on a claims-made form:
- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
  - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, RGS must provide extended reporting coverage for a minimum of 5 years after completion of the Agreement or the work. The AUTHORITY shall have the right to exercise, at RGS's sole cost and expense, any extended reporting provisions of the policy, if RGS cancels or does not renew the coverage.
  - d. A copy of the claim reporting requirements must be submitted to the AUTHORITY prior to the commencement of any work under this Agreement.

#### **6.4 All Policies Requirements.**

**6.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

**6.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, RGS shall furnish AUTHORITY with notifications of coverage and with original endorsements effecting coverage required herein. The notifications and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The AUTHORITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

**6.4.3 Subcontractors.** RGS shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**6.4.4 Variation.** The AUTHORITY may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the AUTHORITY's interests are otherwise fully protected.

**6.4.5 Deductibles and Self-Insured Retentions.** RGS shall disclose to and obtain the approval of AUTHORITY for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of AUTHORITY's Authority Manager, RGS may increase such deductibles or self-insured retentions with respect to AUTHORITY, its officers, employees, agents, and volunteers. The AUTHORITY's Authority Manager may condition approval of an increase in deductible or self-insured retention levels with a requirement that RGS procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

**6.4.6 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, RGS shall provide written notice to AUTHORITY at RGS's earliest possible opportunity and in no case later than five days after RGS is notified of the change in coverage.

**6.5 Remedies.** In addition to any other remedies AUTHORITY may have if RGS fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, AUTHORITY may, at its sole option exercise any of the following remedies, which are alternatives to other remedies AUTHORITY may have and are not the exclusive remedy for RGS's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order RGS to stop work under this Agreement or withhold any payment that becomes due hereunder, or both stop work and withhold any payment, until RGS demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement.

## **Section 7. Legal Requirements.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** RGS and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, RGS and any subcontractors shall comply with all applicable rules and regulations to which AUTHORITY is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** RGS represents and warrants to AUTHORITY that RGS and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions and that RGS is authorized by law to provide the services contemplated by this agreement. RGS represents and warrants to AUTHORITY that RGS and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.
- 7.5 Nondiscrimination and Equal Opportunity.** RGS shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided under this Agreement. RGS shall comply with all applicable federal, state, and Local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement.

## **Section 8. Keeping and Status of Records.**

- 8.1 Records Created as Part of RGS's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that



RGS prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the AUTHORITY. RGS hereby agrees to deliver those documents to the AUTHORITY upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the AUTHORITY and are not necessarily suitable for any future or other use.

**8.2 Confidential Information.** RGS shall hold any confidential information received from AUTHORITY in the course of performing this Agreement in trust and confidence and will not reveal such confidential information to any person or entity, either during the term of the Agreement or at any time thereafter. Upon expiration of this Agreement, or termination as provided herein, RGS shall return materials which contain any confidential information to AUTHORITY. For purposes of this paragraph, confidential information is defined as all information disclosed to RGS which relates to AUTHORITY past, present, and future activities, as well as activities under this Agreement, which information is not otherwise of public record under California law. AUTHORITY shall notify RGS what information and documents are confidential and thus subject to this section 8.2.

**8.3 RGS's Books and Records.** RGS shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the AUTHORITY under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment under this Agreement.

**8.4 Inspection and Audit of Records.** Any records or documents that Section 8.2 of this Agreement requires RGS to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the AUTHORITY. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of AUTHORITY or as part of any audit of the AUTHORITY, for a period of 3 years after final payment under the Agreement.

**Section 8. Non-assignment.** This Agreement is not assignable either in whole or in part without the written consent of the other party.

**Section 9. Amendments.** This Agreement may be amended or modified only by written agreement signed by both Parties.

**Section 10. Validity** The invalidity, in whole or in part, of any provisions of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

**Section 11. Governing Law/Attorneys Fees.** This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in Marin County, California. In the event of litigation between the Parties hereto to enforce any provision of the Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs of litigation.

**Section 12. Mediation.** Should any dispute arise out of this Agreement, the Parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither Party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the Parties. If a mediated settlement is reached, neither Party shall be deemed the prevailing party for purposes of the settlement and each Party shall bear its own legal costs.

**Section 13. Entire Agreement.** This Agreement, including Exhibit A, comprises the entire Agreement.

**Section 14. Indemnity**

**14.1 RGS's indemnity obligations.** RGS will defend and indemnify AUTHORITY, and hold it harmless, from any claim, demand or liability that is related to, or results from the manner in which RGS has performed this Agreement. Thus, RGS's indemnity obligations will arise when any claim or demand is made against AUTHORITY which premises AUTHORITY's liability, in whole or in part, upon any of the following:

- a. the quality or character of the work of RGS's employees or subcontractors;
- b. the negligent acts or omissions of RGS or its officers, directors, employees, or agents; or
- c. the willful misconduct of RGS or its officers, directors, employees, or agents.

Further, RGS will defend and indemnify AUTHORITY, and hold it harmless, from any claim, demand or liability that is related to, or results from an assertion that as a result of providing services to AUTHORITY, an RGS employee or a person performing work pursuant to this agreement is entitled to benefits from, or is covered

by, the Social Security retirement system or the California Public Employee Retirement Systems. Notwithstanding the foregoing, however, RGS's obligation for any payments to such a claimant shall be limited to those payments which AUTHORITY may be required to pay.

**14.2 AUTHORITY's indemnity obligations.** AUTHORITY shall indemnify, defend and hold harmless RGS and its officers, directors, employees and agents from any and all claims and lawsuits where such persons are named in the lawsuit solely by virtue of the position they hold with AUTHORITY, or solely because of a duty any of them performs while in that position.

It is the intent of the parties here to define indemnity obligations that are related to or arise out of AUTHORITY's actions as a governmental entity. Thus, AUTHORITY shall be required to indemnify and defend only under circumstances where a cause of action is stated against RGS, its employees or agents:

- a. which is unrelated to the skill they have used in the performance of the duties delegated to them under this Agreement;
- b. when the allegations in such cause of action do not suggest the active fraud or other misconduct of RGS, its employees, or agents; and
- c. where a AUTHORITY employee, if he had been acting in a like capacity, otherwise would be acting within the scope of that employment.

Whenever AUTHORITY owes a duty hereunder to indemnify RGS, its employees or agents, AUTHORITY further agrees to pay RGS a reasonable fee for all time spent by any RGS employee, or spent by any person who has performed work pursuant to this agreement, for the purpose of preparing for or testifying in any suit, action, or legal proceeding in connection with the services she has provided under this Agreement.

**Section 15. Notices.** All notices required by this Agreement shall be given to AUTHORITY and RGS in writing, by first class mail, postage prepaid, addressed as follows:

AUTHORITY: Marin Emergency Radio Authority  
c/o Novato Fire Protection District  
95 Rowland Way  
Novato, CA 94945

RGS: Regional Government Services Authority  
P. O. Box 1350  
Carmel Valley, CA 94061

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first written by their respective officers duly authorized on their behalf.

DATED: \_\_\_\_\_, 2012 **Marin Emergency Radio Authority**

By: \_\_\_\_\_  
Governing Board President

APPROVED AS TO FORM:

DATED: \_\_\_\_\_, 2012 By: \_\_\_\_\_  
MERA General Counsel

DATED: \_\_\_\_\_, 2012 **REGIONAL GOVERNMENT SERVICES**

By: \_\_\_\_\_  
Richard H. Averett, Executive Director

APPROVED AS TO FORM:

DATED: \_\_\_\_\_, 2012 By: \_\_\_\_\_  
Sky Woodruff, Authority Counsel

## **EXHIBIT A SCOPE OF SERVICES**

RGS shall assign an RGS employee or employees to serve as the Main Emergency Radio Authority's Executive Director which requires performing the functions as described below:

- Perform the functions as described.
- Be reasonably available to perform the services during the normal work week.
- Meet regularly and as often as necessary with the Authority officials for the purpose of consulting about the scope of work performed.
- Perform such other duties consistent with the position as required by the Authority, and will meet with other staff and attend Agency and other meetings as necessary.

Such employee(s) may perform services at the AUTHORITY offices or at other locations.

RGS will provide these services for up to 36 months from the date services commence pursuant to this agreement, subject to the provisions of Section 2 related to termination.

### **COMPENSATION**

1. **Fees.** The AUTHORITY agrees to pay to RGS the full cost of compensation and support, as shown in Exhibit A, for the assigned RGS employee(s). Compensation is shown on an hourly basis.

RGS and AUTHORITY acknowledge and agree that compensation paid by AUTHORITY to RGS under this Agreement is based upon RGS's costs of providing the services required hereunder, including salaries and benefits of employees. Consequently, the parties agree that adjustments to the hourly rate shown below for "Assigned RGS Staff" will be made for changes to the salary and/or benefits costs provided by RGS to such employee. The parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities for which RGS may be obligated for its employees or may otherwise be contractually obligated.

2. **Reimbursement of RGS's Administrative Cost.** The AUTHORITY shall reimburse RGS for overhead as part of the hourly rate specified below, and direct external costs. Support overhead costs are those expenses necessary to administering this Agreement, and are included in the hourly rate. Direct external costs (e.g. materials, supplies, mileage reimbursement or other purchases or expenses incurred for the direct and sole benefit of the AUTHORITY) will be invoiced to the AUTHORITY when received and without mark-up. These external costs will be due upon receipt. Travel time to and from work assignments will not be invoiced to the Authority.

3. **Terms of Payment.** RGS shall submit invoices monthly for the prior month's services. Invoices shall be delinquent if not paid within 20 days of receipt. Delinquent payments will be subject to a late payment carrying charge computed at a periodic rate of 1% per month, which is an annual percentage rate of 12%, which will be applied to any unpaid balance owed commencing 7 days after the payment due date. Additionally, in the event the AUTHORITY fails to pay any undisputed amounts due to RGS within 15 days after payment due date, then the AUTHORITY agrees that RGS shall have the right to consider said default a total breach of this Agreement and the duties of RGS under this Agreement may be terminated by RGS upon 10 working days advance written notice.

Payment Address. All payments due RGS shall be paid to:  
RGS  
C/O McGilloway & Ray Accounting and Consulting  
2511 Garden Road, Suite A-180  
Monterey, CA 93940-5381.

**ASSIGNED RGS STAFF**

<b>NAME</b>	<b>POSITION</b>	<b>HOURLY RATE</b>
Maureen Cassingham	Executive Officer	\$97.97 (monthly rate of \$9,552)

The agreement is for an monthly rate and anticipates the Executive Director will work on-site and remotely, being on-call to respond to the AUTHORITY's need for services, not-to-exceed amount of 19 hours a week on average. The start date for the services to be performed is on or about January 1, 2013, and this agreement is anticipated to remain in force through December 31, 2013, unless extended by mutual consent of both parties.