

CONTRACT

AN AGREEMENT BETWEEN THE MARIN EMERGENCY RADIO AUTHORITY AND THE FEDERATED INDIANS OF GRATON RANCHERIA FOR TREATMENT OF TRIBAL CULTURAL RESOURCES AND TRIBAL MONITORING FOR MERA NEXT GENERATION RADIO SYSTEM

1. PARTIES

This Agreement is entered into as of the _____ day of _____, 2021, by and between (1) the FEDERATED INDIANS OF GRATON RANCHERIA, a federally recognized Indian tribe (“TRIBE” or “FIGR”) and (2) the MARIN EMERGENCY RADIO AUTHORITY (“MERA”). TRIBE and MERA are collectively referred to as “PARTIES.”

2. SUBJECT MATTER

This Agreement concerns the MERA Next Generation Radio Communications System project and the mitigation measures, TRIBE-1, TRIBE-2, TRIBE-3, and CULT-1, identified in the Project’s 2019 Subsequent Environmental Impact Report (SEIR, SCH #99092073) to lessen the impact to tribal cultural resources, as defined in Public Resources Code Section 21074. (“Project” or “PROJECT”)

3. PURPOSE

This Agreement formalizes procedures for tribal monitoring during all grading, groundbreaking, excavation, and ground-disturbing activities performed in conjunction with the Project development, in areas the TRIBE has agreed to monitor: **sites identified under Mitigation Measure TRIBE-2 of Draft SEIR, SCH #99092073 including, but not limited to, Big Rock, Coyote Peak, Mt. Tamalpais, Muir Beach, Point Reyes, San Pedro, Skyview Terrace, Sonoma Mountain, Tomales.** This Agreement is entered into pursuant to the 2019 SEIR, SCH #99092073, and the Mitigation Monitoring and Reporting Program (MMRP) Resolution.

4. CULTURAL AFFILIATION

The PARTIES agree that the Project area consists of land which has been traced to and traditionally occupied by the TRIBE. TRIBE is culturally affiliated to Marin and Sonoma counties and manages tribal cultural resources and sacred sites within its ancestral territory. Any human remains, and burial related items as defined in Section VII which are found in conjunction with the development of this Project shall be treated in accordance with Sections V through VIII of this Agreement. Tribal cultural resources shall be treated in accordance with Section XI of this Agreement. Significant sites shall be treated in accordance with Section XII of this Agreement.

5. MOST LIKELY DESCENDANT

The TRIBE was determined to the Most Likely Descendant ("MLD") under California Public Resources Code § 5097.98 by the Native American Heritage Commission ("NAHC"). If additional Native American human remains are found during development of this Project, the PARTIES understand that the determination of MLD under California Public Resources Code § 5097.98 will be made by the NAHC. Until such time, neither the TRIBE nor MERA guarantees that the TRIBE or one of its members will be so named. However, given the location of the site and the history and prehistory of the area, the PARTIES agree that their good faith belief is that if such Native American human remains are discovered at the Project site, the TRIBE or one of its members will be named the MLD.

Should the NAHC determine that a member of an Indian tribe other than the TRIBE is the MLD, the provisions of this Agreement relating to the treatment of such Native American human remains shall be null and void in their entirety.

6. COORDINATION WITH CORONER'S OFFICE

Pursuant to the mitigation measures of the 2019 Subsequent Environmental Impact Report (SEIR, SCH #99092073) prepared for the MERA Next Generation Radio System project, and in accordance with Public Resources Code § 5097.98 and Health and Safety Code § 7050.5, MERA shall immediately contact the *Marin County Coroner* and the TRIBE in the event any human remains are discovered during the development of the Project.

7. INADVERTENT DISCOVERIES

The PARTIES' intent is to avoid disturbing human remains through consultation and appropriate avoidance, with mitigation as a secondary option. It is understood by the PARTIES that avoidance of the human remains, and grave goods may require changes to the Project plans and activities.

If Native American human remains are found during development of the Project, the following provisions shall apply:

1. The term "Native American human remains" encompasses more than human bones because the TRIBE's traditions call for burial of associated tribal cultural resources with the deceased (grave goods, funerary objects, ceremonial items, and objects of cultural patrimony), and any cremations or ceremonial burning of funerary objects, grave goods and animals. Ashes and other remnants of these burning ceremonies, as well as grave goods and funerary objects, associated with or buried with Native American remains, are to be treated in the same manner as bones, bone fragments and cremations.
2. The Coroner shall immediately be notified, ground disturbing activities in that location shall cease, and the remains shall be left in the place where they were discovered until the Coroner has had the opportunity to inspect the remains in place and make his/her determinations as required by State law, and until a final decision as to the treatment and/or disposition has been made pursuant to this Agreement and to State law.

3. Pursuant to the 2019 SEIR SCH #99092073, ground disturbing activities within one hundred (100) feet of the discovery shall immediately cease, and the remains shall be secured in situ. The archeologist or cultural monitor shall immediately contact the FIGR Tribal Heritage Preservation Officer (“THPO”) who will work with the MLD to schedule a site visit. The MLD, pursuant to California Public Resources Code § 5097.98(a), shall be allowed to: (a) inspect the site of the discovery; (b) make recommendations to MERA as to how the human remains and associated funerary objects should be treated and/or re-interred with appropriate dignity, if necessary. The recommendations will be issued by the TRIBE to MERA within 48 hours or will request consultation with MERA.

8. TRIBAL MONITORING

Given the nature and sensitivity of the archaeological sites and tribal cultural resources that are or may be in the Project area, the TRIBE may designate one monitor representative to be retained as the Tribal monitor during all grading, groundbreaking, excavation, and ground-disturbing activities performed in conjunction with the Project development in areas the TRIBE has requested to monitor.

MERA may have construction inspectors on the PROJECT site during ground disturbing activities. If human remains and burial of associated cultural items, as defined in this Agreement, are found during development of the Project, tribal monitors are empowered to instruct MERA and the onsite construction inspector to temporarily halt and/or relocate grading or excavation activities within one hundred (100) feet pending further evaluation by the TRIBE of the significance of the discovery and further investigation by the *Marin County Coroner* and the TRIBE, pursuant to California Health & Safety Code § 7050.5.

For purposes of determining Tribal monitoring crew sizes, a written schedule of excavation, testing, grading, and ground-disturbing activities will be submitted by MERA to the TRIBE two weeks in advance of the commencement of these activities. For purposes of this Agreement, “notice” must be given during normal business hours (*i.e.*, Monday-Friday from 8:00 a.m. to 5:00 p.m.) to be proper notice. Following any rescheduling or interruption of scheduled activities, MERA will provide the TRIBE forty-eight (48) hours’ notice before activities resume.

9. COMPENSATION AND INSURANCE

The PARTIES agree that the Tribal Monitors are employees of TRIBE, and that MERA shall compensate TRIBE at an hourly rate of \$55.00 per hour for the time spent by the Tribal Monitor, traveling to and from the Project site, and time spent at the Project site during ground-disturbing construction activities, based upon a daily monitoring log maintained by the Tribal Monitor. MERA shall compensate TRIBE for the automobile transportation expenses of the Tribal Monitor at the mileage rate established by the Internal Revenue Service, which is currently set at 56 cents per mile. TRIBE shall invoice MERA for Tribal Monitoring expenses on a monthly basis and shall include copies of the daily monitoring logs supporting the hours reported on the invoice. MERA shall remit payment to the TRIBE within 45 days of receipt of TRIBE invoices. The total compensation payable by MERA to TRIBE for monitoring under this Agreement shall not exceed FORTY THOUSAND DOLLARS (\$40,000.) except by a written amendment of this Agreement approved by the PARTIES.

TRIBE recognizes that dangerous working conditions can exist at a work site, particularly during grading and excavation operations. The Tribal Monitor shall review safety procedures as specified by the Project manager and shall attend all safety meetings.

TRIBE will provide insurance coverage for the Tribal Monitor. The insurance includes workers' compensation, liability, use of a private vehicle and errors and omissions.

MERA agrees TRIBE will invoice AGENCY for the Tribal Monitors' compensation on a monthly basis. TRIBE will invoice MERA at:

Dave Jeffries
Deputy Executive Officer for the Next Gen System
Marin County Emergency Radio
c/o Town of Corte Madera
300 Tamalpais Drive
Corte Madera, California 94925
Email: dave@jeffriespsc.com
Phone: 707.483.1098

MERA shall remit payment in full to the following address within forty-five (45) days of receipt of the TRIBE's invoice:

Steven Garwood
Chief Financial Officer
Federated Indians of Graton Rancheria
6400 Redwood Drive, Suite 300
Rohnert Park, CA 94928
Email: sgarwood@gratonrancheria.com
Phone: 707.566.2288, Ext 126

All unpaid balances are subject to a monthly finance charge of 2% of the balance owed.

10. WORK SITE COVID-19 PROTECTIVE MEASURES

Onsite outdoor work will be performed by MERA contractors or subcontractors to MERA contractors ("CONTRACTORS"). MERA requires all CONTRACTORS to comply with applicable federal, state, and local laws. The currently applicable federal, State of California, and *County of Marin* Public Health Orders related to COVID-19 at the time of work on site will be adhered to during outdoor work. Such compliance shall include, but not be limited to, compliance with social distancing protocols and the wearing of face coverings if required by said orders. MERA agrees to require use of personal protective equipment by its CONTRACTORS as required by COVID-19 orders. MERA shall ensure that such personal protective equipment is properly used by employees of the MERA in the PROJECT area, if any are present.

In the event that a CONTRACTOR or employee is not complying with the federal, State of California, and *County of Marin* Public Health Orders, the Tribal Monitor can raise this concern with the Project Manager. If the Tribal Monitor's concerns regarding Public Health Order compliance on the work site are not addressed, the TRIBE's Tribal Heritage Preservation Officer will contact and address with the MERA.

11. NON-DISCLOSURE OF LOCATION OF REBURIALS

It is understood by the PARTIES that, unless otherwise required by law, the site of any reburial of Native American human remains shall not be disclosed and will not be governed by public disclosure requirements of the California Public Records Act, Cal. Govt. Code § 6250 et seq. The PARTIES agree that MERA shall withhold public disclosure of information related to such reburial pursuant to the specific exemption set forth in California Government Code § 6254(r).

MERA shall have no duty to defend against any legal challenge brought by third parties that seek the release of this information. Prior to release of said information, MERA will advise the TRIBE. In the event that TRIBE determines that the requested information is not a public record under the California Public Records Act, TRIBE must bring an action for an injunction issued by a court to prevent the disclosure of that information.

12. TREATMENT OF TRIBAL CULTURAL RESOURCES

MERA will treat of all tribal cultural resources, including ceremonial items, associated funerary objects, sacred objects, and items of cultural patrimony consistent with the TRIBE's cultural values and practices as determined by the TRIBE.

13. SIGNIFICANT SITES IMPACTED BY PROJECT

The PARTIES agree that if additional significant site or sites not identified as significant in the Project environmental review process, are identified by a qualified archaeologist within the Project site, they will be evaluated by a qualified archaeologist in coordination with the TRIBE. Additional mitigation measures may be necessary to treat sites in a culturally appropriate manner consistent with CEQA guidelines for mitigation of impacts to tribal cultural resources and as described in the mitigation measures in the 2019 SEIR, SCH #99092073.

If an additional significant site or sites not previously recorded/identified as significant are discovered within the Project site, the PARTIES commit to developing an action plan within 48 hours to get the Project reinitiated which may include additional avoidance and/or mitigation measures to address Tribal Cultural Resource (TCR) protection and preservation.

14. NOTICES

All notices to the PARTIES, shall be given by hand delivery, United States mail, or email as set forth below:

To MERA:

Dave Jeffries
Deputy Executive Officer for the Next Gen System
Marin County Emergency Radio
c/o Town of Corte Madera
300 Tamalpais Drive
Corte Madera, California 94925
Email: dave@jeffriespsc.com
Phone: 707.483.1098

With a copy to:

Bruce Bagnoli
MERA Construction Project Manager
Email: bruce.bagnoli@aecom.com
Phone: 415.456.7203

To the Federated Indians of Graton Rancheria:

Buffy McQuillen, THPO
Federated Indians of Graton Rancheria
6400 Redwood Drive Rohnert Park, CA 94929
Email: bmcquillen@gratonrancheria.com
Phone: 707.566.2288, ext.137

15. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, executors, administrators, and assigns of the PARTIES, including contractors and sub-contractors, and any person or entity obligated to comply with environmental and cultural/archaeological protection laws applicable to this Project.

16. ENVIRONMENTAL COMPLIANCE

Nothing in this Agreement shall excuse MERA from its obligations under any applicable state or federal laws or regulations, including but not limited to CEQA; Public Resources Code § 21000 et seq., the National Historic Preservation Act (“NHPA”) 16 U.S.C. § 470 et seq.; California Public Resources Code §§ 5097.98, 5097.98(c), and 5097.99; California Health and Safety Code § 7050.5(c); California Government Code §§ 6254, 65040.2, 65092, 65351, 65352, 65560, 65352.3, 65352.4, 65562.5; California Civil Code § 815.3; the Native American Graves Protection

and Repatriation Act, 25 U.S.C. § 3001 et seq.; the California Native American Graves Protection and Repatriation Act of 2001, California Health and Safety Code §§ 8010 et seq.; the American Indian Religious Freedom Act, 16 U.S.C. § 1996, et seq., and the First Amendment to the United States Constitution. Nothing in this Agreement is intended to make any of the above-referenced laws applicable where such laws would otherwise be inapplicable.

17. SEVERABILITY

Should any part of this Agreement be found by any court of competent jurisdiction to be to any extent invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

18. LIMITATION ON SCOPE

This Agreement is unique to this PROJECT only and does not set a precedent for other projects.

19. AUTHORITY TO EXECUTE

Each of the persons executing this Agreement expressly warrants that he or she is authorized to do so on behalf of the entity for which he or she is executing this Agreement. Each party to this Agreement represents and warrants that this Agreement is executed voluntarily, with full knowledge of its significance.

20. COUNTERPARTS

This Agreement may be signed in two or more counterparts and will be effective when all PARTIES and signatories have affixed their signatures to two or more of the counterparts and said counterparts have been delivered to all PARTIES, at which time the counterparts together will be deemed one original document.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the day, month and year first above written.

**MARIN EMERGENCY RADIO
AUTHORITY**

**FEDERATED INDIANS OF GRATON
RANCHERIA**

Name, printed

X

Marin Emergency Radio Authority

X

LORELLE ROSS, Vice-Chair