

**A JOINT POWERS AGREEMENT
CREATING
THE MARIN EMERGENCY RADIO AUTHORITY**

This Agreement is entered into this 28th day of February, 1998, by and between the following local agencies: _____ (See attached)
pursuant to Sections 6500, et seq., of the California Government Code.

RECITALS

A variety of local agencies within Marin County have cooperated in the development and operation of a radio system for several decades throughout the County of Marin. Currently, these agencies find that their system is obsolete and not dependable. Moreover, replacement parts are difficult, if not impossible, to procure for the proper operation of the system. Additionally, the Federal Government has made certain mid-band radio frequencies available to the local agencies of Marin County for the operation of a public safety and emergency radio system.

For these and other reasons, local agencies within Marin County have determined it is in the public interest to create the Marin Emergency Radio Authority, an entity separate from its Member agencies, which will own and operate the Public Safety and Emergency Radio System.

NOW, THEREFORE, these Agencies agree as follows:

ARTICLE 1: DEFINITIONS

Certain words as used in this Agreement shall be defined as follows:

- A. "**Agencies**" shall mean the County, Special Districts, Cities and Towns within Marin County.
- B. "**Agreement**" shall mean this Agreement that establishes the Marin Emergency Radio Authority.
- C. "**Authority**" shall mean the Marin Emergency Radio Authority.
- D. "**Board**" shall mean the Board of Directors which is the governing body of the Marin Emergency Radio Authority.
- E. "**County**" shall mean County of Marin.
- F. "**Cities**" shall mean the Cities of Belvedere, Larkspur, Mill Valley, Novato, San Rafael and Sausalito.
- G. "**Towns**" shall mean Towns of Corte Madera, Fairfax, Ross, San Anselmo and Tiburon.
- H. "**Executive Committee**" shall mean the committee described in Section 7.3(b) of Article 7 of the Agreement.
- I. "**Special Districts**" shall mean governmental agencies created for single or limited purposes within the County of Marin.
- J. "**Members**" shall mean the County, Special Districts, Cities or Towns which are

signatories to this Agreement.

K. "**Quorum**" shall mean a majority of the Board members.

L. "**Ross Valley Agencies**" shall mean the Town of Corte Madera, the City of Larkspur, the Town of San Anselmo, the Town of Fairfax, the Town of Ross, Twin Cities Police Department, Ross Valley Fire Services and the College of Marin.

M. "**Southern Marin Cities and Towns**" shall mean the City of Mill Valley, the Town of Tiburon, the City of Belvedere and the City of Sausalito.

ARTICLE 2: PURPOSE

2.1 The purpose of this Agreement is to establish a public entity separate from the County, Special Districts, Cities and Towns. This public entity is to be known as the Marin Emergency Radio Authority.

The Authority will plan, finance, implement, manage, own and operate a multi-jurisdictional and county-wide Public Safety and Emergency Radio System with the attendant facilities.

ARTICLE 3: TERM OF AGREEMENT

3.1 This Agreement becomes effective on February 28, 1998. To become a Member, a local agency must execute this Agreement by February 28, 1998. It shall remain in effect until it is terminated pursuant to Article 11.

ARTICLE 4: BOARD OF DIRECTORS

4.1 The Board shall be comprised of one representative from each Member. A Member may designate two alternative representatives to act for that Agency in the absence of the appointed representative.

4.2 Minutes of the adjourned, regular and special meetings of the Board shall be kept by the Executive Officer and said minutes shall be forwarded to each member of the Board within thirty days after each meeting. Each member of the Board shall have one vote. A majority of the members of the Board will constitute a quorum. For purposes of conducting business, a majority of the quorum will be authorized to act on behalf of the Authority.

ARTICLE 5: POWERS OF THE AUTHORITY EXERCISED BY THE BOARD OF DIRECTORS

5.1 The Authority shall have all of the necessary powers and authorities granted by law to acquire the necessary hardware, software, FCC licenses and site locations in order to provide and operate a high quality public radio broadcast system.

5.2 The Authority may contract with private companies and public agencies to create, implement and operate the public safety and emergency radio system.

5.3 The Authority may adopt budgets, determine fees and dues of Members, retain personnel, retain legal counsel, retain consultants and engineers, acquire grants, acquire, hold, lease and dispose of real and personal property, use the power of eminent domain, accept donations, sue and be sued, and possesses all other powers associated with the operation of a joint powers authority on behalf of the citizens, property owners, and public agencies within

Marin County.

5.4 The Authority may own radio frequencies.

5.5 The Authority shall have the responsibility to keep Members informed of and advocate for or against pending legislation that would affect the operations of the Authority.

5.6 The Authority may incur debt and issue bonds or any like instruments in order to efficiently provide the services enumerated herein in compliance with the pertinent sections of the Government Code of the State of California. Specifically, the Authority can incur debt on its own under any law authorizing a joint powers authority to do so, including Government Code Section 6540, et seq., and the Marks-Roos Local Bond Pooling Act of 1985, Government Code Section 6584, et seq. The Authority can use lease financing, certificates of participation, installment purchase certificates, short-term notes and any other suitable form of borrowing. The Authority may enter into an agreement with a Member regarding that Member incurring debt on behalf of the Agency.

5.7 The Authority shall defend, hold harmless and indemnify the Members of the Authority.

5.8 The Authority may contract with a Member for services from a Member's employees.

5.9 The Authority may exercise the powers permitted under Government Code § 6504 or any successor statute. Specifically, (a) contributions from the treasuries may be made for the purpose set forth in the Agreement, (b) payments of public funds may be made to defray the cost of such purpose, (c) advances of public funds may be made for the purpose set forth in the Agreement, such advances to be repaid as provided in the Agreement, or (d) personnel, equipment or property of one or more of the Members to the Agreement may be used in lieu of other contributions or advances.

5.10 The Authority shall determine how any Agency will become a Member subsequent to February 28, 1998. Specifically, the Board shall establish fees and any other conditions necessary for an Agency to become a Member. Such fees shall be calculated based upon all prior project expenditures in a manner consistent with the cost allocation of existing Members and any additional costs necessary to serve that new Member. Such a proposed new Member shall also pay interest at the rate of Bank of America prime rate, calculated on a quarterly basis, from February 28, 1998, to its date of membership. The determination of the Board regarding fees and any other required conditions for new Members shall be within its sole discretion.

5.11 The Authority shall determine the amounts each Member shall contribute to the funding of the Authority. The initial contribution is set forth in Section 9.2 of Article 9 of the Agreement.

5.12 The Authority may do all things necessary and lawful to carry out the purpose of the Agreement.

5.13 As is required by Government Code Section 6509, one Member must be designated such that the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by that Member. The County of Marin is designated the Government Code § 6509 agency.

ARTICLE 6: BYLAWS

The Board may adopt from time to time such policies, procedures, bylaws, rules or regulations for the conduct of its affairs as deemed necessary by the Board.

ARTICLE 7: ORGANIZATION

7.1 Members.

- a. The County, Special Districts, Cities and Towns who enter into this Agreement by February 28, 1998.
- b. The County, any Special District and any City or Town may be considered for Membership in the Authority after February 28, 1998, by presenting an adopted resolution to the Board which includes a request to become a Member of the Authority.
- c. The Board shall accept proposed Members upon a majority affirmative vote of the quorum, upon payment of any Board determined fee and interest, and upon satisfaction of any conditions established by the Board as a prerequisite for Membership.

7.2 Board.

- a. The Authority shall be governed by the Board which shall exercise all powers and authority on behalf of Authority.
- b. The Board shall consist of one member of the governing body or the chief administrative officer or a designee of the County, Special District, City or Town which are party to this Agreement. Upon execution of this Agreement, the governing body of the County, any Special District, City or Town shall appoint its member of the Board and another member or members to serve as an alternate to the Board, to serve in the absence of the regular member. Each member and alternate shall serve at the pleasure of the governing body of the appointing Agency. Any change in appointment of a member or alternate shall be by action of the governing body of the appointing Agency.
- c. A majority of the members of the Board shall constitute a quorum for the transaction of business. The Authority shall act upon majority vote of those in attendance, each member having one vote, of the members of the Board.
- d. The Board shall elect, by majority vote from its Members, a President and Vice President. The President shall represent the Authority and execute any contracts and other documents when required by the Rules of Procedure and/or Bylaws. The Vice President shall serve in the absence of the President.

7.3 Executive Committee.

- a. The Executive Committee shall be responsible to the Board for the following: the administration and management of Authority affairs; the provision of assistance and advice to the Board; entering into contracts with other agencies; adhering to the budget adopted by the Board, supervision of the Executive Officer of MERA; and nominating officers for the MERA Board (President and Vice President).
- b. The Executive Committee shall be comprised of Board members representing the following:
 - County of Marin - 2 (One member selected by the Board of Supervisors and one who shall be the Marin County Sheriff.)
 - City of San Rafael - 1

- City of Novato - 1
- Fire Districts - 2 (One seat shall be permanently filled by the Novato Fire Protection District and one “at large” seat selected by and from the remaining fire districts for a two-year term which may be extended to a maximum of two consecutive full terms.)
- Ross Valley Agencies - 1 (One member shall be selected by and from among the participating Ross Valley Agencies for a two year term which may be extended to a maximum of two consecutive full terms.)
- Southern Marin Cities and Towns - 1 (One member shall be selected by and from among the participating Southern Marin Cities and Towns for a two year term which may be extended to a maximum of two consecutive full terms.)
- Association Members - 3 (Three at large, non-voting, members representing the Marin County Fire Chiefs Association, the Marin County Police Chiefs Association and the Marin Public Works Association. Said members shall be fully recognized by the Executive Committee for the purpose of interaction and discussion. These members shall be appointed by their respective associations. Actual terms and whether these members should be from participating agencies shall be determined by the respective associations.)

c. Five “voting” members of the Executive Committee shall constitute a quorum for the transaction of business. No action shall be taken by the Executive Committee except upon a majority affirmative vote of the quorum.

d. There shall be a two-year term set for the members of the Executive Committee, with the exception for the Sheriff.

e. The Executive Committee shall have the authority to execute a change order to any existing MERA agreement with any person, entity or agency in an amount up to and including \$100,000.00.

7.4 Executive Officer.

There will be an Executive Officer of the Authority who shall be responsible for the administration of the Authority. The Executive Officer shall be appointed by and may be removed for any reason by a majority vote of the Board. The Executive Officer shall be designated the Government Code Section 6505.1 officer who shall file an official bond. The Executive Officer shall have the authority to execute a change order to any existing MERA agreement with any person, entity or agency in an amount up to and including \$5,000.00.

7.5 Additional Committees.

Ad hoc or standing committees may be formed by a majority vote of either the Executive Committee or of the Board of Directors.

ARTICLE 8: MEETINGS AND REPORTS

8.1 Board Meetings.

- a. The Board shall hold at least one (1) regular meeting each year as determined by the bylaws.
- b. Special Meetings of the Board may be called in accordance with the provisions of Section 54956 of the California Government Code.
- c. All meetings of the Board shall be held subject to the provisions of the Ralph M. Brown Act (Sections 54950, et seq., of the California Government Code) and other applicable laws of the State of California requiring notice be given of meetings of public bodies.
- d. Minutes of all Board meetings shall be kept and shall, as soon as possible, after each meeting, be forwarded to each member and alternate member of the Board within 30 days.
- e. The President of the Board shall cause correspondence to be prepared and delivered as directed by the Board.
- f. The public agency with whom the Authority contracts to provide services shall be the custodian of the official records of the Authority.

8.2 Executive Committee Meetings.

- a. The Executive Committee shall hold at least one (1) meeting each quarter.
- b. Special meetings of the Executive Committee may be called in accordance with the provisions of Section 54956 of the California Government Code.
- c. All meetings of the Executive Committee shall be held subject to the provisions of the Ralph M. Brown Act (Sections 54950, et seq., of the California Government Code) and other applicable laws of the State of California requiring notice be given of meetings of public bodies.
- d. Minutes of all Executive Committee meetings shall be kept and shall, as soon as possible after each meeting, be forwarded to members of the Committee and to each member and alternate member of the Board within 30 days.

8.3 Other Committee Meetings.

- a. Other committees shall hold meetings as may be called by the Committee Chair or a majority of the members.
- b. Minutes of all meetings shall be kept and forwarded to members of the Committee and to each member and alternate member of the Board.

8.4 Progress Reports.

At least annually, a report on the activities and operations of the Joint Powers Authority which shall be provided to each of its Members. The report shall be completed prior to January 1 of each year.

ARTICLE 9: FUNDING

9.1 Authority Budget.

The Board shall adopt an annual budget for the Authority's activities within ninety (90) days of the effective date of this Agreement and by June 1 of each succeeding year.

Public funds may not be disbursed by the Authority without adoption of the approved budget and all receipts and disbursements shall be in strict accordance with the approved budget. The budget shall identify the programs of the Authority and allocate funds by the program. The budget and accounting system shall account for direct and overhead costs by program. The Board shall allocate these costs for each program with the adoption of the annual budget.

9.2 Funding of the Authority.

The monetary contribution of Members for the system backbone costs and annual operating costs shall be determined in accordance with the Lando formula which provides as follows:

MERA Apportionment Formula (for distribution of backbone costs):

- **Agency:** Each Member is identified by user type. The type corresponds to the Member’s purpose, i.e., Police, Fire, Public Works, Transit, Land Management, Private Brigade, etc.
- **Coefficient:** A common number is applied to each user type depicting its approximate radio utilization compared to the other user types. The total user coefficients add up to 1 or 100%. The Coefficients are:

Police	=	.6
Fire	=	.25
Public Works	=	.1
Transit	=	.01
Land Management	=	.025
Private Brigade	=	.01
Unused	=	<u>.005</u>
TOTAL	=	1 or 100%

- **% of Population:** This ratio expresses the percentage of the Member’s population to total county population.
-
- **% of Area:** This ratio expresses the percentage of the Member’s area to the total county area.
-
- **C:** This is the Member’s buy in cost (same for all members).
-
- **Members’ Determinant:** (((% Population x 2) + % area) x Coefficient) + .005. The sum of the factors represents 100% of all the participating agencies Members by their type.
-
- **Apportioning Formula:** The Members’ Determinant Factor divided by the sum of all Member factors equals the percentage to be applied to the total costs and determines the Member’s cost.

Apportionment Formula (for distribution of annual operating costs): MERA Members' annual operating cost equals 5% of total annual operating cost divided equally by MERA Members plus members agency costs as determined from percentages as provided in the "MERA Apportionment Formula".

This Lando formula can only be changed by a 2/3 vote of all Members. Members shall pay their contributions within 30 days after a request for payment has been made by the Authority.

9.3 Duties of Treasurer/Controller.

a. The Board shall appoint a Treasurer from among the senior management staff of the Member Agencies. The Treasurer shall be either the County Auditor/Controller, the Treasurer Tax Collector or the Finance Director of one of the Members. This person shall also function as Controller of the Authority.

b. The Treasurer shall serve as the depository and have custody of all Authority funds and establish and maintain such books, records, funds, and accounts as may be required by reasonable accounting practice. Government Code Section 6505. The books and records of the Authority shall be open to inspection at all reasonable times to the Members.

c. The Treasurer, within ninety (90) days after the close of each fiscal year (which shall be from July 1 to June 30), shall give a complete written report of all financial activities for such fiscal year to the Members.

d. The Treasurer shall prepare such financial reports as may be directed by the Board or Executive Committee.

e. The Treasurer shall cause an independent annual audit of the accounts and records to be conducted by a certified public accountant in compliance with the requirements of Section 6505 of the Government Code and generally accepted accounting standards.

9.4 Debts and Liabilities.

As permitted under Government Code Section 6508.1, no debt, liability, or obligation of the Authority shall constitute a debt, liability, or obligation of any Agency and each Member's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this Agreement or as the parties hereto may agree.

9.5 Disposition of Authority Funds Upon Termination.

a. In the event of termination of the Authority where there is a successor public entity which will carry on the activities of the Authority and assume its obligations, Authority funds, including any interest earned in deposits, remaining upon termination of the Authority and after payment of all obligations shall be transferred to the successor public entity.

b. If there is no successor public entity which would carry on any of the activities of the Authority or assume any of its obligations, Authority funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, shall be divided in proportion to the contribution of each agency.

c. If there is a successor public agency which would undertake some of the

functions of the Authority and assume some of its obligations, Authority funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, shall be allocated by the Board between the successor public entity and Members.

d. In the event the Authority is terminated under circumstances falling with (b) or (c) above, all decisions of the Board with regard to determination of amounts to be transferred to Members or any successor shall be final.

ARTICLE 10: INDEMNIFICATION

The Authority shall acquire such insurance protection as is necessary to protect the interest of the Authority, the County, Special Districts, Cities, Towns and the public. The Authority created by this Agreement shall assume the defense of and indemnify and save harmless the County, Special Districts, Cities, Towns and each of their respective officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities of the Authority or the activities undertaken pursuant to this Agreement.

ARTICLE 11: TERMINATION

This Agreement may be terminated by the Board upon notice of withdrawal being received from a majority of the Member Agencies. Upon termination, payment of the obligations and division of the property of the Authority shall be conducted pursuant to Section 9.5 of Article 9 of this Agreement.

ARTICLE 12: AMENDMENTS

This Agreement may be amended only upon the two-thirds (2/3) affirmative vote of all the Members of the Board with such proposed amendment having been noticed to Members thirty (30) days prior to the date of the meeting.

ARTICLE 13: WITHDRAWAL

Any City, Town, Special District or the County may withdraw from this Agreement effective July 1 of any year, ninety (90) days prior to the end of the fiscal year, upon written notice to the Authority. Upon withdrawal, a City, Town, Special District or the County retains its financial obligations for current contracts executed to fulfill this Agreement, and assumes that responsibility at its own expense.

Notwithstanding the foregoing, a Member may withdraw immediately if it (a) decides to order no radios, (b) notices that decision to the Executive Officer within two business days, and (c) gives said notice prior to the Authority entering into a contract with a vendor for the initial purchase of radios. A Member may use this immediate withdrawal procedure only once under any circumstances.

ARTICLE 14: SEVERABILITY

If any provision of this Agreement or its application to any person or circumstances is held invalid, the remainder of this Agreement and the application of the

provision to other persons or circumstances shall not be affected.

ARTICLE 15: NOTICES

All notices to Agencies shall be deemed to have been given when mailed to the governing body of each Agency. The Board may provide for notice by e-mail or facsimile or some other reliable method by resolution. All notices to the Authority shall be delivered to its Executive Officer.

ARTICLE 16: NO RIGHTS IN THIRD PARTIES

All of the terms, conditions, rights and duties provided for in this Agreement are, and shall always be, solely for the benefit of the Members. It is the intent of the Members that no third party shall ever be the intended beneficiary of any performance, duty or right created or required pursuant to the terms and conditions of this Agreement.

ARTICLE 17: AGREEMENT COMPLETE

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein. Any such agreements merge into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereunder duly authorized and effective as of the date of execution of all parties hereto. This Agreement may be executed in counterparts.

Dated: _____

Dated: _____

Dated: _____

Dated: _____

Dated: _____

Dated: _____

Dated: _____

e:\farhad\mneraj\paagt61799.doc

Attachment to MERA JPA Agreement
Revised 6/17/99

Member Agency
Alto-Richardson Bay Fire District
City of Belvedere
Bolinas Fire Protection District
Town of Corte Madera
Town of Fairfax
Inverness Public Utility District
Kentfield Fire Protection District
City of Larkspur
County of Marin
Marin Community College District
Marin County Transit District
Marin Municipal Water District
Marinwood Community Services District
City of Mill Valley
City of Novato
Novato Fire Protection District
Town of Ross
Ross Valley Fire Service
Town of San Anselmo
City of San Rafael
City of Sausalito
Stinson Beach Fire Protection District
Tamalpais Fire Protection District
Town of Tiburon
Tiburon Fire Protection District
Twin Cities Police Department