

DRAFT

December 14, 2005

GROUND LEASE FOR AN ANTENNA FACILITY

by and between

MARIN EMERGENCY RADIO AUTHORITY

and the

MARTINELLI FAMILY

This lease is entered into on _____, 2002 between LOUISA M. NEWCOMB, GURU KAR SINGH KHALSA, PETER J. MARTINELLI, LISA M. ZIERENBERG, and KATHLEEN M. MARTIN (“Landlord”) and the MARIN EMERGENCY RADIO AUTHORITY (“MERA”), a Joint Powers Authority organized pursuant to California Government Code § 6500 *et seq.* (“Tenant”).

A. Landlord is the owner of certain real property (the “Property”) in the County of Marin, State of California, described on Exhibit “A,” which is attached and incorporated by reference.

B. Tenant desires to lease part of the Property (the “Premises”) together with certain appurtenant rights and easements for the purpose of constructing an antenna facility and other related improvements (“the Improvements”).

ARTICLE 1

LEASE OF PREMISES AND TERM OF LEASE

AGREEMENT TO LEASE

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this lease, Landlord agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, “the Premises” includes the real property described in Exhibit “B,” plus any Access Easements described below in Section 3.02 and as described in the survey map depicted on Exhibit “C.” Both Exhibits are attached hereto and incorporated by reference.

TERM OF LEASE

Section 1.02. The term of this lease shall be for a period of twenty (20) years. Tenant has the option to renew the lease for two successive five (5) year terms if it notifies Landlord prior to six (6) months before the lease would otherwise end. Tenant’s rent for the renewal period shall continue to increase as provided under Section 2.01 below.

ARTICLE 2 RENT

MINIMUM RENT

Section 2.01. Tenant agrees to pay Landlord a rent of \$~~_____~~\$2,500.00 per month commencing in the manner indicated below in Section 2.03. That rent shall be increased each year on the annual date of renewal of this Lease by an amount equal to the general Bay Area CPI as determined by the Federal Bureau of Labor Statistics. Rent will be paid quarterly and shall be due upon receipt of an invoice from the Landlord.

TIME AND PLACE FOR PAYMENT OF RENT

Section 2.02. The rent shall be paid to Landlord at the following address:

~~Louisa M. Newcomb~~Paradise Valley Ranch
Post Office Box 347
Bolinas, CA 94924
~~Tel: 415-868-9811~~

NO PARTNERSHIP OR JOINT VENTURE

Section 2.04. Nothing in this lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this lease be construed to authorize either to act as agent for the other.

ARTICLE 3 USE OF PREMISES

PERMITTED USE

Section 3.01. Tenant shall use the Premises solely for the purpose of constructing and maintaining an antenna facility for MERA. The antenna facility shall consist of a tower, 30' x 15' equipment shelter, a generator and pad, a propane tank and pad, parking and fencing. The Tenant shall be permitted to park vehicles at the site for purposes of site maintenance or repair. Tenant shall be authorized access to the site as ordered to construct, maintain or repair the facility. Landlord and Tenant acknowledge that the use hereunder is for an emergency public safety communications facility that must be kept in continuous operations.

ACCESS AND UTILITY EASEMENT

Section 3.02. Landlord agrees to grant an access and utility easement through its property and maintain it all times sufficient under the following conditions:

- a. The easement is described on Exhibit "C."
 - 1) As indicated in Exhibit "C," the "Deer Camp Access Road" shall be the "Primary Route" of access for the Tenant for construction, maintenance and repair of its facilities.
 - 2) As indicated in Exhibit "C," the "Park Access Route" shall be the "Secondary Route" of access for the Tenant for construction, maintenance and repair of its facilities should the "Primary Route" unusable, for whatever reason by the Tenant, for those stated purposes above.
- b. Tenant shall inspect and approve the existing "Primary Route," to include by not limited to the width of said roadway and the height of any surrounding trees or other vegetation, to the site to determine that said "Primary Route" is adequate for the ingress and egress of construction vehicles necessary for the construction of the proposed Antenna Facility. Landlord shall not be responsible for the costs necessary to improve or grade said "Primary Route" or the immediately adjacent shoulder of said "Primary Route" to provide the necessary ingress and egress of Tenant's construction vehicles. Tenant shall be responsible for maintenance of the "Primary Route" during construction of the Antenna Facility and only if such maintenance is necessary for Tenant's construction purposes only.
- c. If use of the "Secondary Route" by the Tenant shall be necessary during construction of the Antenna Facility, Tenant shall be responsible for the costs necessary to improve or grade said "Secondary Route" or the immediately adjacent shoulder of said "Secondary Route" to provide the necessary ingress and egress of construction vehicles necessary for the construction of the proposed Antenna Facility. Landlord shall not be responsible for the costs necessary to improve or grade said "Secondary Route" or the immediately adjacent shoulder of said "Secondary Route" to provide the necessary ingress and egress of Tenant's construction vehicles. Tenant shall be responsible for maintenance of the "Secondary Route" during construction of the Antenna Facility and only if such maintenance is necessary for Tenant's construction purposes only.
- d. Tenant shall be responsible for obtaining any approvals or permits necessary to allow any vehicles for construction of the Antenna Facility to traverse said easement roadway, whether the "Primary Route" or the "Secondary Route" and any access through the Point Reyes National Seashore Park that may be required by any governmental agency.
- e. Landlord shall maintain said "Primary Route" or "Secondary Route" in such a condition, following the completion of the construction of the Antenna Facility, that will allow Tenant reasonable access to the Antenna Facility in order to adequately maintain and repair said Facility, including but not limited to the scraping of said "Primary Route" or "Secondary Route" surface, sufficient to

allow four wheel drive vehicular access to the Facility. However, the Landlord's responsibility to maintain said "Primary Route" or "Secondary Route" does not include that situation where access to the Antenna Facility is not possible due to weather conditions causing landslides or flooding of said "Primary Route" or "Secondary Route" which does not allow the Landlord reasonable access to the roadway and/or to bring necessary equipment to the roadway in order to maintain or repair said "Primary Route" or "Secondary Route".

- f. In the event that the Landlord fails to maintain or repair said easement "Primary Route" or "Secondary Route", Tenant shall have the right to conduct such maintenance or repairs upon written notice to the Landlord of Tenant's intention to proceed with such maintenance and repairs. Tenant shall have the right to deduct the costs and expenses of the maintenance and repair work conducted against any future rents owed or past rents due.
- g. Tenant shall not be responsible for the construction, maintenance or repair of the "Primary Route" or "Secondary Route" that may be required for any other additional commercial or personal uses that the Landlord might utilize said Antenna Facility for, whether the Landlord is required to provide such parking by contractual agreement or by any governmental agency.

~~h. Power to Site~~

~~1) Easement~~

~~2) Aboveground poles~~

COMPLIANCE WITH LAWS

Section 3.03. Tenant shall, at Tenant's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the Premises or Improvements, relating to any use and occupancy of the Premises (and specifically not limited to any particular use or occupancy by Tenant), whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted.

PROHIBITED USES

Section 3.04. Tenant shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises.

ARTICLE 4

TAXES AND UTILITIES

TAXES

Section 4.01. Tenant shall be responsible for all property taxes on the land value of the site.

UTILITIES

Section 4.0102. Tenant shall pay or cause to be paid, and hold Landlord and Landlord's property including the Premises free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities to the Premises during the lease's term and for the removal of garbage and rubbish from the Premises during the term of this lease.

Section 4.03. Utilities shall be constructed underground from the intersection on the overhead power lines and the easement road. Tenant shall be authorized to upgrade or replace above ground poles to the location where utilities are undergrounded.

ARTICLE 5 CONSTRUCTION BY TENANT

DUTY TO CONSTRUCT

Section 5.01. Tenant shall, at Tenant's sole cost and expense, construct or cause to be constructed on the Premises, an antenna facility and power lines in the manner and according to the terms and conditions specified in this Article.

COMPLIANCE WITH LAW AND STANDARDS

Section 5.02. The antenna facility shall be constructed, all work on the Premises shall be performed, and all buildings or other improvements on the Premises shall be erected in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over the Premises.

ZONING AND USE PERMITS

Section 5.03. Should Tenant deem it necessary or appropriate to obtain any use permit, variance, or rezoning of the Premises to construct or operate the antenna facility, Landlord agrees to execute any documents, petitions, applications, and authorizations that may be necessary or appropriate and hereby appoints Tenant as Landlord's attorney in fact to execute in the name and on behalf of Landlord any such documents, petitions, applications, or authorizations; provided, however, that any such permits, variances, or rezoning shall be obtained at the sole cost and expense of Tenant and Tenant agrees to protect and save Landlord and the property of Landlord, including the Premises, free and harmless from any such cost and expense.

OWNERSHIP OF IMPROVEMENTS

Section 5.04. Title to all Improvements to be constructed on the Premises by Tenant shall be owned by Tenant until expiration of the term or earlier termination of this lease.

COOPERATION OF LANDLORD

Section 5.06. Landlord shall fully cooperate with Tenant to provide all information necessary for any environmental review or permit approval process required by any governmental agency.

ARTICLE 6 REPAIRS AND RESTORATION

MAINTENANCE BY TENANT

Section 6.01. At all times during the term of this lease Tenant shall, at Tenant's own cost and expense, keep and maintain the Premises, and all Improvements now or hereafter on the Premises in good order and repair, and in a safe and clean condition.

TENANT'S DUTY TO RESTORE PREMISES

Section 6.02. If at any time during the term of this lease any improvement is destroyed, Tenant shall have the right at its own cost and expense to repair and restore the improvements.

OPTION TO TERMINATE LEASE FOR DESTRUCTION

Section 6.03. Notwithstanding Section 6.02 of this lease, Tenant shall have right to terminate this lease if the Improvements are damaged or destroyed by a casualty.

OPTION TO TERMINATE LEASE IF TENANT CEASES TO EXIST

Section 6.04. If Tenant ends its existence as a joint powers authority, it or its member agencies shall have no obligation under this Lease. However, Tenant may assign the Lease pursuant to Section 9.01 below prior to its expiration. If Tenant ceases to exist and does not assign this Lease, all improvements shall be the property of Landlord.

APPLICATION OF INSURANCE PROCEEDS

Section 6.05. Any and all fire or other insurance proceeds that become payable at any time during the term of this lease because of damage to or destruction of any Improvements on the Premises shall be paid to Tenant and applied by Tenant toward the cost of repairing and restoring the damaged or destroyed Improvement.

ARTICLE 7 INDEMNITY AND INSURANCE

INDEMNITY AGREEMENT

Section 7.1. Tenant shall indemnify and hold Landlord and Landlord's property, including the Premises and Improvements now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Tenant's negligence.

Landlord shall indemnify and hold Tenant and Tenant's property, including the Improvements hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Landlord's negligence.

LIABILITY INSURANCE

Section 7.02. Tenant shall maintain liability insurance and name Landlord as an additional insured in a broad form comprehensive coverage policy of public liability insurance.

ARTICLE 8 CONDEMNATION

TOTAL CONDEMNATION

Section 8.01. In the event the property is condemned by a government agency, the proceeds shall be divided in accordance with the fair market value of the ownership interest of landlord and the leasehold interest of the tenant.

ARTICLE 9 ASSIGNMENT AND SUBLEASING

NO ASSIGNMENT WITHOUT LANDLORD'S CONSENT

Section 9.01. Tenant may assign this lease to another government agency engaged in emergency radio services. Landlord shall not unreasonably withhold or delay its consent, and shall grant consent if the proposed assignee is financially qualified and has sufficient experience in the operation and management of radio equipment to perform all the agreements, undertakings, and covenants of this lease and all other agreements entered into by Tenant which relate to the management, operation, maintenance, construction, and restoration of the Improvements and the Premises.

ARTICLE 10 DEFAULT AND REMEDIES

CUMULATIVE REMEDIES

Section 10.01. Each party is entitled to all remedies available at law.

SURRENDER OF PREMISES

Section 10.02. On expiration or earlier termination of this lease, Tenant shall surrender the Premises and all Improvements in or on the Premises to Landlord in as good, safe, and clean condition as practicable, reasonable wear and tear excepted.

ARTICLE 11 OTHER PROVISIONS

FORCE MAJEURE

Section 11.01. Except as otherwise expressly provided in this lease, if the performance of any act required by this lease to be performed by either Landlord or Tenant is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

ATTORNEYS' FEES

Section 11.02. Should any litigation be commenced between the parties to this lease concerning the Premises, this lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for that party's attorneys' fees in that litigation that shall be determined by the court in that litigation or in a separate action brought for that purpose.

NOTICES TO LANDLORD

Section 11.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Landlord by Tenant shall be in writing and shall be deemed duly served and given when personally delivered to Landlord, to any managing employee of Landlord, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Landlord at Post Office Box 347, Bolinas, California 94924, attention: Louise M. Newcomb.

NOTICES TO TENANT

Section 11.04. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by

express mail that allows for tracking, addressed to Tenant at:

Marin Emergency Radio Authority
27 Commercial Boulevard, Suite C
Novato, CA 94949
Attention: Martin Nichols

GOVERNING LAW

Section 11.05. This lease, and all matters relating to this lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this lease or any decision or holding concerning this lease arises.

BINDING ON HEIRS AND SUCCESSORS

Section 11.06. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as a consent by Landlord to any assignment of this lease or any interest in the lease by Tenant except as provided in Article 9 of this lease.

PARTIAL INVALIDITY

Section 11.07. If any provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this lease shall remain in full force and effect unimpaired by the holding.

SOLE AND ONLY AGREEMENT

Section 11.08. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, the construction of the improvements described in this lease on the Premises, and the lease terms set forth in this lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises, their leasing to Tenant by Landlord, or any other matter discussed in this lease not expressly set forth in this instrument are null and void.

TIME OF ESSENCE

Section 11.09. Time is expressly declared to be of the essence of this lease.

MEMORANDUM OF LEASE FOR RECORDING

Section 11.10. Tenant may record a memorandum of lease. The memorandum or “short form” of this lease shall describe the parties, set forth a description of the leased premises, specify the term of this lease, incorporate this lease by reference, and include any other

necessary provisions required by Lender(s).

EXECUTED on _____ [date], at _____ [city], California.

AGREED BY:

LOUISA M. NEWCOMB
Owner

GURU KAR SINGH KHALSA
Owner

PETER J. MARTINELLI
Owner

LISA M. ZIERENBERG
Owner

KATHLEEN M. MARTIN
Owner

(Signature of Tenant)

(Print or Type Name)

APPROVED BY
MARIN EMERGENCY RADIO AUTHORITY

By: _____
Executive Officer

APPROVED AS TO FORM:
NERA GENERAL COUNSEL

APPROVED AS TO FORM
ATTORNEY FOR TENANTS

By _____ By _____

EXHIBIT A
DESCRIPTION OF THE PROPERTY

~~To be provided by the Martinelli Family.~~

An emergency radio communication facility operated by the Marin Emergency Radio Authority consisting of apparently 2,000 square feet of land. Improvements consist of antenna, equipment shelter, generator, propane tank, fencing and a parking area.

The property is located on a portion of lands conveyed to Newcomb et al as described in official recorded instrument No. 2001-51596 Marin County Records, vicinity of Bolinas, California.

As described on the County Recorder's statement filed the 28th day of November 2004 at 1:00 p.m. in book 2004 of maps at page 295 at the request of the County Surveyor Serial No. 2004-0099413. A copy of which is attached hereto and incorporated by the reference.

EXHIBIT B
DESCRIPTION OF THE PREMISES

~~To be surveyed by MERA.~~

An apparently 2,000 square feet lease hold on a portion of the lands conveyed to Newcomb et al as described in official record No. 2001-51596 – Marin County Record and located as follows:

56° 08' E 30'
S 83°52' W 70'
N 6° 80' W 30'
N 88° 52' E 70'

Existing Facilities:

There are no existing communications facilities. An existing fire road provides access to the site.

Proposed Facilities:

The Stewart Point communications facility will consist of the following items:

One 10' x 15' single story telecommunications shelter;
One 35 foot monopole;
One 4 foot diameter microwave dish mounted on the monopole at 13 feet height;
Two, two-way radio omni-directional antennas on the monopole;
One 45KW diesel fueled generator with internal fuel tank.

In addition, the site will be fenced by chain-link fencing, a small PG&E transformer will be mounted within the leased area, and approximately 8 new bushes will be planted for visual mitigation purposes.

No telephone services are required. PG&E power will be provided underground from an existing pole approximately 3,900 feet away.

EXHIBIT C
PROPOSED LANGUAGE EASEMENTS

An easement for ingress and egress **and power** along a route general in the vicinity of the attached map, sufficient in width to allow the tenant to bring any necessary vehicles to the site for construction and maintenance of the antenna facility. Landlord agrees to maintain the site in a sufficient manner to provide access by four-wheel drive vehicles in all weather. Tenant is granted the right to do necessary road maintenance if Landlord fails to maintain the road.