

**MARIN EMERGENCY RADIO AUTHORITY
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

THIS AGREEMENT is made and entered into this 1st day of January 1, 2006 by and between the Marin Emergency Radio Authority, hereinafter referred to as "Agency", and Martin J. Nichols, hereinafter referred to as "Contractor".

RECITALS:

WHEREAS, Agency desires to retain a person or firm to serve as the Agency's Executive Director; and

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by Agency, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

2. FEES:

The fees for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit "B"** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the contract.

3. PAYMENT:

The fees for services under this Contract shall be due within thirty (30) calendar days after receipt by Agency of a proper invoice covering the service(s) rendered.

4. INSURANCE:

Contractor shall provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of Three Hundred Thousand (\$300,000) Dollars. Said policies shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis unless Agency specifically consents to a "claims made" basis. The insurer shall supply a certificate of insurance with endorsements signed by the insurer evidencing such insurance to Agency prior to commencement of work and said certificate with endorsement shall provide for ten (10) day advance notice to Agency of any termination or reduction in coverage.

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify and hold the Agency harmless and defend the Agency against any and all claims, damages, losses and expense that may arise by reason of the Contractor's negligent actions or omissions. Agency agrees to timely notify Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of the agreement. In addition to any other available remedies, Agency may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

5. WORKER'S COMPENSATION:

The Contractor acknowledges that it is aware of the Labor Code of the State of California which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Contract. If Contractor has employees, a copy of the certificates evidencing such insurance shall be provided to Agency prior to commencement of work.

6. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

7. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of Agency.

8. BOOKS OF RECORD AND AUDIT PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Contractor shall maintain detailed records of all expenses charged to the Agency. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit the Agency to audit all books accounts or records relating to this Contract. Any audit may be conducted on Contractor's premises or, at Agency's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from Agency. Contractor shall refund any moneys erroneously charged along with reimbursing the Agency for the costs of any audit made necessary by an overpayment to Contractor.

9. TERM OF CONTRACT:

This Contract shall commence on January 1, 2006 and shall terminate on June 30, 2006 at 12:00 p.m. unless terminated earlier pursuant to Section 11 of this Contract.

10. TITLE:

It is understood that any and all documents, information and reports concerning the services provided under this Contract prepared by and/or submitted to the Contractor, shall be the property of the Agency. The Contractor may retain copies of such documents. In the event of the termination of this Contract, for any reason whatever, Contractor shall promptly turn over all information, writing and documents to Agency without exception or reservation.

11. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, Agency may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving sixty (60) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered or certified mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract.

12. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performance of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the Agency. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and worker's compensation.

13. AMENDMENT:

This Contract may be amended or modified only by written agreement of all parties.

14. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in MARIN County, California.

15. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold Agency harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees which it may incur as a consequence of this Contract and from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's willful misconduct or negligent performance of this Contract.

16. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all federal, state and local laws affecting the services covered by this Contract.

17. NOTICES:

All notices shall be given to Agency at the following location:

Greg Stepanicich
44 Montgomery Street #3800
San Francisco, CA 94104

Notices shall be given to Contractor at the following address:

27 Commercial Blvd., Suite C
Novato, CA 94949

IN WITNESS WHEREOF, the parties hereunto have executed this Contract on the date first above written.

APPROVED BY
MARIN EMERGENCY RADIO AUTHORITY

By: _____
Chair, Board of Directors

CONTRACTOR:

APPROVED AS TO FORM:
GENERAL COUNSEL

By _____

By: _____
Name: Martin J. Nichols
Federal Tax I.D.# _____
Telephone No. 415-883-9100

EXHIBIT "A"

SCOPE OF SERVICES FOR EXECUTIVE OFFICER MARIN EMERGENCY RADIO AUTHORITY (2006 Agreement)

Under the Direction of the Board of Directors:

1. Prepare Board agendas and staff reports on recommended actions.
2. Coordinate with the General Counsel, Project Engineer, and Environmental Consultant, on the various site and construction issues related to completion of the MERA radio system.
3. Prepare, recommend and administer the Agency's annual budget.
4. Administer the Motorola contract for construction of the system.
5. Authorize Agency bill payments through the County Department of Public Works.
6. Monitor bond proceeds and interest earnings through Trustee and County Auditor/Controller.
7. Invoice member agencies for their share of annual operating funds.
8. Invoice member agencies for their share of annual bond payments.
9. Retain appropriate records and files.
10. Negotiate lease of backbone facilities.
11. Represent the Board in dealings with media, member agencies, other governmental agencies, residents, the Grand Jury, and Bond Trustees.
12. Coordinate legal actions initiated on behalf of the Agency or filed against the Agency.
13. Coordinate potential condemnation proceedings.
14. Coordinate annual audit.
15. Monitor member payments to ensure receipt of all funding.
16. Ensure that all Fair Political Practices Commission filings are made.
17. Schedule and attend meetings of the Executive Committee and the Finance Committee.
18. In consultation with the Executive Committee prepare:
 - a. An Executive Officer succession plan.
 - b. A MERA history
 - c. A RFP for Executive Officer Services.

EXHIBIT "B"

**COMPENSATION TO BE PAID TO CONTRACTOR
FOR EXECUTIVE OFFICER
MARIN EMERGENCY RADIO AUTHORITY
(2006 Agreement)**

- A. Commencing on January 1, 2006 Contractor will be paid a monthly fee of \$8,500.00 (Eight Thousand, Five Hundred dollars per month) for the services provided for in this Contract, including all office and support staff expenses incurred by Contractor.
- B. On or about the first of each month, Contractor shall submit an invoice for \$8,500.00 to the Chair of the Agency Board of Directors, who will authorize its payment.
- C. Payment of any additional expenses of the Contractor may be authorized by the Agency Board of Directors.

Other Provisions

Contractor is authorized to subcontract for clerical and administrative assistant services at no additional cost to the Agency.