



TOWN OF FAIRFAX

STAFF REPORT

December 4, 2019

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Approve reimbursement agreement with FIRESafe MARIN to advance funds- the Town will be reimbursed by a CAL FIRE grant- for FIRESafe MARIN's work to reduce roadside vegetation and improve evacuation routes in Cascade Canyon, Manor Hill, Deer Park, and Forrest Avenue.

RECOMMENDATION

Authorize the Town Manager to execute an agreement with FIRESafe MARIN (FIRESafe) to advance funds- FIRESafe will reimburse the Town from a CAL FIRE grant- to FIRESafe to perform work to reduce roadside vegetation and improve evacuation routes in Town.

DISCUSSION

FIRESafe MARIN was awarded a grant by CAL FIRE for 2019-2020 to reduce roadside vegetation and improve wildfire evacuation routes in vulnerable neighborhoods where Firewise USA sites exist. In Fairfax, this affects 4 neighborhoods - Cascade Canyon, Manor Hill, Deer Park, and Forrest Ave.

The grant functions on a reimbursement basis. CAL FIRE will reimburse FIRESafe MARIN for expenses incurred, following completion of each project area and submission of a work report and invoice. Reimbursement typically takes 90-120 days from time of invoice submission. In order to complete this work in Fairfax, FIRESafe MARIN requests that the Town of Fairfax fund the upfront costs by paying the project contractors directly, and be reimbursed when FIRESafe receives payment from the CAL FIRE grant. However, FIRESafe MARIN is responsible for contracting for the work, managing the work, and authorizing payment to the contractors. In essence, the Town is advancing funds for the work and will be reimbursed by FIRESafe's CAL FIRE grant. The Town will be issuing temporary encroachment permits for the contractors performing the work in Town.

The approximate FIRESafe budget for work in the Town of Fairfax includes:

Area	Road Miles	Budget
Manor Hill	4.75	\$71,276
Cascade Canyon	5.96	\$89,386
Forest Ave/Deer Park	4.78	\$71,659
Fire Access Roads in Town Limits	3	\$60,000
Total 18.49 miles		\$292,321

FIRESafe anticipates work beginning December 2019 and extending through Spring 2020 pending approval of this proposal by the Town of Fairfax. FIRESafe MARIN will provide basic signage ("Wildfire Evacuation Route Vegetation Removal from XX date to XX date"), liaison with Firewise USA communities from each neighborhood, and will have a local project coordinator to manage contractors and provide a point of contact for residents. The Town will assist FIREsafe MARIN with additional roadway signage and electronic communication (e.g., Nextdoor, newsletter) with residents in the affected neighborhoods.

FISCAL IMPACT

Any lost interest on the advanced funds would be offset by the benefits of the project and the work being managed by FIRESafe Marin.

ATTACHMENT

Agreement

**REIMBURSEMENT AGREEMENT BETWEEN
TOWN OF FAIRFAX AND
FIRE SAFE MARIN, INC. FOR
ADVANCE FUNDING FOR VEGETATION MANAGEMENT**

This REIMBURSEMENT AGREEMENT (“Agreement”) is made this ____ day of _____, 2019, by and between the Town of Fairfax, a California municipal corporation (“Town”), and Fire Safe Marin, Inc., a California nonprofit corporation with its principal place of business at 33 Castle Rock Road, Woodacre, CA 94973 (“Fire Safe Marin”). Town and Applicant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. Fire Safe Marin was awarded a grant by the California Department of Forestry and Fire Protection (“CAL FIRE”) to reduce roadside vegetation and improve wildfire evacuation routes (“vegetation management”) in vulnerable neighborhoods, including four neighborhoods in the Town.

B. Fire Safe Marin and CAL FIRE entered into a grant agreement on July 26, 2019 for the Central Marin & Ross Valley Wildfire Access/Egress Fuel Reduction Program (“grant agreement”), described in Exhibit A, attached hereto and incorporated herein. Under the grant agreement, CAL FIRE will reimburse Fire Safe Marin for vegetation management expenses incurred after a project area is completed and a work report and invoice are submitted.

C. Immediate funding is required in order to pay for the vegetation management work that CAL FIRE will later reimburse.

D. The Parties desire to enter into this Agreement to provide the terms that Town will pay the project contractors directly hired to perform vegetation management for the four affected neighborhoods in the Town (“Costs”), and Fire Safe Marin will reimburse Town for such Costs when Fire Safe Marin receives payment from CAL FIRE.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by Town and Fire Safe Marin as follows:

TERMS

1. Incorporation of Recitals. The parties hereby agree that the above recitals are true and correct and are therefore incorporated herein by reference.

2. Term. This Agreement shall remain in effect until Fire Safe Marin has repaid to Town the Costs that Town has paid in advance, as described herein.

3. Obligations of Town. Town shall undertake the following obligations:

(a) Pay the project contractors that Fire Safe Marin hires to perform vegetation management services for Town in connection with the grant agreement (“Services”). In no event shall the total amount Town advance payment for Services under this Agreement exceed Two Hundred Ninety-Two Thousand Three Hundred Twenty-One Dollars (\$292,321), as described in Exhibit B, attached hereto and incorporated herein. All Services shall be conducted in compliance

with all applicable local, state and federal laws including, without limitation, the California Public Contract Code and the California Labor Code.

(b) Fire Safe Marin shall provide Town with an invoice submitted by the project contractors hired to perform the Services and Town shall pay project contractors within thirty (30) days of the date of the invoice.

4. Obligations of Fire Safe Marin. Fire Safe Marin shall undertake the following obligations:

(a) Within thirty (30) days of receipt of reimbursement by CAL FIRE for the Services performed by the project contractors, Fire Safe Marin shall reimburse Town for the full amount Town has paid project contracts in advance pursuant to Section 3 above.

(b) If Fire Safe Marin does not reimburse Town for the Costs in full within ten (10) days of the due date specified Section 4(a) or by August 15, 2022, whichever is earlier, interest which shall accrue on the balance at a rate of 8% per annum. Accrued interest may be waived at the sole discretion of the Town.

5. Default. If Fire Safe Marin fails to reimburse Town pursuant to Section 4(b) or the Services are not fully performed, Town shall provide notice to Fire Safe Marin that Fire Safe Marin is in default under this agreement.

6. Insurance.

(a) Fire Safe Marin shall not allow any contractor or subcontractor to commence work on any contract or subcontract until it has secured all insurance required under this section. Prior to execution of the Agreement, Fire Safe Marin shall file with Town evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein.

(b) Minimum Policy Limits Required.

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

7. Indemnification. Fire Safe Marin hereby agrees to indemnify, defend, assume all liability for and hold harmless Town and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including without limitation any fines, penalties, judgments, actual litigation expenses and attorneys' fees), and/or personal injuries or death to any persons (collectively, "Claims"), arising out of or in any way connected to any of the activities under this Agreement.

8. Entire Agreement. This Agreement represents the entire understanding of Town and Fire Safe Marin as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered hereunder.

9. Amendments. No amendment, modification, or supplement of this Agreement, shall be binding without the written consent of both Parties.

10. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

11. Legal Actions. Any Party may institute legal action to cure, correct or remedy any default, and the Town may institute an action against Fire Safe Marin, to recover damages, in whole or in part, for any default under this Agreement including, but not limited to, failure to repay Town for Costs that Town has paid pursuant to Section 3, or to obtain any other remedy available to that Party under this Agreement or at law or in equity. This Agreement is executed and is to be performed in the Town of Fairfax, Marin County, California, and any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of Marin, California.

12. Governing Law and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. In the event of any such action between the Parties, the prevailing Party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the court.

13. Severability and Waiver. The unenforceability, invalidity, illegality, or unconstitutionality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid, illegal, or unconstitutional. Waiver by any Party of any portion of this Agreement shall not constitute a waiver of any other portion thereof.

**SIGNATURE PAGE FOR
REIMBURSEMENT AGREEMENT BETWEEN
TOWN OF FAIRFAX AND
FIRE SAFE MARIN, INC. FOR
ADVANCE FUNDING FOR VEGETATION MANAGEMENT**

IN WITNESS WHEREOF, this REIMBURSEMENT AGREEMENT between Town of Fairfax and Fire Safe Marin, Inc. for Advance Funding for Vegetation Management, is executed by Town and Fire Safe Marin.

TOWN OF FAIRFAX

FIRE SAFE MARIN, INC.

By: _____
Garrett Toy
Town Manager

By: _____
Rich Shortall
President, Board of Directors

Attest: _____
Michele Gardner
Town Clerk

Attest: _____
Todd Lando
Fire Safe Council Coordinator

Approved as to Form:

By: _____
Janet Coleson
Town Attorney

Exhibit A
Grant Agreement
Central Marin & Ross Valley Wildfire Access/Egress Fuel Reduction Program

[to be inserted]

Exhibit B
Budget for Services Performed in Town

Area	Road Miles	Budget
Manor Hill	4.75	\$71,276
Cascade Canyon	5.96	\$89,386
Forest Ave/Deer Park	4.78	\$71,659
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