



# TOWN OF FAIRFAX

## STAFF REPORT

### October 2, 2013

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager 

**SUBJECT:** Approval of an agreement with the County of Marin for proceeds from the Marin Parks, Open Space, and Farmland Preservation Transactions and Use Tax Ordinance (Measure A)

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#### **RECOMMENDATION**

- 1) Authorize the Town Manager to execute an agreement with the County of Marin to receive proceeds from Measure A.
- 2) Form an ad-hoc committee consisting of two Councilmembers, two PARC commissioners, and two Open Space Committee (OSC) members to prepare a work plan for Council consideration regarding the proposed uses of the funds.

#### **DISCUSSION**

In November 2012, the Marin Parks, Open Space, and Farmland Preservation Transactions and Use Tax Ordinance (Measure A) was approved by Marin County voters. Measure A levies a one-quarter of one-percent transactions and use tax (sales tax) in Marin County and is estimated to generate approximately \$10,000,000 per year for the life of the measure. The expenditure plan allocates 15% of the revenues from the sales tax increment to a City, Town, and Special District Program to assist Marin's municipalities and applicable special districts in managing their parks, open space preserves, recreation programs, and vegetation to promote biodiversity and reduce wildfire risk. The Town anticipates receiving over \$40,000 in revenue.

As a condition of receiving the funds, the Town must submit a work plan detailing the proposed uses of the funds which can be used for the following:

- i. To maintain, restore and/or renovate existing parks, preserves and recreational facilities.
- ii. To construct new parks and recreational facilities or acquire parklands.
- iii. To engage in vegetation management to reduce wildfire risk, promote biodiversity or control invasive non-native weeds on private, municipal, or district lands.

Staff is recommending the formation of the Committee with representatives from the Council, PARC, and OSC to prepare a workplan for Council consideration. Attached is a draft contract for your reference. Staff has not received a final version of the agreement from the County. In order to avoid any delays in receiving the funds, staff is requesting authority to sign the agreement when finalized by the County and would like a Committee formed now so a work plan can be approved by the Council in December.

#### **FISCAL IMPACT**

Over \$40,000 in Measure A revenues to the Town.

#### **ATTACHMENTS**

Draft contract

**DRAFT**  
**AGREEMENT FOR DISBURSEMENT OF TAX PROCEEDS**

BETWEEN

COUNTY OF MARIN

AND

CITY OF \_\_\_\_\_  
TOWN OF \_\_\_\_\_  
\_\_\_\_\_ DISTRICT

This Agreement (hereinafter "AGREEMENT") is made and entered into this 5th day of November, 2013, by and between the County of Marin, a political subdivision of the State of California (hereinafter "COUNTY"), and the CITY/TOWN of \_\_\_\_\_, or \_\_\_\_\_ DISTRICT (hereinafter "CITY", "TOWN" or "DISTRICT", whichever is applicable), a political subdivision of the State of California, collectively hereinafter the "PARTIES".

**Recitals**

**Whereas**, the Marin Parks, Open Space, and Farmland Preservation Transactions and Use Tax Ordinance (hereinafter "MEASURE A"; attached as Exhibit A) was approved by Marin County voters on November 6, 2012; and

**Whereas**, MEASURE A levies a one-quarter of one-percent transactions and use tax (hereinafter "sales tax") in Marin County and is estimated to generate approximately \$10,000,000 per year for the life of the measure; and

**Whereas**, the MEASURE A expenditure plan, included in Exhibit A, allocates 15% of the revenues from the sales tax increment to a City, Town, and Special District Program (hereinafter "PROGRAM") to assist Marin's municipalities and applicable special districts in managing their parks, open space preserves, recreation programs, and vegetation to promote biodiversity and reduce wildfire risk; and

**Whereas**, COUNTY is charged with the fiduciary duty to administer the MEASURE A sales tax proceeds consistent with applicable laws; and

**Whereas**, MEASURE A, requires that an allocation method be developed as a means to determine the amount of funding each municipality and applicable special district receives on an annual basis from the PROGRAM; and

**Whereas**, the Marin County Board of Supervisors approved said allocation method on September 10th, a copy of which (Exhibit B) is attached hereto and made a part hereof (hereinafter "ALLOCATION METHOD"); and

**Whereas**, the objective of this AGREEMENT is to establish a mutually beneficial relationship between PARTIES to disburse and account for MEASURE A fund expenditures;

**Therefore**, PARTIES are entering into this AGREEMENT.

## **Statement of Agreement**

1. It is mutually agreed and understood that, upon signing of this AGREEMENT:
  - a. COUNTY is responsible for allocating, managing, accounting for, and disbursing all PROGRAM funds.
  - b. COUNTY will disburse PROGRAM funds to CITY/TOWN/DISTRICT semiannually (two times per fiscal year), as follows:
    - i. Disbursement 1 will occur on or about the first Monday in July each year, conditional upon receipt by Marin County Parks of an Annual Measure A Work Plan prepared by CITY/TOWN/DISTRICT, in the form attached as Exhibit C, by June 1 of the same calendar year. Disbursement 1 will consist of PROGRAM funds from Measure A revenue received during the preceding January 1 through June 30 period and allocated to the CITY/TOWN/DISTRICT according to the ALLOCATION METHOD. If CITY/TOWN/DISTRICT submits its Annual Measure A Work Plan after June 1, Disbursement 1 shall occur approximately 30 days subsequent to submittal.
    - ii. Disbursement 2 will occur on or about the first Monday in January, conditional upon receipt by Marin County Parks, by September 15th of the same fiscal year, of an Annual Measure A Expenditure Report prepared by CITY/TOWN/DISTRICT, in the form attached as Exhibit D, describing actual expenditures for the preceding fiscal year spending. Disbursement 2 will consist of PROGRAM funds from Measure A revenue received during the preceding July 1 through December 31 period and allocated to the CITY/TOWN/DISTRICT according to the ALLOCATION METHOD. If CITY/TOWN/DISTRICT submits its Annual Measure A Expenditure Report after September 15, Disbursement 2 shall occur approximately 30 days subsequent to submittal.
    - iii. COUNTY will make every effort to make disbursements within the time periods specified above, and shall not willfully delay or withhold PROGRAM funds for reasons other than those stated in this AGREEMENT, but shall not be responsible for the consequences if disbursements are delayed for any reason. Disbursements will occur by electronic transfer.
    - iv. Notwithstanding the foregoing schedule,-the first disbursement will occur on or about the first Monday in January 2014. The first disbursement will consist of PROGRAM funds from Measure A revenue received from April 1, 2013 through December 31, 2013 and allocated to the CITY/TOWN/DISTRICT according to the ALLOCATION METHOD, and may be applied to CITY/TOWN/DISTRICT PROGRAM expenditures and obligations made or incurred during that period.

- c. CITY/TOWN/DISTRICT's allocation of PROGRAM funds must be used as described in Exhibit A to this AGREEMENT. Only the following uses are allowed:
  - i. To maintain, restore and/or renovate existing parks, preserves and recreational facilities.
  - ii. To construct new parks and recreational facilities or acquire parklands.
  - iii. To engage in vegetation management to reduce wildfire risk, promote biodiversity or control invasive non-native weeds on private, municipal, or district lands.
- d. Without changing the ALLOCATION METHOD, COUNTY may review and adjust CITY/TOWN/DISTRICT's allocation every three years, beginning with the date of this AGREEMENT, to reflect population changes in the municipalities and applicable special districts receiving PROGRAM funds. COUNTY shall provide CITY/TOWN/DISTRICT's with notice of any adjustments.
- e. For CITY/TOWN/DISTRICT's budgeting purposes, COUNTY will provide an estimate of a CITY/TOWN/DISTRICT's annual allocation for the coming fiscal year on or about February 1, for as long as the tax is in effect. Actual allocation may be higher or lower than the estimate due to variability in annual tax receipts. The first estimate of annual allocation will occur on or about September 15, 2013.
- f. CITY/TOWN/DISTRICT is not required to match funds,
- g. CITY/TOWN/DISTRICT will segregate PROGRAM funds from other funds available to it. CITY/TOWN/DISTRICT is required to establish a Measure A Revenue Account and an annual Measure A Budget, out of which expenditures may be made. The Measure A Budget may be part of the CITY/TOWN/DISTRICT's annual budget. CITY/TOWN/DISTRICT may borrow from the Measure A Revenue Account, as long as (1) funds borrowed are repaid with interest at the same rate that CITY/TOWN/DISTRICT receives on its deposits and (2) all PROGRAM funds are expended for the purposes and within the timeframes specified in this AGREEMENT.
- h. CITY/TOWN/DISTRICT need not expend its annual allocation of PROGRAM funds in a single fiscal year. Allocations may accumulate with the CITY/TOWN/DISTRICT and carry over into multiple, successive fiscal years if, for example, CITY/TOWN/DISTRICT wishes to use the funds for a program, project or projects that cannot be funded with a single year allocation.
- i. CITY/TOWN/DISTRICT will expend the sum total of its annual allocations by April 1, 2023 which is one year after the date MEASURE A expires. On that date, PROGRAM funds not expended by CITY/TOWN/DISTRICT shall revert and be due to COUNTY, except as follows. In the event that, prior to April 1, 2022, CITY/TOWN/DISTRICT has initiated a project to be funded in part with PROGRAM funds, the last payment for which will be made after April 1, 2023, CITY/TOWN/DISTRICT may hold and use PROGRAM funds for that project after April 1, 2023.

- j. CITY/TOWN/DISTRICT's first Annual Measure A Work Plan, as described in Exhibit C will be due to COUNTY on December 1, 2013. Future annual work plans shall be due as stated in item "b" above. If CITY/TOWN/DISTRICT submits its first Annual Measure A Work Plan after December 1, the Disbursement described in item b(iv) above shall occur approximately 30 days subsequent to submittal.
- k. CITY/TOWN/DISTRICT is responsible for ensuring that environmental review and permitting requirements are fulfilled, if applicable, for all projects receiving Measure A funds
- l. CITY/TOWN/DISTRICT will spend Measure A funds solely on project or program costs. Project or program costs are defined as costs associated with staff, contractors, consultants or materials related to projects identified in the annual Work Plan.
- m. The accuracy of CITY/TOWN/DISTRICT's annual Measure A Expenditure Reports will be certified by the CITY/TOWN/DISTRICT's chief fiscal officer.
- n. COUNTY may audit CITY/TOWN/DISTRICT's expenditure of PROGRAM funds.
- o. COUNTY will assist CITY/TOWN/DISTRICT to establish practices and procedures, as necessary, to facilitate CITY/TOWN/DISTRICT's fulfillment of its responsibilities pursuant to this AGREEMENT.

## **2. Indemnification**

CITY/TOWN/DISTRICT shall defend, indemnify, hold harmless, and release COUNTY, its elected and appointed officials, officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses (hereinafter "LIABILITY") that may be asserted by any third party arising out of or in connection with CITY/TOWN/DISTRICT'S performance under or the making of this AGREEMENT, except to the extent that LIABILITY is caused by the negligence or willful misconduct of COUNTY.

COUNTY shall defend, indemnify, hold harmless, and release CITY/TOWN/DISTRICT, its elected and appointed officials, officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses (hereinafter "LIABILITY") that may be asserted by any third party arising out of or in connection with COUNTY'S performance under or the making of this AGREEMENT, except to the extent that LIABILITY is caused by the negligence or willful misconduct of CITY/TOWN/DISTRICT.

## **3. Duration and Termination**

The terms of this AGREEMENT shall remain in full force and effect for 10 (ten) years from the date adopted and signed. This AGREEMENT may be renewed by the mutual consent of all PARTIES. Any party may terminate this AGREEMENT by notifying the other party a minimum of 30 days in advance.

## **4. Contacts and Notices**

All notices under this Agreement shall be in writing (unless otherwise specified) delivered to the parties by hand, by commercial courier service, or by United States mail, postage prepaid, addressed to the parties at the addresses set forth below or such other addresses as the parties may designate by notice.

**For County:**

Director  
Marin County Parks  
3501 Civic Center Drive, Suite 260  
San Rafael, CA 94903  
Phone: (415) 473-6387  
Fax: (415) 473-3795  
Email: LDahl@marincounty.org

**For City, Town or District:**

Title  
Name of City/Town/District  
Address  
Phone  
Fax  
E-mail \_\_\_\_\_

**5. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this agreement shall be construed to create, and the PARTIES do not intend to create, any rights in third parties.

**6. EXPENSES**

Except as otherwise provided in Section 2 of this AGREEMENT, each party shall be solely responsible for and shall bear all of its own respective legal expenses in connection with any dispute arising out of this AGREEMENT and the transactions hereby contemplated. PARTIES may not use PROGRAM funds for the aforementioned purpose.

**7. INTEGRATION**

This AGREEMENT, including Exhibits A, B, C and D which are attached hereto and incorporated herein by reference, represents the entire AGREEMENT of the PARTIES with respect to the subject matter thereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein.

**8. AMENDMENT**

Except as otherwise provided herein, this AGREEMENT may not be changed, modified or rescinded except in writing, signed by all PARTIES hereto, and any attempt at oral modification of this AGREEMENT shall be void and of no effect.

**9. SEVERABILITY**

Should a court of competent jurisdiction rule or declare that any part of this AGREEMENT is unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this AGREEMENT, which shall continue in full force and effect; provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the day and year above written.

CITY, TOWN OR DISTRICT

\_\_\_\_\_

Mayor

Attest:

\_\_\_\_\_  
Clerk of the City/Town/District

\_\_\_\_\_  
CITY/TOWN/DISTRICT Clerk

Approved as to Form:

\_\_\_\_\_  
Attorney for City/Town/District  
CITY/TOWN/DISTRICT COUNSEL

By: \_\_\_\_\_

COUNTY OF MARIN

\_\_\_\_\_

President, Board of Supervisors

Attest:

\_\_\_\_\_  
Clerk of the Board

Approved as to Form:

COUNTY COUNSEL

By: \_\_\_\_\_

**EXHIBIT A**

Marin County Ordinance No. 3586

**EXHIBIT B**

Allocation Method

**EXHIBIT C**

Form of Annual Measure A Work Plan

**EXHIBIT D**

Form of Annual Measure A Expenditure Report

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