



TOWN OF FAIRFAX

STAFF REPORT

November 6, 2013

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

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)

RECOMMENDATION

- 1) Authorize the Town Manager to execute an agreement with the County of Marin to receive proceeds from Measure A.
- 2) Revise the Advisory Committee to consist of two Councilmembers, two Open Space Commissioners (OSC), One Parks and Recreation Commissioner (PARC), and one member from the Volunteer Board.

DISCUSSION

In November 2012, the Marin Parks, Open Space, and Farmland Preservation Transactions and Use Tax Ordinance 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 special districts in managing their parks, open space preserves, recreation programs, and vegetation to promote biodiversity and reduce wildfire risk. The County estimates the Town will receive over \$21,000 in revenue for the first nine months of the tax (April to Dec. 2013).

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.

In October 2013, the Council approved the formation of an Advisory Committee with representatives from the Council, PARC, and OSC to prepare a workplan for Council consideration. The Committee has yet to meet, but staff anticipates that the Committee will be able to meet and recommend a workplan to the Council by its December meeting. The Council has appointed its two Councilmembers. OSC has also appointed two members to participate. PARC indicates that its newest member will participate on the Committee after the Council appoints that person to PARC. The Volunteer Board would also like to appoint a Board representative to the Committee.

FISCAL IMPACT

We anticipate that the Town will receive over \$40,000 per year in Measure A funds.

Attachment: Agreement with the County of Marin

AGENDA ITEM # 5

GRANT AGREEMENT FOR DISBURSEMENT OF TAX PROCEEDS

BETWEEN

COUNTY OF MARIN

AND

TOWN OF FAIRFAX

This Grant Agreement (hereinafter "AGREEMENT") is made and entered into this 3rd day of December, 2013, by and between the County of Marin, a political subdivision of the State of California (hereinafter "COUNTY"), and the Town of Fairfax (hereinafter "TOWN"), 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, the term, applicable special districts, means a local public entity located wholly within the unincorporated area of Marin that was explicitly formed to provide services to the community for park and recreation purposes and/or park and recreation purposes plus open space. Applicable special districts do not include federal agencies, state agencies, extensions of the County government (i.e. CSAs) and/or districts located within an incorporated town or city even if such agencies or districts provide services to the community for recreation, open space or recreation programming.

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 December 3rd, 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 TOWN 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 TOWN, 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 from the Board of Equalization during the preceding January 1 through June 30 period and allocated to the TOWN according to the ALLOCATION METHOD. If TOWN 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 TOWN, in the form attached as Exhibit D, describing actual expenditures for the preceding fiscal year. Disbursement 2 will consist of PROGRAM funds from Measure A revenue received from the Board of Equalization during the preceding July 1 through December 31 period and allocated to the TOWN according to the ALLOCATION METHOD. If TOWN submits its Annual Measure A Expenditure Report after September 15, Disbursement 2 shall occur approximately 30 days subsequent to submittal. Late Expenditure Reports will delay annual reporting on Measure A, and the work of the Measure A Community Oversight Committee. TOWN is encouraged to produce Expenditure Reports on time.
 - 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 TOWN according to the ALLOCATION METHOD, and may be applied to TOWN PROGRAM expenditures and obligations made or incurred during that period. Any money spent prior to the approval of the first Work Plan may not be reimbursed by Measure A funds if the work performed does not meet the requirements of the Work Plan and Measure A Ordinance.
- c. TOWN'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 TOWN'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 TOWN with notice of any adjustments.
- e. For TOWN's budgeting purposes, COUNTY will provide an estimate of a TOWN's annual allocation for the coming fiscal year on or about February 1, for as long as the tax is in effect. COUNTY will base the estimate on the annual budget approved by the Board of Supervisors and account for an estimated delay in payment from the sales tax is assessed to the time a payment is made to COUNTY of three (3) months. 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 October 18, 2013.
- f. TOWN is not required to match funds.
- g. TOWN will segregate PROGRAM funds from other funds available to it. TOWN is required to establish a Measure A Revenue Account and an annual Measure A Budget, out of which expenditures may be made.
- h. TOWN need not expend its annual allocation of PROGRAM funds in a single fiscal year. Allocations may accumulate with the TOWN and carry over into multiple, successive fiscal years if, for example, TOWN wishes to use the funds for a program, project or projects that cannot be funded with a single year allocation.
- i. TOWN will expend the sum total of its annual allocations by 10 years after the date the original MEASURE A expires. On that date, PROGRAM funds not expended by TOWN shall revert and be due to COUNTY.

- j. TOWN's first Annual Measure A Work Plan, as described in Exhibit C will be due to COUNTY on December 16, 2013. Future annual work plans shall be due as stated in item "b" above. If TOWN 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. TOWN is responsible for ensuring that environmental review and permitting requirements are fulfilled, if applicable, for all projects receiving Measure A funds.
- l. TOWN 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 TOWN's annual Measure A Expenditure Reports will be certified by the TOWN's chief fiscal officer.
- n. COUNTY may audit TOWN's expenditure of PROGRAM funds.
- o. COUNTY will assist TOWN to establish practices and procedures, as necessary, to facilitate TOWN's fulfillment of its responsibilities pursuant to this AGREEMENT.

2. Indemnification

TOWN 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 TOWN'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 TOWN, 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 TOWN.

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 (thirty) 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 Town:

Town Manager
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Phone: 458-2345
Fax: 453-1618
E-mail: gtoy@townoffairfax.org

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.

TOWN OF FAIRFAX

Town Manager

Attest:

Clerk of the Town

Approved as to Form:
TOWN 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

Allocation Method: Marin County Ordinance No. 3586, the Marin Parks, Open Space, and Farmland Preservation Transactions and Use Tax Ordinance, also known as Measure A, earmarks 15% of its annual revenues for a “City, Town and Applicable Special District Program”. The municipalities and districts have worked together to agree upon an allocation method. The following allocation method is final:

Of the total funds available to this program annually:

- 73.55% shall be allocated to cities and towns. This amount shall be divided among the 11 municipalities on a per capita basis.
- 26.45% shall be allocated to the applicable special districts. Half of this amount shall be divided equally among the 8 districts. The remaining half shall be divided on a per capita basis among the districts.

Work Plan

**Measure A City, Town, and Applicable Special District Program
Proposed Expenditure of Measure A Funds for April 1, 2013 to June 30, 2014**

Timely and accurate completion of this report is a condition of receiving Measure A funds.

Instructions:

- This work plan must be completed by an authorized representative of the recipient.
- Please complete this work plan, then scan and e-mail it to Kevin Wright, Marin County Parks External Affairs Coordinator (kwright@marincounty.org), by December 15, 2013. In future years, this work plan will be due on June 1, before the start of the new fiscal year.
- Contact Mr. Wright by e-mail (kwright@marincounty.org) or phone (415) 473-2129 if you have any questions, or if you have suggestions to improve this form.
- Marin County Parks will review this plan within one month of its receipt to ensure that proposed expenditures are consistent with Marin County Ordinance 3586 (Measure A).
- Recipients must provide Marin County Parks with 30-days prior notice of any project additions or substitutions that are proposed while a work plan is in effect.
- Marin County Parks will provide the recipient with an estimate of recipient's Measure A funding for Fiscal Year 2013-14 by October 18, 2013.
- Total actual project expenditures may not exceed recipient's actual Measure A funding for any given fiscal year, plus any balance remaining from previous years.

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A. Name of Recipient (city, town, or special district):

B. Recipient's representative and contact information: (Please print all information)

Name: _____
(Print)

Title: _____
(Print)

Address: _____

City, Zip: _____

Phone: _____

E-mail: _____

C. Total estimated funds for current fiscal year 2013-14:

i.. Balance of recipient's Measure A funds from previous fiscal years	ii. Estimate of recipient's Measure A funds for Fiscal Year 2013-14. (This information will be provided by Marin County Parks)	iii. Total estimated available funds for current fiscal year (i + ii).
\$ 0	\$	\$

D. Recipient's Measure A Work Plan for Fiscal Year 2013-14:

Name of work or project:	Primary purpose of work or project. Select only one from list below. **	Description. Be as specific as possible. Include numbers related to square footage of facilities, acreage, etc. If Measure A funds were used for maintenance, use numbers to indicate change from pre-Measure A conditions.	Amount of Measure A funds estimated to be used:	Source(s) and amount(s) of matching funds projected for use. If none, enter "0"	Total expenditures projected for work or project in current reporting year
			\$		\$
			\$		\$

			\$		\$
			\$		\$
			\$		\$
Estimated Total					\$

****Select work or project purpose only from the following menu:** (see next page for additional choices)

- a) Routine maintenance
- b) Renovation of existing recreational facility, including infrastructure (includes planning, environmental review, permitting, design development, etc.)
- c) Construction of new park or recreation facility (includes planning, environmental review, permitting, design development, etc.)
- d) Parkland acquisition
- e) Vegetation management to reduce wildfire risk
- f) Vegetation management to promote biodiversity
- g) Vegetation management to control invasive, non-native weeds

E. Certification

I certify that the information contained herein is true and accurate, to the best of my knowledge.

Signature

Title

Print Name

Date

Expenditure Report

Measure A City, Town, and Applicable Special District Program Expenditure of Measure A Funds for April 1, 2013 to June 30, 2014

Timely and accurate completion of this report is a condition of receiving Measure A funds, and is necessary to fulfill financial reporting requirements pursuant to Marin County Ordinance 3586 (Measure A). Information contained in this report is subject to verification and will be included in a Measure A Annual Report prepared by Marin County Parks.

Instructions:

- This report must be completed by an authorized representative of the recipient and signed by both the authorized representative and the chief fiscal officer.
- Please complete this report, then scan and e-mail it to Kevin Wright, Marin County Parks External Affairs Coordinator (kwright@marincounty.org), by September 15, 2014.
- Contact Mr. Wright by e-mail (kwright@marincounty.org) or phone (415) 473-2129 if you have any questions, or if you have suggestions to improve this form.
- Recipients are encouraged to accompany reports with photos of finished work and projects funded in full or in part by Measure A. Please include the project name and other pertinent information in the photo file name. If you plan on submitting a large number of photos, please contact Mr. Wright for access to a Dropbox folder to facilitate the file transfer.

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A. Name of Recipient (city, town, or special district):

B. Recipient's representative and contact information:

Name: _____ Title: _____

(Print)

Address: _____ City, Zip Code

Phone: _____ E-mail:

C. Recipient's total actual allocation of Measure A funds for Fiscal Year 2013-14 (sum of disbursements received):

\$ _____

D. Balance of recipient's Measure A funds on June 30, 2014:

i. Remaining balance from current reporting year	ii. Balance from previous years	iii. Total balance (i + ii) on June 30, 2014
\$	\$ 0	\$

E. Recipient's total expenditures for Fiscal Year 2013-14. Attach a list of itemized expenditures for each project.

Name of work or project (as it appears in the Work Plan):	Primary purpose of work or project. Select only one from list below.	Revised description based on what was actually accomplished (use numeric values where possible to quantify and update information from Work Plan)	Amount of Measure A funds used:	Source(s) and amount(s) of matching funds used. If none, enter "0"	Total expenditures for work or project in reporting year
			\$		\$
			\$		\$

			\$		\$
			\$		\$
			\$		\$
Actual Total					\$

F. Certification

I certify that the information contained herein is true and accurate, to the best of my knowledge.

 Signature _____ Title (Print) _____
 Date

 Print Name

 Signature, Chief Fiscal Officer _____ Date _____

 Print Name, Chief Fiscal Officer