



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager's Office

Prepared by: Iman Kayani

City Manager Approval: 

TOPIC: COMMUNICATIONS SITE LICENSE AGREEMENT WITH MARIN EMERGENCY RADIO AUTHORITY (MERA) FOR TELECOMMUNICATIONS FACILITIES NEAR 70 SKYVIEW TERRACE

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A COMMUNICATIONS SITE LICENSE AGREEMENT WITH MARIN EMERGENCY RADIO AUTHORITY (MERA) FOR INSTALLATION OF TELECOMMUNICATIONS FACILITIES NEAR 70 SKYVIEW TERRACE

RECOMMENDATION: Adopt Resolution approving a communications site license agreement.

BACKGROUND: On February 28, 1998, the City of San Rafael ("City") entered into a [Joint Powers Agreement \(JPA\)](#) with the County of Marin ("County") and MERA. The purpose of this JPA is to plan, finance, implement, manage, own, and operate a multijurisdictional and countywide public safety, public service, and emergency radio system throughout the County. MERA provides wireless communication for public safety emergency services throughout the County.

ANALYSIS: Both the County and the City own land located near 70 Skyview Terrace, San Rafael, California, also identified as Assessor's Parcel No. 165-220-03. The County, the City, and MERA desire to enter into an agreement ("Agreement") that would provide the land for locating communications equipment that will become a part of the MERA system.

Changes in frequency allocations by the Federal Communications Commission mandate that MERA upgrade the current countywide radio system, shifting the systems radio frequencies from the UHF T-band to the 700 Mhz band. The 700 MHz band gives better broadcast characteristics and covers larger geographic areas.

Concurrently, MERA will use this opportunity to increase radio user capacity, improve radio coverage, and modernize the aging radio system. This upgrade will utilize existing radio communications facilities to the fullest extent possible, but it will also require the development of certain new tower sites where additional radio equipment can be installed.

The term of the proposed agreement is ten years.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

FISCAL IMPACT: No compensation from this license agreement is proposed, due to the City's participation in the MERA JPA.

RECOMMENDED ACTION: Adopt the Resolution.

ATTACHMENT:

1. Proposed License Agreement
2. Exhibit A of Proposed Agreement
3. Exhibit B of Proposed Agreement
4. Resolution approving License Agreement

COMMUNICATIONS SITE LICENSE AGREEMENT

This Communications Site License Agreement (“Agreement”) is entered into the _____ day of _____, 2020 by and among the County of Marin, a political subdivision of the State of California (the “County”), the City of San Rafael, a municipal corporation, (the “City”, and together with the County, the “Licensor”), and the Marin Emergency Radio Authority (“MERA” or “Licensee”).

WHEREAS, MERA is a joint exercise of powers authority duly organized and operating pursuant to Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, and pursuant to the Joint Powers Agreement, dated February 28, 1998 by and among the members (the “JPA”); and,

WHEREAS, MERA’s purpose is to plan, finance, implement, manage, own and operate a multi-jurisdictional and County-wide public safety and emergency radio system (the “System”); and

WHEREAS, the County and the City are parties to the JPA and members of MERA; and,

WHEREAS, the County and City are the record owners of that certain real property located near 70 Skyview Terrace, San Rafael, California, also identified as Assessor’s Parcel No. 165-220-03, and more particularly described in Exhibit “A” hereto (“the Property”); and

WHEREAS, the County, the City and MERA desire to enter into this Agreement to provide, in part, space for locating communications equipment that will become a part of the System and be located on the Property as further described herein.

NOW, THEREFORE the parties hereto agree, in consideration of the mutual covenants and obligations, to the terms and conditions hereinafter set forth as follows:

1. Licensed Property.

The Licensor hereby licenses to Licensee and Licensee hereby licenses from the Licensor, space on that portion of the Property depicted in Exhibit “B” (the “License Space”), together with the rights described hereinafter in paragraph 6. The parties hereto acknowledge that other licenses, leases or easements for communication and other purposes may currently exist on the Property.

2. Use.

A. The Licensor grants to MERA, subject to the rights and privileges of current tenants and other grantees, the right and privilege to use the License Space for the System, including the transmission and reception of radio communication signals on various frequencies, and the construction, maintenance, and operation of the MERA Facilities defined below.

B. Licensor agrees not to grant or permit to be granted, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property (or adjacent property owned, controlled or managed by Licensor), if such use

materially and adversely affects or interferes with the MERA Facilities or the rights of MERA under this Agreement.

C. Licensor shall not use, nor shall Licensor permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property (or any adjacent property owned, controlled or managed by Licensor), if such use adversely affects or interferes with the MERA Facilities or the rights of MERA under this Agreement.

D. If MERA determines that interference exists and is within Licensor's control or caused by Licensor's employees, tenants, licensees, invitees or agents, MERA shall provide notice to Licensor of such interference. After receipt of such notice, if the cause of the interference is within Licensor's direct control, Licensor shall, within twenty-four (24) hours, take all reasonable efforts to cause such interference to cease. If the cause of the interference is within the control of a third-party, such as Licensor's tenants, licensees, invitees or agents, Licensor shall diligently work to identify the source of the interference. In any event, Licensor shall not take longer than seventy-two (72) hours to identify the source of the interference and notify the third party of its obligation to immediately cease said interference. In the event any such interference does not cease within the applicable remediation period, the parties acknowledge that the public may suffer irreparable injury, and therefore, MERA shall have the right, in addition to any other rights that it may have at law or in equity, to elect to enjoin such interference.

3. MERA Facilities. MERA may install, operate and maintain within the License Space, at its sole cost and expense, one 35-foot tall monopole tower supporting two microwave antennas with associated cables, one backup generator with propane fuel tank, and one prefabricated equipment shelter containing various equipment racks with associated cables. Collectively, these components comprise the "MERA Facilities." The equipment described in this Agreement may change from time to time due to a variety of factors. MERA may make changes to MERA Facilities with prior written consent from the County Department of Public Work's Director or designee, which consent shall not be unreasonably withheld. MERA shall comply with all applicable codes, regulations and laws regarding any installation, modification, or operation of the MERA Facilities. Notwithstanding any provision in this Agreement to the contrary, in the event MERA's operations within the License Space interfere with County's emergency communications, County shall notify MERA of such interference and MERA shall take all reasonable steps necessary to correct and eliminate the interferences as soon as practicable. If there is a loss of electrical service at the License Space due to an emergency or other circumstance beyond the control of MERA, MERA may, at its expense, install and maintain a temporary transportable power generator and related transportable fuel storage tank at the License Space or on the Property adjacent to the License Space for a period not to exceed thirty (30) days or the period necessary for the utility company requires to restore electric service to the License Space, whichever is greater and such temporary transportable power generator shall be installed in a manner acceptable to Licensor in its sole discretion and in a manner that does not compromise security at the Property.

4. Term.

A. Commencement Date and Term. Subject to the "Condition Precedent Regarding Environmental Law Compliance" set forth below, this Agreement shall be effective upon full execution (the "Effective Date"). The term of this Agreement shall

commence on the first day of the first month following MERA's notice to the Licensor that MERA has obtained all permits and approvals necessary for MERA to be legally entitled to construct a facility for providing a public safety and emergency radio system (the "Commencement Date") and continue for a period of ten (10) years, except in the case that such permits and approvals are not obtained within three(3) years from the date of approval of this Agreement then this Agreement shall automatically terminate and be deemed null and void. MERA shall be permitted to occupy the License Space and commence construction of the MERA Facilities upon receipt of all such permits and approvals. As of the Effective Date, MERA shall have the right to enter the License Space for the purpose of making appropriate engineering inspections, other reasonable necessary tests.

B. Extension of Agreement. MERA shall have the option to extend the term hereof for two (2) additional ten (10) year periods, subject to all of the provisions of this Agreement and Licensor's written consent, provided MERA is not in default hereunder at the time it seeks to exercise the right to extend. MERA shall notify Licensor in writing of its intention to exercise extension rights at least ninety (90) days prior to expiration of the term.

C. Condition Precedent Regarding Environmental Law Compliance. MERA represents, and Licensor acknowledges, that MERA must comply with the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000, et seq. in connection with the Project and Communications Facility. It is understood by the parties that MERA's compliance with CEQA is a condition precedent to the effectiveness of this Agreement. Therefore, notwithstanding anything to the contrary in this Agreement, unless and until MERA approves the Project and certifies the related environmental impact report, MERA shall not be obligated under this Agreement in any manner provided, however, MERA acknowledges and agrees once it commences construction of any portion of the MERA Facilities, MERA shall be deemed to have approved the Project and certified the related environmental impact report for all purposes of this clause C.

5. License Fee Payments.

Based upon (i) MERA's status as a joint powers authority dedicated to the furtherance and enhancement of the public safety communications system in Marin County, (ii) the Licensor's status as members of the JPA, and (iii) use of the Communications Facility for those same public safety purposes, the Licensor has agreed to waive the license fees (normally required for any License Space) under this Agreement. If at any time any of the above statements is no longer true then Licensor shall have the right to implement a market rate License Fee for the License Space occupied by MERA, and such fee will be payable in the next fiscal year.

6. Right to Enter.

A. MERA is hereby given a right to enter the Property, subject to the limitations, restrictions, covenants, conditions, leases, licenses and easements of record, for ingress and egress to the License Space over, upon, and across the Licensor owned property required for the erection, installation, maintenance, replacement and removal of the MERA Facilities and related equipment and other necessary appurtenances used in connection with the MERA Facilities.

B. MERA shall have the right to enter the Property for the purpose of making necessary inspections and engineering surveys, and other tests reasonably necessary to determine the suitability of the License Space for MERA's equipment and facilities and for the purposes of preparing for the installation of the MERA equipment and facilities. MERA shall repair any damage to the Property caused by any tests performed and shall return the Property to the condition that existed prior to any tests.

C. MERA shall have access at all times to the Property for construction, installation, maintenance and repair of the MERA Facilities and related equipment. MERA shall cooperate with, and adhere to, the Licensor's access, safety, and security rules designed to promote the safety, security and integrity of the Property wherein the License Space is located; however, the Licensor agrees not to unreasonably restrict entry to the License Space by authorized MERA employees, agents, contractors and sub-contractors.

D. In the event of an emergency that requires the Licensor to conduct emergency repair work within, at, or near the License Space or MERA's antennas, the Licensor agrees to notify MERA immediately and engage MERA personnel in support of the emergency effort.

7. Utilities at MERA's Cost.

MERA shall be solely responsible for and pay within 30 days of receipt of an invoice MERA's pro rata share, (if not separately metered), or actual amount (if separately metered) of all charges for gas, electricity, telephone service, or any other utility used or consumed by MERA on the License Space and shall pay invoices provided by Licensor on a quarterly basis. Licensor may elect to waive utility charges at its discretion in acknowledgement of the mutual public safety benefits through its partnership and participation as a MERA member.

8. Holding Over.

Should MERA, with the Licensor's written consent, continue to utilize the License Space or any portion thereof after the expiration of the ten (10) year term and without exercising any available extension option, MERA shall continue to do so on a month-to-month basis subject to all terms and conditions of this Agreement.

9. Notice.

All notices or demands are deemed to be given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid United States mail, and addressed to the respective parties as follows;

LICENSOR:
COUNTY OF MARIN
Department of Public Works, Real Estate
3501 Civic Center Drive, Room 304
San Rafael, CA 94901

and

CITY OF SAN RAFAEL
City Manager
1400 Fifth Avenue
P.O. Box 151560
San Rafael, CA 94915-1560

LICENSEE:
Marin Emergency Radio Authority
300 Tamalpais Drive
Corte Madera, CA 94925

Attention: Executive Officer

The address to which any notice or demand may be given to either party may be changed by written notice.

10. Indemnification.

A. With respect to the Property and except for the sole negligence or willful misconduct of the Licensor or its agents, employees or contractors, MERA shall indemnify, hold harmless, and defend the Licensor from any and all claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of the licensed use of the Property by MERA, or MERA's officers, contractors, licensees, agents, employees, guests, invitees, or visitors in or about the License Space. The Licensor shall not be liable for any loss or damage to persons or property sustained by MERA or other persons, which may be caused by theft, or by any act or neglect of any other Licensee, tenant or occupant of the Property, or by any Third Parties. The indemnity obligations hereunder survive the termination of this Agreement.

B. With respect to the Property and except for the sole negligence or willful misconduct of MERA or its agents, employees or contractors, the Licensor shall indemnify, hold harmless, and defend MERA from any and all claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of the Licensor's gross negligence or willful misconduct with respect to the Licensor's access, use or occupancy of the Property. MERA shall not be liable for any loss or damage to persons or property sustained by the Licensor or other persons, which may be caused by theft, or by any act or neglect by any other licensee, tenant or occupant of the Property, or by any Third Parties. The indemnity obligations hereunder survive the termination of this Agreement.

11. Taxes.

In the event MERA's presence as a licensee subjects the Property or Licensor to a tax or assessment event, property tax, personal tax, or otherwise, MERA shall pay all taxes and assessments levied upon or by reason of MERA's interest in the License Space herein licensed. All payments of taxes or assessments or both shall be prorated for the initial year and for the year in which the Agreement terminates.

12. MERA's Right to Terminate.

MERA shall have the right to terminate this Agreement at any time, upon the occurrence of any of the following events:

- A. Upon providing the Licensor twelve (12) months advance written notice;
- B. Upon revocation, expiration or termination of necessary approvals of any agency, board, court or other governmental authority or third party for the construction and/or operation of the facilities or access thereto or if MERA reasonably determines the cost of obtaining such approval is unfeasible;
- C. If MERA reasonably determines that the License Space is not appropriate under MERA's design or engineering specifications for its operation or that of the public safety and emergency radio system to which the facility belongs; or
- D. Failure by Licensor to comply with any material term, covenant or condition of this Agreement, if such failure is not cured to the satisfaction of MERA within thirty (30) days after written notice thereof to Licensor.

13. Licensor's Right to Terminate.

Licensor shall have the right to terminate this Agreement at any time upon the occurrence of any of the following:

- A. Failure by MERA to comply with any material term, covenant or condition of this Agreement, if such failure is not cured to the satisfaction of Licensor within thirty (30) days after written notice thereof to MERA;
- B. Upon providing MERA twelve (12) months advance written notice.

14. Insurance, Subrogation.

- A. During the term of this Agreement, MERA shall, at its expense, obtain and keep in force comprehensive general liability insurance with limits not less than \$1,000,000 per occurrence. The Licensor shall be named as an additional insured on the general liability policy.
- B. During the term of this Agreement, MERA shall, at its expense, obtain and keep in force property insurance providing coverage at least as broad as the current ISO Special Form ("all-risks") policy in an amount not less than the full insurable replacement cost of all of MERA's alterations, additions, improvements, trade fixtures and other personal property within the Property. Such property insurance must include be written on "replacement cost coverage, no co-insurance" provisions.
- C. Should the policy in this Agreement be cancelled or non-renewed, it is MERA's duty to notify the Licensor immediately upon receipt of the notice of cancellation or non-renewal.

MERA intends that, except to the extent caused by Licensor's gross negligence or willful misconduct and not covered by the property insurance MERA is required to carry pursuant to the terms of this Agreement, its property loss risks shall be borne by reasonable insurance carriers to the extent above provided, and MERA hereby agrees to

look solely to, and seek recovery only from, its respective insurance carriers in the event of a property loss to the extent that such loss is the result of a risk insurable under policies of property damage insurance. Notwithstanding anything to the contrary in this Agreement, MERA hereby waives all rights and claims against Licensor for such losses, and waive all rights of subrogation of its respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder. MERA agrees that its insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder.

15. Fixtures.

The Licensor agrees that no part of the fixtures or equipment constructed, erected or placed by MERA on the License Space shall be considered as being fixed to or a part of the Licensor's real property, it being the specific intention of the Licensor to agree that the MERA Facilities shall be and remain the property of MERA. Prior to the expiration or termination of this Agreement, MERA shall remove, at its sole expense, from the License Space any and all fixtures of every kind constructed, installed and erected thereon except for those fixtures that the Licensor agrees in writing to keep at Licensor's sole consent.

16. Assignment.

MERA shall not voluntarily or by operation of law assign, transfer, license, or otherwise transfer or encumber all or any part of its interest in this Agreement without the Licensor's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, MERA shall have the right to assign this Agreement, or license the License Space to any governmental entity that controls, is controlled by, or is under common control with MERA, or to any governmental entity resulting from merger or consolidation with MERA, provided that such assignee assumes in full all of MERA's obligations under the Agreement and County and City are each a full member of such assigned governmental entity.

17. Hazardous Materials.

MERA understands that the Licensor has undertaken no internal investigation of its files, examination of its employees, or testing of the License Space with respect to whether or not the License Space has been used for the generation, storage, treatment or disposal of hazardous materials (as defined in "16 A through 16 E" below), and, with this qualification, the Licensor represents that it has no present knowledge that the License Space has been so used in connection with hazardous materials.

MERA shall not use, store, or bring onto the Property or License Space any hazardous materials except in accordance with all federal, state, and local laws and regulations. In the event of leakage or spillage from any of MERA's equipment under the control or custody of MERA or any contractor or agent for MERA, MERA shall at its own expense promptly clean the Licensor's Property and License Space to the reasonable satisfaction of the Licensor, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state, or local environmental regulations incurred by the Licensor or MERA as a direct consequence of MERA's use of the Property or the License Space shall be borne by

MERA, including any fines and judgments levied against the Licensor. MERA agrees that in the event that MERA uses, stores, or brings onto the Property or License Space any hazardous materials and such act(s) result(s) in damage or injury to the Property or License Space, or to Licensor, Licensor's employees, agents, or contractors, MERA shall, at its own expense, indemnify, defend, and hold Licensor or any of Licensor's employees, agents, or contractors harmless as a result of the damage or injury, including, without limitation to, promptly cleaning Licensor's Property to the reasonable satisfaction of Licensor, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state, or local environmental regulations incurred as the result of the above-mentioned acts by the MERA shall be borne by MERA, including any fines and judgments levied against either party.

Should MERA bring in any transportable or permanent fuel storage equipment, MERA shall register such equipment as required by the appropriate agencies with such oversight. MERA shall register such equipment to ensure that is differentiated from any Licensor equipment registered with the appropriate agencies.

The Licensor agrees that in the event the Licensor uses, stores, or brings onto the Property or License Space, any hazardous materials and such act(s) result(s) in damage or injury to MERA, or any of MERA's employees, agents, or contractors, the Licensor shall, at its own expense, indemnify and hold MERA or any of MERA's employees, agents, or contractors harmless as a result of the damage or injury, including, without limitation to, promptly cleaning MERA's License Space to the reasonable satisfaction of MERA, the Environmental Protection Agency and any public body having jurisdiction in the matter. Any expense of required compliance with federal, state or local environmental regulations incurred as the result of the above-mentioned acts by the Licensor shall be borne by the Licensor, including any fines and judgments levied against either party.

As used in this section, hazardous materials shall mean:

- A. "Hazardous substances" and "pollutants and contaminants" as defined in CERCLA, 42 USC Sections 9601 (14) and (33) and regulations issued pursuant thereto, or their successors;
- B. "Extremely hazardous substances, hazardous chemicals" and "toxic chemicals" as defined in the Emergency Planning and Community Right to Know Act, 42 USC Sections 11002 (a), 11021(e), and 11023 (c), and regulations issued pursuant thereto, or their successors;
- C. "Hazardous chemicals" within the meaning of OSHA's Hazard Communication Rules, 29 CFR Section 1910.1200, or their successors;
- D. Any such materials regulated under state or local environmental laws and regulations similar to the foregoing federal authorities listed in A-C above, or their successors; and
- E. Any materials not covered by, or exempted from, the sources listed in subparagraphs A-D above or their successors that may nevertheless pose a threat to the Licensor's function as a public agency or to human health or

welfare or to the environment including, without limitation to, petroleum, including crude oil or any fraction thereof, and radon.

18. Interference.

The Licensor's use of the Property as a public facility shall take priority and precedence over any other operations on the Property including the License Space; provided, however, that the parties hereby acknowledge the MERA Facilities are essential to the operation of a multi-jurisdictional and County-wide public safety and emergency radio system, and that in the event MERA determines that interference is materially and adversely affecting the operation of MERA Facilities, the Licensor shall correct and eliminate such interference, as set forth in Paragraph 2 above.

19. Damage or Destruction.

If during the term hereof, MERA's fixtures or equipment are damaged or destroyed from any cause whatsoever, other than Licensor's gross negligence or willful misconduct (and subject to the waiver of subrogation set forth in Section 14 above), MERA may elect, at its sole cost and expense, repair, restore or rebuild the same in accordance with its condition prior to such damage or destruction or in accordance with any plans and specifications first approved in writing by the Licensor after receiving all necessary third party approvals. In the event MERA determines it is commercially infeasible to repair, replace or rebuild its fixtures or equipment within the Communications Facility, it may elect to terminate this Agreement upon providing the Licensor thirty (30) days advance written notice of its intention to do so.

In the event MERA elects to repair such damage or destruction of its fixtures or equipment, MERA shall take all reasonable steps to obtain necessary permits and approvals within a reasonable time. Work shall commence within thirty (30) days after all permits and approvals are obtained and shall be completed with due diligence. Any and all insurance proceeds collected for such damage or destruction to MERA's fixtures and equipment shall be applied to the costs of such repairs and if such insurance proceeds are insufficient for such purposes, MERA shall make up the deficiency out of its funds.

The failure or refusal of MERA to make repairs or provide notice of its intention to terminate this Agreement as provided for herein shall constitute a default under the covenants and conditions of this Agreement and the Licensor may at its option terminate this Agreement.

In the event of any damage or destruction to the License Space from any cause other than the Licensor's gross negligence or willful misconduct, that prevents MERA from operating its fixtures and equipment whether such equipment is operable or not, MERA shall not be entitled to compensation, damages or rebate in rent for loss of use of the MERA Facilities.

20. Merger.

This Agreement contains all the agreements of the parties hereto and no prior agreements or understandings shall be effective or binding for any purpose.

21. Amendment or Modification.

This Agreement may be amended or modified only by the mutual written consent of both parties hereto.

22. Time is of the Essence.

Time is of the essence with respect to the performance of every provision of this Agreement in which time or performance is a factor.

23. Mediation.

Any dispute or claim in law or equity between the Licensor and MERA arising out of this agreement, if not resolved by informal negotiation between the parties, shall be mediated by referring it to the Superior Court of California, County of Marin, for assignment by the Presiding Judge for mediation. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the judge-mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. The mediation process shall continue until the case is resolved or until such time as the mediator makes a finding that there is no possibility of resolution.

24. Condemnation.

If a condemning authority other than the County or City takes all of the Licensor's property or a portion sufficient to render the License Space unsuitable for MERA's use, MERA shall terminate the License as of the date when possession is delivered to the condemning authority. In any condemnation proceeding MERA shall be entitled to make a claim against the condemning authority for just compensation so long as such claim does not reduce the award available to the County or City, as applicable. Sale of all or a portion of the License Space to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

25. Construction.

Neither initial nor subsequent construction shall commence on the site until the County approves the construction plans and specifications. Construction shall be defined as any work that visibly changes the License Space, excepting changes to equipment contained within MERA rack systems.

The construction process shall be as follows:

MERA shall submit five (5) sets of plans and construction specifications to the County for permitting by County, as required by law, and City of San Rafael Fire Department.

- The County will review and provide revision "markup" when required within thirty (30) business days of submittal of the plans.

- MERA shall resubmit five (5) sets of the revised plans and specifications to the County. If acceptable, the County will mark two sets as approved and return them to the MERA within fifteen (15) business days of re-submittal.
- MERA shall notify the County five (5) business days prior to commencing any construction to the site.
- All construction will be subject to reasonable inspection by the County and City of San Rafael Fire Department.

26. Ordinances and Statutes.

MERA shall comply with the requirements of all federal, state, and local authorities now in force, or which may hereafter be in force, pertaining to the said Property, and shall faithfully observe in the use of the Property all federal, state, and local statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction or the admission of MERA in any action or proceeding against MERA whether Licensor is a party thereto or not, that MERA has violated any such ordinance or statute in the use of the Property, shall be conclusive of that fact as between Licensor and MERA.

As part of the requirements of the above paragraph, MERA agrees to abide by Marin County Codes, Chapter 23.19 (Integrated Pest Management Policy).

If there is a conflict with another code or law then the more restrictive language will control.

27. Applicable Law.

This Agreement which is governed by the laws of the State of California applies to and binds the successors, and assigns of the parties.

28. Radio Frequency Emission Best Practices.

A. Licensor shall provide the following radio frequency emission best management practices on the Property:

(i) Post a NOTICE, CAUTION, or WARNING sign, as needed to advise persons when they are entering an area on the Property in which the radio frequency emissions exceed safety standards established by the Federal Communications Commission (FCC).

(ii) Post radio frequency guideline signage, which complies with FCC guidelines, at each access point to the Property.

(iii) Control access to the Property in a manner that prevents access by the general public.

(iv) Inspect the Property to ensure compliance with FCC radio frequency emission safety standards after the addition or modification of any equipment on

the Property or any other change to the radio frequency environment on the Property.

B. MERA shall ensure that in the Property, any person accessing an area in which the radio frequency emissions exceed levels considered safe for the general public, as established by the FCC: (i) wears a personal radio frequency exposure monitor; and (ii) has completed radio frequency safety awareness training, which includes knowledge of the use of personal protective equipment.

29. Joint and Several Obligations.

If at any time during the term of this Agreement the Property is owned, in whole or in part, by a Licensor comprised of more than one entity, all obligations of such Licensor under this Agreement shall be joint and several, and the Default of any such entity shall be the Default of all such entities.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

LICENSOR:

COUNTY OF MARIN

APPROVED AS TO FORM:

President, Board of Supervisors

Deputy County Counsel

Date: _____

ATTEST:

Deputy Clerk

CITY OF SAN RAFAEL

APPROVED AS TO FORM:

Mayor

City Attorney

Date: _____

ATTEST:

City Clerk

LICENSEE:

MARIN EMERGENCY RADIO AUTHORITY

APPROVED AS TO FORM:

Maureen Cassingham, Executive Officer

Trisha Ortiz, MERA Counsel

Date: _____

**EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

This Exhibit "A" is attached to and made a part of that certain Communications Site License Agreement by and between the County of Marin, as Licensor, and the Marin Emergency Radio Authority, as Licensee.

The Property is all that real property situated in City of San Rafael, County of Marin, State of California and is more particularly described as follows:

Assessor's Parcel No: 165-220-03

BEGINNING AT THE MOST SOUTHERN CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO TRANS WESTERN TITLE COMPANY, A CALIFORNIA CORPORATION, RECORDED JANUARY 31, 1964 IN BOOK 1775 OF OFFICIAL RECORDS, AT PAGE 442; THENCE FROM SAID POINT OF BEGINNING, ALONG THE WESTERN LINE OF SAID TRANS WESTERN TITLE PARCEL, NORTH 01° 15' 00" EAST 290.00 FEET, NORTH 25° 58' 00" EAST 235.00 FEET, NORTH 10° 26' 00" EAST 163.00 FEET AND NORTH 02° 25' 00" WEST 37.085 FEET TO THE SOUTHWESTERN CORNER OF PARCEL ONE, AS DESCRIBED IN THE DEED TO JACK H. BENNETT, RECORDED MARCH 14, 1967 IN BOOK 2114 OF OFFICIAL RECORDS, AT PAGE 392; THENCE ALONG THE GENERAL WESTERN LINE OF PARCELS ONE AND TWO, AS DESCRIBED IN SAID DEED TO JACK. H BENNETT, THE FOLLOWING EIGHT (8) COURSES: NORTH 02° 25' 00" WEST 290.915 FEET; THENCE NORTH 34° 09' 00" WEST 367.00 FEET; THENCE NORTH 39° 35' 00" EAST 353.00 FEET; THENCE NORTH 00° 18' 00" EAST 194.00 FEET; THENCE NORTH 35° 51' 00" WEST 620.00 FEET; THENCE NORTH 49° 55' 00" EAST 505.00 FEET; THENCE NORTH 08° 45' 00" WEST 392.00 FEET AND NORTH 74° 34' 00" WEST 140.50 FEET TO THE NORTHEASTERN CORNER OF LOT 221, AS SHOWN UPON THE MAP ENTITLED, "SAN RAFAEL PARK UNIT FOUR", FILED FOR RECORD MARCH 8, 1967 IN VOLUME 13 OF MAPS, AT PAGE 90, MARIN COUNTY RECORDS; THENCE ALONG THE GENERAL EASTERN AND SOUTHERN LINES OF SAID SAN RAFAEL PARK UNIT FOUR, THE FOLLOWING EIGHT (8) COURSES; SOUTH 12° 06' 10" EAST 204.54 FEET; THENCE SOUTH 09° 20' 18" WEST 228.02 FEET; THENCE SOUTH 44° 48' 44" WEST 215.67 FEET; THENCE SOUTH 74° 52' 55" WEST 128.44 FEET; THENCE SOUTH 85° 34' 47" WEST 304.91 FEET; THENCE SOUTH 64° 07' 39" WEST 258.96 FEET; THENCE SOUTH 10° 57' 16" EAST 104.61 FEET AND SOUTH 86° 59' 55" WEST 168.30 FEET TO THE SOUTHEASTERN CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE DIXIE SCHOOL DISTRICT, RECORDED SEPTEMBER 22, 1966 IN BOOK 2080 OF OFFICIAL RECORDS, AT PAGE 397; THENCE ALONG THE SOUTHEASTERN LINE OF SAID DIXIE SCHOOL DISTRICT PARCEL, SOUTH 49° 21' 00" WEST 532.625 FEET TO THE MOST EASTERN CORNER OF LOT 117, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "SAN RAFAEL PARK UNIT TWO", FILED FOR RECORD AUGUST 17, 1965 IN VOLUME 13 OF MAPS AT PAGE 26; THENCE ALONG THE SOUTHEASTERN LINE OF SAID SAN RAFAEL PARK UNIT TWO, SOUTH 47° 44' 26" WEST 170.99 FEET TO THE MOST EASTERN CORNER OF LOT 120, AS SHOWN THEREON SAID CORNER BEING FURTHER DESCRIBED AS AN ANGLE POINT IN THE NORTHERN LINE OF THE LANDS SHOWN UPON THE MAP ENTITLED, "SAN

RAFAEL PARK UNIT THREE", FILED FOR RECORD APRIL 20, 1966 IN VOLUME 13 OF MAPS, AT PAGE 65; THENCE ALONG THE GENERAL NORTHERN AND EASTERN LINE OF SAID SAN RAFAEL PARK UNIT THREE, THE FOLLOWING FIVE (5) COURSES SOUTH 71° 28' 00" EAST 193.00 FEET, THENCE SOUTH 18° 45' 00" EAST 385.50 FEET, THENCE SOUTH 53° 31' 00" WEST 241.51 FEET, THENCE SOUTH 13° 01' 00" WEST 263.00 FEET AND SOUTH 00° 09' 00" EAST 281.84 FEET TO A POINT IN THAT CERTAIN BOUNDARY AGREED UPON AND DESCRIBED IN AN AGREEMENT ESTABLISHING BOUNDARY, EXECUTED BY AND BETWEEN MANUEL FAGUNDES, MANUEL T. FREITAS, AND OTHERS, RECORDED MARCH 1, 1951 IN BOOK 681 OF OFFICIAL RECORDS AT PAGE 76; THENCE ALONG SAID BOUNDARY LINE, SOUTH 63° 16' 30" EAST 1534.48 FEET, MORE OR LESS, TO AN ANGLE POINT THEREIN THAT BEARS SOUTH 39° 03' 00" WEST FROM THE POINT OF BEGINNING, THENCE CONTINUING ALONG SAID BOUNDARY LINE, NORTH 39° 03' 00" EAST 135.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE MARIN MUNICIPAL WATER DISTRICT, RECORDED MAY 26, 1955 IN BOOK 944 OF OFFICIAL RECORDS, AT PAGE 589, AS FOLLOWS:

COMMENCING AT A POINT IN THE LANDS OF MANUEL J. FAGUNDES, ET AL, WHICH POINT BEARS SOUTH 63° 24' EAST 1745.55 FEET, NORTH 71° 25' 30" EAST 165.16 FEET AND NORTH 47° 42' EAST 112.36 FEET FROM THE INTERSECTION OF THE TWO CALLS, NORTH 63° 16' 30" WEST 3248.12 FEET AND SOUTH 26° 31' WEST 402.45 FEET, SET FORTH IN THE AGREEMENT BETWEEN MANUEL FAGUNDES, AND MANUEL T. FREITAS, ET AL, RECORDED MARCH 1, 1951 IN BOOK 681 OF OFFICIAL RECORDS AT PAGE 76; RUNNING THENCE NORTH 47° 28' WEST 55.69 FEET; THENCE NORTH 42° 32' EAST 220 FEET; THENCE SOUTH 47° 28' EAST 197 FEET; THENCE SOUTH 42° 32' WEST 220 FEET; THENCE NORTH 47° 28' WEST 141.31 FEET TO THE POINT OF BEGINNING.

AND FURTHER EXCEPTING THEREFROM THAT PORTION THEREOF CONTAINED IN THE DEED FROM PACIFIC CASCADE LAND COMPANY, INC., TO THE MARIN MUNICIPAL WATER DISTRICT, A PUBLIC CORPORATION, RECORDED SEPTEMBER 29, 1967 IN BOOK 2161 OF OFFICIAL RECORDS, AT PAGE 247, MARIN COUNTY RECORDS.

AND FURTHER EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE MOST SOUTHERN CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO TRANS WESTERN TITLE COMPANY, A CALIFORNIA CORPORATION, RECORDED JANUARY 31, 1964 IN BOOK 1775 OF OFFICIAL RECORDS, AT PAGE 442; THENCE FROM SAID POINT OF BEGINNING, ALONG THE WESTERN LINE OF SAID TRANS WESTERN TITLE PARCEL, NORTH 01° 15' 00" EAST 290.00 FEET, NORTH 25° 58' 00" EAST 235.00 FEET, NORTH 10° 26' 00" EAST 163.00 FEET AND NORTH 02° 25' 00" WEST 37.085 FEET TO THE SOUTHWESTERN CORNER OF PARCEL ONE, AS DESCRIBED IN THE DEED TO JACK H. BENNETT, RECORDED MARCH 14, 1967 IN BOOK 2114 OF OFFICIAL RECORDS, AT PAGE 392; THENCE ALONG THE GENERAL WESTERN LINE OF SAID PARCEL ONE NORTH 2° 25' 00" WEST 290.915 FEET, AND NORTH 34° 09' 00" WEST 367.00 FEET; THENCE LEAVING SAID WESTERN LINE NORTH 85° 52' 37" WEST 140.00 FEET; THENCE SOUTH 4° 07' 23" WEST 1296 FEET MORE OR LESS

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**EXHIBIT B
DEPICTION OF LEASE SPACE**

This Exhibit "B" is attached to and made a part of that certain Communications Site License Agreement by and between the Licensor, and the Licensee.

SEE ATTACHED DIAGRAMS CONSISTING OF ONE (1) PAGE

**EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

This Exhibit "A" is attached to and made a part of that certain Communications Site License Agreement by and between the County of Marin, as Licensor, and the Marin Emergency Radio Authority, as Licensee.

The Property is all that real property situated in City of San Rafael, County of Marin, State of California and is more particularly described as follows:

Assessor's Parcel No: 165-220-03

BEGINNING AT THE MOST SOUTHERN CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO TRANS WESTERN TITLE COMPANY, A CALIFORNIA CORPORATION, RECORDED JANUARY 31, 1964 IN BOOK 1775 OF OFFICIAL RECORDS, AT PAGE 442; THENCE FROM SAID POINT OF BEGINNING, ALONG THE WESTERN LINE OF SAID TRANS WESTERN TITLE PARCEL, NORTH 01° 15' 00" EAST 290.00 FEET, NORTH 25° 58' 00" EAST 235.00 FEET, NORTH 10° 26' 00" EAST 163.00 FEET AND NORTH 02° 25' 00" WEST 37.085 FEET TO THE SOUTHWESTERN CORNER OF PARCEL ONE, AS DESCRIBED IN THE DEED TO JACK H. BENNETT, RECORDED MARCH 14, 1967 IN BOOK 2114 OF OFFICIAL RECORDS, AT PAGE 392; THENCE ALONG THE GENERAL WESTERN LINE OF PARCELS ONE AND TWO, AS DESCRIBED IN SAID DEED TO JACK. H BENNETT, THE FOLLOWING EIGHT (8) COURSES: NORTH 02° 25' 00" WEST 290.915 FEET; THENCE NORTH 34° 09' 00" WEST 367.00 FEET; THENCE NORTH 39° 35' 00" EAST 353.00 FEET; THENCE NORTH 00° 18' 00" EAST 194.00 FEET; THENCE NORTH 35° 51' 00" WEST 620.00 FEET; THENCE NORTH 49° 55' 00" EAST 505.00 FEET; THENCE NORTH 08° 45' 00" WEST 392.00 FEET AND NORTH 74° 34' 00" WEST 140.50 FEET TO THE NORTHEASTERN CORNER OF LOT 221, AS SHOWN UPON THE MAP ENTITLED, "SAN RAFAEL PARK UNIT FOUR", FILED FOR RECORD MARCH 8, 1967 IN VOLUME 13 OF MAPS, AT PAGE 90, MARIN COUNTY RECORDS; THENCE ALONG THE GENERAL EASTERN AND SOUTHERN LINES OF SAID SAN RAFAEL PARK UNIT FOUR, THE FOLLOWING EIGHT (8) COURSES; SOUTH 12° 06' 10" EAST 204.54 FEET; THENCE SOUTH 09° 20' 18" WEST 228.02 FEET; THENCE SOUTH 44° 48' 44" WEST 215.67 FEET; THENCE SOUTH 74° 52' 55" WEST 128.44 FEET; THENCE SOUTH 85° 34' 47" WEST 304.91 FEET; THENCE SOUTH 64° 07' 39" WEST 258.96 FEET; THENCE SOUTH 10° 57' 16" EAST 104.61 FEET AND SOUTH 86° 59' 55" WEST 168.30 FEET TO THE SOUTHEASTERN CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE DIXIE SCHOOL DISTRICT, RECORDED SEPTEMBER 22, 1966 IN BOOK 2080 OF OFFICIAL RECORDS, AT PAGE 397; THENCE ALONG THE SOUTHEASTERN LINE OF SAID DIXIE SCHOOL DISTRICT PARCEL, SOUTH 49° 21' 00" WEST 532.625 FEET TO THE MOST EASTERN CORNER OF LOT 117, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "SAN RAFAEL PARK UNIT TWO", FILED FOR RECORD AUGUST 17, 1965 IN VOLUME 13 OF MAPS AT PAGE 26; THENCE ALONG THE SOUTHEASTERN LINE OF SAID SAN RAFAEL PARK UNIT TWO, SOUTH 47° 44' 26" WEST 170.99 FEET TO THE MOST EASTERN CORNER OF LOT 120, AS SHOWN THEREON SAID CORNER BEING FURTHER DESCRIBED AS AN ANGLE POINT IN THE NORTHERN LINE OF THE LANDS SHOWN UPON THE MAP ENTITLED, "SAN

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SITE: SKYVIEW TERRACE

LESSOR: City of San Rafael

Site Address: Near 70 Skyview Terrace
San Rafael, CA 94903

APN: 165-220-03

I. Overview

The Marin Emergency Radio Authority (MERA) is a joint exercise of powers authority established February 28, 1998. MERA's purpose is to plan, finance, implement, manage, own, and operate a multijurisdictional and countywide public safety, public service, and emergency radio system.

Changes in frequency allocations by the Federal Communications Commission mandate that MERA upgrade the currently installed countywide radio system, shifting the system's radio frequencies from the UHF T-band to the 700 MHz band of frequencies. At the same time, MERA will use this opportunity to increase radio user capacity, improve radio coverage, and modernize the aging system.

This upgrade will utilize existing radio communications facilities to the fullest extent possible, but it will also require the development of certain new tower sites where additional radio equipment can be installed.

II. Site Development

MERA proposes to construct as its sole cost and expense a state-of-the-art communications compound on the leased property. This communications site will include:

- Land clearing and site grading
- Crushed rock ground base
- Earthen berms
- One (1) 6-ft. chain link fence
- One (1) 15-ft. x 10-ft. equipment shelter
- One (1) 35-ft. monopole tower
- One (1) cable bridge
- One (1) 50 kVA emergency generator
- One (1) 499-gallon propane fuel tank
- Underground electrical service from utility point of connection

III. Equipment to Be Added

On Tower:

- Two (2) 3 ft. microwave dishes
- Associated ground connections and cabling

Inside Shelter:

- One (1) combined microwave radio and DC power supply rack
- Associated ground connections and cabling

IV. Tentative Implementation Schedule

- | | |
|----------------------------|----------------------------|
| Site development | July 2020 to February 2021 |
| New equipment installation | February 2021 |

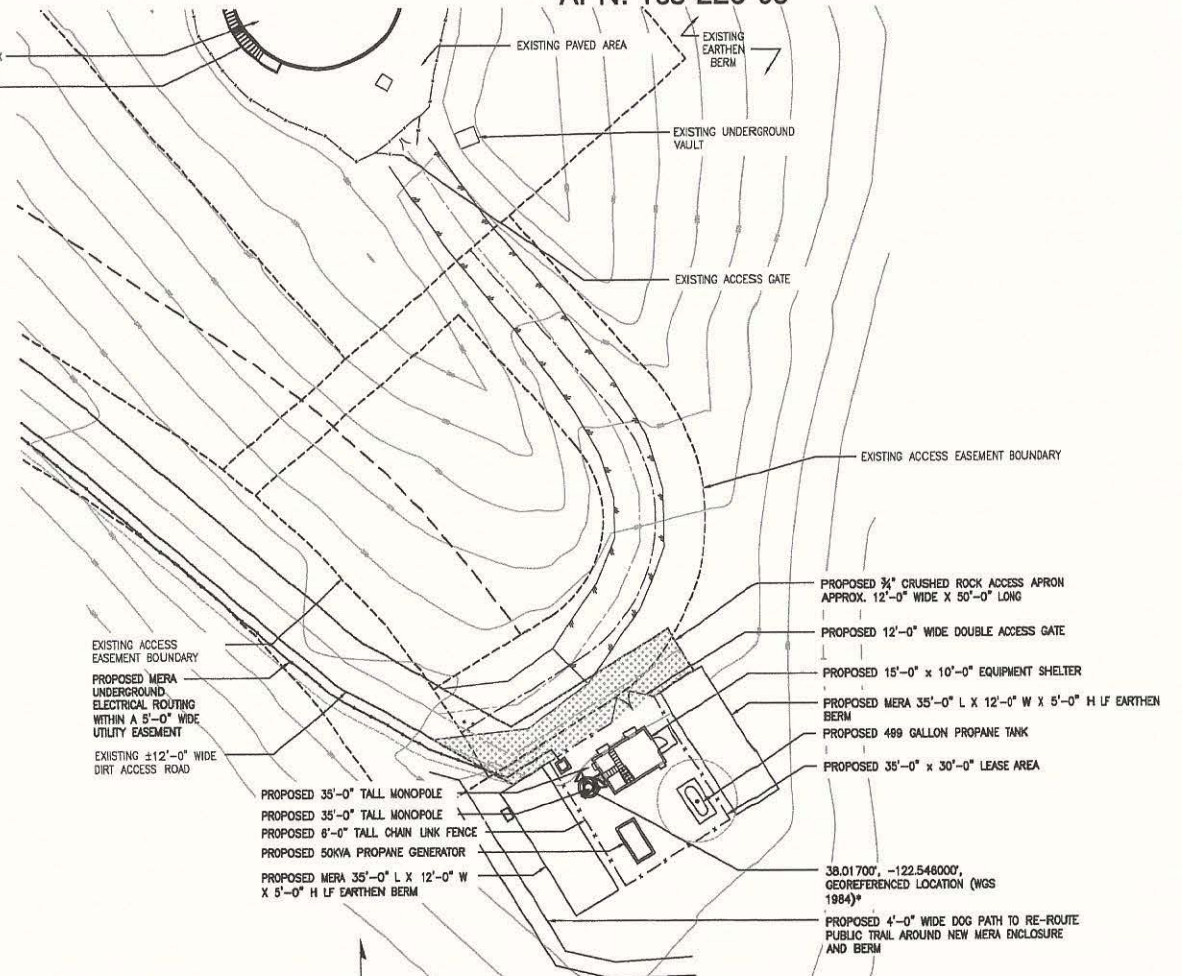
LEASE EXHIBIT

SKYVIEW TERRACE WATER TANK

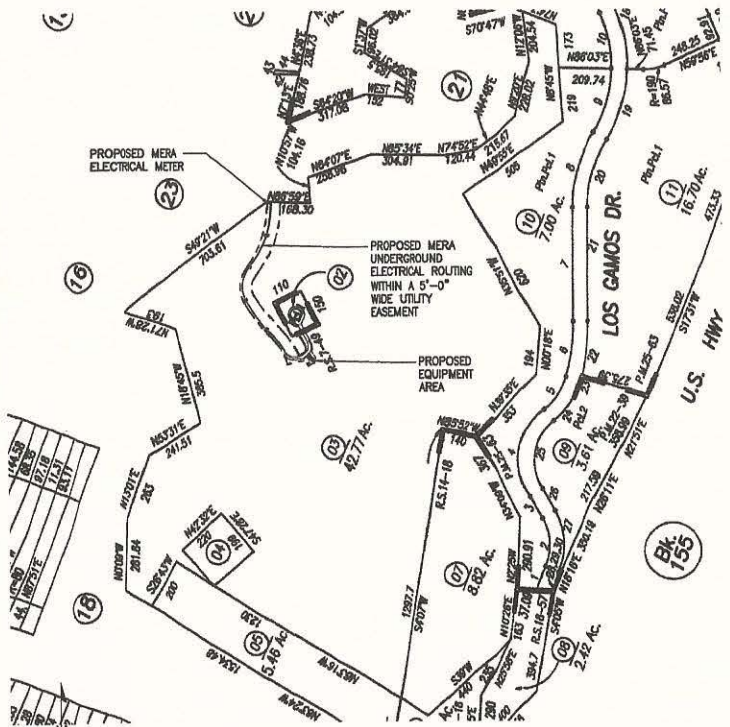
NEAR 70 SKYVIEW TERRACE
 SAN RAFAEL, CA 94903
 APN: 165-220-03



VICINITY MAP
N.T.S.



- EXISTING WATER TANK
- EXISTING STAIRS
- EXISTING PAVED AREA
- EXISTING EARTHEN BERM
- EXISTING UNDERGROUND VAULT
- EXISTING ACCESS GATE
- EXISTING ACCESS EASEMENT BOUNDARY
- EXISTING ACCESS EASEMENT BOUNDARY
- EXISTING ±12'-0" WIDE DIRT ACCESS ROAD
- PROPOSED 3/4" CRUSHED ROCK ACCESS APRON APPROX. 12'-0" WIDE X 50'-0" LONG
- PROPOSED 12'-0" WIDE DOUBLE ACCESS GATE
- PROPOSED 15'-0" x 10'-0" EQUIPMENT SHELTER
- PROPOSED MERA 35'-0" L X 12'-0" W X 5'-0" H LF EARTHEN BERM
- PROPOSED 489 GALLON PROPANE TANK
- PROPOSED 35'-0" x 30'-0" LEASE AREA
- 38.01700', -122.548000', GEOREFERENCED LOCATION (WGS 1984)*
- PROPOSED 4'-0" WIDE DOG PATH TO RE-ROUTE PUBLIC TRAIL AROUND NEW MERA ENCLOSURE AND BERM
- PROPOSED MERA ELECTRICAL METER
- PROPOSED MERA UNDERGROUND ELECTRICAL ROUTING WITHIN A 5'-0" WIDE UTILITY EASEMENT
- PROPOSED EQUIPMENT AREA
- PROPOSED MERA UNDERGROUND ELECTRICAL ROUTING WITHIN A 5'-0" WIDE UTILITY EASEMENT
- PROPOSED 35'-0" TALL MONOPOLE
- PROPOSED 35'-0" TALL MONOPOLE
- PROPOSED 6'-0" TALL CHAIN LINK FENCE
- PROPOSED SOKIA PROPANE GENERATOR
- PROPOSED MERA 35'-0" L X 12'-0" W X 5'-0" H LF EARTHEN BERM



1 SITE PLAN
 SCALE: 22'x34" SHEET 1" = 80'-0"
 SCALE: 11'x17" SHEET 1" = 40'-0"
 125' 0 125' 250' 500'
 (IN FEET)

2 SITE DETAIL
 SCALE: 22'x34" SHEET 1" = 15'-0"
 SCALE: 11'x17" SHEET 1" = 30'-0"
 7.5' 0 7.5' 15' 30'
 (IN FEET)

CALLED NORTH

CALLED NORTH

Bk 155

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A COMMUNICATIONS SITE LICENSE AGREEMENT WITH MARIN EMERGENCY RADIO AUTHORITY (MERA) FOR INSTALLATION OF TELECOMMUNICATIONS FACILITIES NEAR 70 SKYVIEW TERRACE

WHEREAS, the Marin Emergency Radio Authority (“MERA”) is a joint exercise of powers authority duly organized and operating pursuant to Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, and pursuant to the Joint Powers Agreement, dated February 28, 1998 by and among the members (the “JPA”); and,

WHEREAS, MERA’s purpose is to plan, finance, implement, manage, own and operate a multi-jurisdictional and County-wide public safety and emergency radio system (the “System”); and

WHEREAS, the County of Marin (“County”) and the City of San Rafael (“City”) are parties to the JPA and members of MERA; and,

WHEREAS, the County and the City are the record owners of that certain property located near 70 Skyview Terrace, San Rafael, California, bearing Assessor’s Parcel Number 165-220-03 (the “Property”); and

WHEREAS, changes in frequency allocations by the Federal Communications Commission mandate that MERA upgrade the current countywide radio system by shifting the systems radio frequencies from the UHF T-band to the 700 Mhz band; and

WHEREAS, MERA will also use this opportunity to increase radio user capacity, improve radio coverage, and modernize the aging radio system; and

WHEREAS, the County and the City desire to grant MERA a license, in the form attached as Attachment 1 to this resolution and incorporated herein, to install, operate,

and maintain on the Property certain specified communications equipment that will become a part of the System;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL RESOLVES that the City Manager is authorized to execute the License Agreement with MERA attached hereto as Attachment 1, subject to final approval as to form by the City Attorney, approving the installation of MERA's communications equipment on the Property near 70 Skyview Terrace, San Rafael, California, APN 165-220-03.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Tuesday, the 8th day of September 2020 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk