


# **TOWN OF FAIRFAX**

## **STAFF REPORT**

### **December 5, 2018**

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager 

**SUBJECT:** Authorize Town Manager to execute a Joint Exercise of Powers Agreement (JEPA) for the formation of an advisory group to provide oversight and guidance for yellow school bus services in the Ross Valley

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#### **RECOMMENDATION**

Authorize the Town Manager to execute the Joint Exercise of Powers Agreement (JEPA) between the Town of San Anselmo, Town of Fairfax, County of Marin and Ross Valley School District to provide public oversight to the Ross Valley Yellow School Bus Program.

#### **BACKGROUND**

Beginning in the School Year of 2016/2017, the Town of Fairfax has provided annual funding to help support the Yellow Bus Program. This program provides bus service to students attending White Hill Middle School, along with limited service for students attending Hidden Valley Middle School. This program is designed to relieve congestion along the Sir Francis Drake corridor.

A planning group consisting of representatives from the Towns of Fairfax and San Anselmo, the County, the Ross Valley School District (RVSD), and Marin Transit, has met periodically to review, discuss, and evaluate the program. This group has been convening since the fall of 2016.

#### **DISCUSSION**

Over the past three school years, the Yellow Bus Program has been operated by Marin Transit, who contracts with Michael's Transportation to provide the bus service. Marin Transit staff have provided all coordination of the program including bus pass sales, route development and management, and financial management.

The program has been funded in part by large annual contributions from the County of Marin and Transportation Authority of Marin (TAM), along with smaller contributions by the Towns of Fairfax and San Anselmo. These sources make-up about half of the program's operating budget. The other half of the funding comes from student bus pass sales.

The objective of the current planning group is to create a more formal structure from which to provide local feedback and input to the program's management team from Marin Transit. The JEPA has been drafted to form a Joint Committee to achieve this.

As stated in the JEPA, the purpose of this Agreement is to “enable the Member Agencies to provide enhanced public oversight and transparency regarding school-related traffic relief throughout the Ross Valley by providing policy guidance and advice to Marin Transit as a manager of yellow bus services.”

Member Agencies will provide feedback to Marin Transit to assist with coordination of the provision of yellow bus services in the Ross Valley School District, focusing on advice regarding annual budget formation, decision making regarding service issues and service levels, and enhanced public oversight regarding yellow bus needs and services in the Ross Valley School District.

The Joint Committee will have the following functions:

1. Establish objectives and priorities, at least annually, for the operation of Ross Valley Yellow Bus services.
2. Evaluate the operation of Ross Valley Yellow Bus services and the performance of Ross Valley Yellow Bus services on a continuing basis.
3. Coordinate the Parties’ identification and development of funding mechanisms, including but not limited to, public and private grants and other private participation.
4. Annually, provide feedback and advice to Marin Transit as a manager of Yellow Bus services, focusing on advice regarding annual budget formation, decision making regarding service issues and service levels, and enhanced public oversight regarding Yellow Bus needs and services in the Ross Valley School District.
5. Adopt Committee by-laws consistent with this Agreement which will set forth rules and procedures for the conduct of the Joint Committee’s business.

The Town of San Anselmo has graciously volunteered to be the lead agency and will be responsible for all the JEPA administration.

Councilmembers Goddard and Reed, as the Town’s liaisons to the RVSD Board, would be the Town’s elected representatives to the JEPA.

### **FISCAL IMPACT**

While the Town contributes \$10,000 per year toward Yellow Bus services, the formation of the JEPA will not have a financial impact on the Town. It is important to note, however, that funding for the Yellow Bus programs countywide is uncertain at this time. The recently passed Measure AA will provide increased funding for school-related transit services when compared to Measure A, but it is expected that there will be increased competition for this funding by other local agencies who do not currently receive funding.

### **ATTACHMENT**

Joint Exercise of Powers Agreement for the Yellow Bus Program

**ROSS VALLEY YELLOW BUS TRANSPORTATION SERVICES  
JOINT EXERCISE OF POWERS AGREEMENT**

This joint exercise of powers agreement between the Ross Valley School District, Town of San Anselmo, Town of Fairfax, and the County of Marin (hereinafter collectively referred to as the "Parties") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018.

**RECITALS**

WHEREAS, the Parties desire to join for the purpose of providing enhanced public oversight and transparency regarding school-related traffic relief throughout the Ross Valley by, among other things, providing policy guidance and advice to the Marin County Transportation District (hereinafter "Marin Transit") as a manager of yellow bus transportation services (hereinafter "yellow bus services").

WHEREAS, the Parties do not intend to establish a joint powers authority through this Agreement.

**AGREEMENT**

**ARTICLE I.**

**Definitions.**

1. "Lead Agency" means the Town of San Anselmo, or any Member Agency that, with the written consent of the Parties, is designated as a subsequent new Lead Agency.
2. "Member Agency" means a Party to this joint exercise of powers agreement ("Agreement") other than the Lead Agency.

**ARTICLE II.**

**1. Purpose.**

The purpose of this Agreement is to enable the Member Agencies to provide enhanced public oversight and transparency regarding school-related traffic relief throughout the Ross Valley by providing policy guidance and advice to Marin Transit as a manager of yellow bus services.

Member Agencies will provide feedback to Marin Transit to assist with coordination of the provision of yellow bus services in the Ross Valley School District focusing on advice regarding annual budget formation, decision making regarding service issues and service levels, and enhanced public oversight regarding yellow bus needs and services in the Ross Valley School District.

**2. Powers.**

The powers to be exercised by the parties are those express and implied powers under applicable provisions of law, focusing on advisory guidance to Marin Transit as a manager of yellow bus services.

### **3. Method.**

The method of implementing the above purpose and executing the above powers is to provide policy guidance to Marin Transit in accordance with the terms and conditions herein under the leadership of a joint committee consisting of two representatives from each of the Parties ("Joint Committee"). By this Agreement the Parties do not create an agency or entity separate from the Parties themselves.

### **4. Parties.**

A current list of participating agencies is attached hereto as Exhibit A. This Agreement is not effective until executed by all participating agencies. No agencies can be added without the prior written amendment of this Agreement.

### **5. Term of Agreement.**

Irrespective of the date or dates of execution hereof, the term of this Agreement will commence January 1, 2019 and will continue unless terminated earlier by mutual agreement of the Parties or as otherwise provided for in this Agreement.

### **6. Termination.**

a. A Member Agency may terminate its membership for any reason and will give written notice to the Parties of its intention to terminate membership no less than thirty (30) days prior to the effective date of termination.

b. The Lead Agency may terminate its membership for any reason and will give written notice to the Parties no less than ninety (90) days prior to the effective date of termination.

c. Termination for Cause. A Member Agency's membership may be terminated for cause if two-thirds (2/3) of the Parties approve of the termination. For purposes of this Agreement, cause includes, but is not limited to, material breach of this Agreement by the Member Agency or violation by the Member Agency of any applicable laws. Notice of termination will specify the reason for termination and will indicate the effective date of such termination.

### **7. Share of Cost/Funding.**

Each Party, in its normal and customary appropriation process, may identify and develop resources to cooperate with all other parties in the sharing of any agreed costs of yellow bus services in the Ross Valley School District, respecting the fact no provision in this Agreement requires any Party to make any specific financial commitments (as provided in Article III(1)(f), below).

## **ARTICLE III**

### **1. The Joint Committee**

a. Each Party to this Agreement will have two (2) representatives on the Joint Committee, consisting of one (1) elected official and one (1) staff member. Each agency will have one (1) vote. The elected official from each agency, when present, shall be the voting representative from the agency. When the elected official is not present, but the staff member representative is present, the staff member shall have the power to vote. Although not required, any agency

may appoint an alternate elected official to represent, and vote on behalf of, the agency in the absence of its primary member.

b. By majority vote of the Joint Committee, the members of the Joint Committee will select a chairperson, or co-chairpersons, at its first meeting of the new calendar year. The term of the chairperson(s) will extend through December of that year. A vacancy in the office will be filled for the balance of the term by a representative, or representatives, selected by a majority vote of the Joint Committee at the first meeting of the Joint Committee following notice of the vacancy.

c. The Joint Committee will meet as often as necessary to fulfill its functions, but not less than two (2) times per year. The frequency of and agendas for such meetings will be determined by the chairperson(s). The chairperson(s) will provide each representative and the public with notice of meetings, together with an agenda of matters to be discussed.

d. A quorum of four representatives will be required in order for the Joint Committee to meet, provided that at least one representative from at least three of the four public agencies that are parties to this agreement are present. Except where otherwise provided in this Agreement, a unanimous vote of the Joint Committee representatives present at the meeting is required for the Joint Committee to act.

e. The Joint Committee will have no power to alter, amend, modify or terminate this Agreement except as expressly delegated to it in accordance with this Agreement.

f. The Joint Committee will have no power to obligate the Parties financially, including no power to obligate the Parties to make in-kind commitments.

g. The Joint Committee will have the following functions:

1. Establish objectives and priorities, at least annually, for the operation of Ross Valley yellow-bus services.
2. Evaluate the operation of Ross Valley yellow-bus services and the performance of Ross Valley yellow-bus services on a continuing basis.
3. Coordinate the Parties' identification and development of funding mechanisms, including but not limited to, public and private grants and other private participation.
4. Annually, provide feedback and advice to Marin Transit as a manager of yellow bus services, focusing on advice regarding annual budget formation, decision making regarding service issues and service levels, and enhanced public oversight regarding yellow bus needs and services in the Ross Valley School District.
5. Adopt Committee by-laws consistent with this Agreement and with all applicable laws that include, but are not limited to, Ross Valley yellow bus service overview and the mission of Ross Valley yellow bus service as provided under this Agreement in coordination with Marin Transit. The by-laws will also set forth rules and procedures for the conduct of the Joint Committee's business. Such rules and procedures will include a process for the orderly documentation of Joint Committee meetings, including the distribution of meeting agendas and final meeting minutes.

## **2. Lead Agency Obligations.**

The Lead Agency shall be the Town of San Anselmo, which can be changed subject to written consent of all Parties to this Agreement. The Lead Agency will:

- a. Provide all noticing and clerk responsibilities as necessary for the conduct of open meetings in compliance with the Brown Act and adhere to all Member Agency Obligations set forth in Article III, Section 3 of this Agreement.
- b. Prepare minutes and memorialize into writing any decisions of the Joint Committee, including the issuance of bylaws, the passage of resolutions, or other actions.

## **3. Member Agency Obligations.**

Each of the Parties will:

- a. Comply with all policies and procedures established by the Lead Agency to facilitate the Lead Agency's administrative work.
- b. Submit any local reports to the Joint Committee or Lead Agency as required by the Joint Committee, except where information is confidential as a matter of law or agency policy.

# **ARTICLE IV**

## **1. Data Privacy and Confidentiality**

The Parties agree to comply with applicable Federal and State laws and regulations in effect at the inception of this Agreement, or that become effective during the term of this Agreement, concerning the handling and disclosure of private and confidential information.

## **2. Mutual Indemnification.**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but instead the Parties agree that pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such Party under this Agreement. No Party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other Parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other Parties under this Agreement.

## **3. Nondiscrimination.**

The Parties will comply with all applicable Federal, State, and local laws and regulations. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. The Parties will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will the Parties discriminate in provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

**4. Notices.**

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other Parties to this Agreement.

**5. Contact Person/Program Manager.**

To coordinate the services of the Parties under this Agreement, the Lead Agency will identify an individual to act as a contact person for the program operated by Marin Transit.

**6. Governing Law.**

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

**7. Entire Agreement.**

This document represents the entire Agreement between the Parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the Parties with respect to the subject matter of this Agreement are merged into this Agreement.

**8. Amendments.**

This Agreement may be amended only by a written instrument signed by each of the Parties.

**9. Counterparts and Delivery.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Lead Agency will deliver to each Member Agency three executed originals of this Agreement. Each Member Agency will deliver to the Lead Agency two originals of this Agreement executed by the Member Agency as soon as practicable following its execution.

**10. Assignment.**

Except to the extent expressly provided herein, no Party may assign any right or obligation hereunder without the written consent of the other Parties to the Agreement.

**11. Severability.**

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

**12. Waiver.**

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing, and shall apply to the specific instance expressly stated.

IN WITNESS WHEREOF, the below designated Parties have executed this Agreement on the dates set forth below.

TOWN OF SAN ANSELMO

COUNTY OF MARIN

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

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

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Agency Legal Counsel

\_\_\_\_\_  
Agency Legal Counsel

TOWN OF FAIRFAX

ROSS VALLEY SCHOOL DISTRICT

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

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

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Agency Legal Counsel

\_\_\_\_\_  
Agency Legal Counsel



## **EXHIBIT A**

### **LIST OF JURISDICTIONS PARTICIPATING IN THE ROSS VALLEY YELLOW BUS SERVICE AGREEMENT**

1. County of Marin
2. Town of Fairfax
3. Town of San Anselmo
4. Ross Valley School District