



TOWN OF FAIRFAX

STAFF REPORT

November 4, 2020

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Adopt a Resolution Authorizing the Mayor to Sign the Dissolution Agreement of the Marin County Major Crimes Task Force

RECOMMENDATION

Adopt a Resolution authorizing the Mayor to sign the Dissolution Agreement of the Marin County Major Crimes Task Force (MCMCTF) to:

- (1) formally terminate the MCMCTF's JPA Agreement dated February 25, 2016; and
- (2) provide for the dissolution of the MCMCTF and its operations; and
- (3) liquidate the Task Force's assets and distribute such assets and property (including all asset forfeiture funds, monies and grants) pursuant to Article 7.2 of the MCMCTF JPA

BACKGROUND

The Marin County Major Crimes Task Force (MCMCTF) was created in 1977, and in 1979 was expanded and formalized at the behest of the Marin County Police Chiefs' Association by entry into a Joint Powers Agreement (JPA) among all the cities, towns and the County of Marin.

The MCMCTF has successfully operated for many years as a general investigation unit charged with assisting local agencies in investigating resource-intensive crimes as well as narcotics offenses, and it operated across jurisdictional boundaries within the County. Fairfax has viewed its participation in the MCMCTF as an "insurance" policy for additional resources that may be needed for a major criminal investigation.

Over the years, the MCMCTF was restructured by multiple amendments to its JPA Agreement, centralizing control with the Marin County Sheriff's Office. The current, operative version of the amended JPA Agreement was executed by the County and all the member agencies and is dated February 25, 2016. Section 7.1 of this amended JPA Agreement provides that it shall be deemed terminated when member agencies representing fifty percent or more of the population of Marin County file their notices of intent to withdraw.

DISCUSSION

On June 19, 2020, on behalf of the City/Town Managers, the Chair of the Marin Managers' Association (MMA) advised the Sheriff in writing that, because of the COVID-19 pandemic and the extreme stress it imposed upon the budgets of the member agencies, it was soon likely that agencies representing more than fifty percent (50%) of the County's population would file notices of intent to withdraw from the Task Force, thereby resulting in termination of the JPA Agreement.

In late June 2020, the City/Town Managers of member agencies Novato, San Rafael, Mill Valley, Ross, Belvedere, Fairfax, Tiburon, Larkspur, San Anselmo and Corte Madera, advised the Board Chair of the Task Force Oversight Committee in writing they were formally providing their notices of intent to withdraw and thereby invoked Article 7.1's termination process.

Representatives of the County and the Member Agencies formed a subcommittee, following receipt of the aforementioned notices of intent to withdraw, held periodic meetings and worked closely together to inventory the Task Force's assets, sell its vehicles, account for asset forfeiture funds and create reserve projections for close-out costs such as lease payments, evidence processing costs, liability insurance premiums, and related dissolution expenses.

After a three-month process, the subcommittee negotiated an agreement to: (1) formally terminate the MCMCTF's JPA Agreement dated February 25, 2016; (2) provide for the dissolution of the MCMCTF and its operations; and (3) liquidate the MCMCTF's assets and distribute such assets and property (including all asset forfeiture funds, monies and grants) pursuant to Article 7.2 of the JPA.

On September 28, 2020, the subcommittee met with the MCMCTF Oversight Committee and reviewed this agreement. No changes were recommended by the Oversight Committee.

This Dissolution Agreement must be approved and signed by the member agencies consisting of the County of Marin and the Cities/Towns of Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael and Tiburon, for the purposes of terminating the Joint Powers Agreement creating the Marin County Major Crimes Task Force and dissolving the Task Force.

At the request of the Marin Managers Association, Thomas Bertrand was hired to represent the City/Town member agencies and authored the attached agreement in coordination with Marin County Counsel Kerry Gerchow. Attached is a summary of the agreement prepared by the MMA subcommittee. In essence the agreement dissolves the MCMCTF and ensures the member agencies do not incur any future expenses/liabilities associated with its dissolution. In exchange, we give up all claims to potential future asset revenues due the MCMCTF.

FISCAL IMPACT

At the August Council meeting to adopt the Town's FY20-21 budget, staff recommended, and the Council approved the reallocation of \$100,000 from the Police budget to the Racial Equity and Social Justice Committee for expenses. At the meeting, we indicated that a portion of the \$100,000 was from savings related to the pending dissolution of the MCMCTF. The FY20-21 budgeted amount for the MCMCTF was approximately \$25,000. However, all the member agencies had to pay the estimated costs for the first quarter of MCMCTF operations prior to its dissolution. Fairfax's share was approximately \$4,000. As a result, the Town will save approximately \$21,000 from the dissolution in FY20-21. It should be noted that the Sheriff's office has indicated it plans to reconstitute a smaller version of the MCMCTF that communities may wish to join. Staff anticipates that discussion being incorporated into the next budget cycle for FY21-22, but not the current year's budget.

ATTACHMENTS

- A. Summary of agreement
- B. Resolution, with Dissolution Agreement included as Exhibit A

ATTACHMENT A

Summary of the Agreement

Section 1: The Agreement, included as Exhibit A to the Resolution, includes the final spreadsheets that set forth the various applicable calculations, valuations, projections and figures necessary to proceed with the Task Force's dissolution and final termination of the current JPA Agreement. Both the County of Marin and the City/Town Member Agencies agree that these final figures are accurate and correct to the best of the parties' knowledge and abilities. The parties all agree that they will not challenge or contest these figures for any reason in any subsequent forum or proceeding.

Section 2: In the foregoing meetings, representatives of the County of Marin and the City/Town Member Agencies jointly sought the most expeditious, simple and fair terms for dissolving the Task Force and distributing its assets. The parties have agreed upon such terms as set forth in the agreement.

Section 3: All the Member Agencies agree to waive and forego any and all claims or rights to their respective shares of MCMCTF assets/monies as follows: (a) waiver of any and all of their rights or claims to asset forfeiture funds to which they would be entitled in the future; (b) waiver of any and all of their rights or claims to cash amounts currently existing in the MCMCTF savings and checking accounts; (c) waiver of any and all of their rights to any FY 2019-20 MCMCTF budget surplus; (d) waiver of any and all of their rights to the sale proceeds of the seven MCMCTF vehicles recently sold; (e) waiver of any and all of their rights to claim that the remaining five MCMCTF vehicles have monetary value while being retained/used by County of Marin; (f) waiver of any and all of their rights to claim that the office lease has value if subleased or if occupied by the County of Marin for its own use; (g) waiver of any and all of their rights to unused funds calculated/set aside for future evidence processing, insurance, rent or other such reserve contingencies; and (h) waiver of any and all of their rights to the use or value of all office furniture, computers, and other such equipment possessed by the MCMCTF.

Section 4: Notwithstanding the foregoing paragraph, County of Marin hereby agrees to pay/distribute to both Central Marin Police Authority (Larkspur/Corte Madera/San Anselmo) and Novato their respective shares/payouts of asset forfeiture funds previously agreed to: \$107,434 to CMPA and \$74,147 to Novato. Such payments to CMPA and Novato shall be made upon final execution of this agreement, which shall be effectuated upon the final Member Agency's formal adoption of this Agreement by its governing body in a public meeting. Member Agencies agree to facilitate such formal adoption as soon as practicable after recommendation of said Agreement by the Major Crimes Task Force Oversight Committee.

Section 5: The County of Marin and Member Agencies also each agree to themselves assume, and make no claims for, their respective shares expended to date for operation of the MCMCTF during the final months of 2020 immediately preceding its termination/dissolution.

Section 6: The City/Town Member Agencies, in exchange for and in consideration of their agreement to waive their entitlement to their respective shares of Task Force assets as set forth in paragraph 4 above, shall be forever relieved as of the effective date of this agreement from any and all duties, obligations, liabilities, debts, responsibilities and claims arising from both the operation and the dissolution of the MCMCTF. The County of Marin, by and through its Sheriff's Office acting as the Designated Police Agency under the JPA Agreement, hereby agrees to be the "Dissolving Member" of the Task Force and to undertake all actions necessary to effectuate the dissolution of the Task Force, including but not limited to (i) the establishment of necessary reserve funds; (ii) undertaking

final evidence processing tasks; (iii) procurement of tail liability insurance and establishing, if appropriate, self-insured reserve funds; (iv) payment of all remaining rental payments and proper termination of the office lease; (v) preparation and filing of the appropriate Statement of Facts-Roster of Public Agencies with the California Secretary of State's Office; and (vi) whatever other final actions are required to completely and finally dissolve the Task Force. The County of Marin agrees to provide the City/Town Member Agencies with copies of all tail insurance policies/declaration pages procured by it covering the Task Force upon expiration of current liability insurance effective through June 30, 2021.

Section 7: As further consideration for the City/Town Member Agencies' agreement to waive their entitlement to their respective shares of MCMCTF assets as set forth in the agreement, the County of Marin agrees to fully indemnify, hold harmless, defend and release all the City/Town Member Agencies and their officers, directors, agents and employees from any and all liabilities, actions, claims, damages, costs, and expenses of suits, which may ever be asserted after execution of this agreement by any person or entity arising out of or in connection with the activities the MCMCTF and its agents and employees whether or not concurrent passive negligence exists on the part of the Member Agencies but excluding liability for said Member Agencies' gross negligence or willful misconduct. This indemnification obligation is not limited in any way by the amount or types of damage claims made against or paid on behalf of the MCMCTF or its agents under any legal theory, statute or basis of recovery. From and after dissolution, the City/Town Member Agencies agree to cooperate fully with the County of Marin in connection with any existing or future investigations, claims, litigation, audits or similar actions involving the Task Force in which and to the extent the County of Marin deems the Member Agencies' cooperation is necessary.

Section 8: Both the County of Marin and Member Agencies agree that the dissolution terms set forth in this agreement comply with the requirements of Section 7.2 of the current JPA Agreement providing for the distribution of assets in proportion to the contributions of the parties.

Section 9: Should any disagreement or dispute between the parties arise concerning interpretation, implementation, and/or enforcement of any of the terms or subject matter of this Agreement, the parties shall submit such dispute to mandatory mediation before an agreed-upon mediator, with each party to pay an equal share of the mediation fees and each party to pay its own attorneys' fees and legal costs. Should the parties be unable to agree upon a mediator, they shall agree upon a mediation service and shall have that service select a mediator for them. Should mediation be unsuccessful, then the parties each agree that they shall submit their dispute to binding arbitration before a mutually agreeable arbitrator. If they cannot agree upon an arbitrator, they shall select an arbitration service, which shall select an arbitrator for them. The parties each shall pay an equal portion of the arbitration fees and each party shall pay its own attorneys' fees and legal costs, it hereby being agreed that the arbitrator shall have no authority to award attorneys' fees or costs to any prevailing party. The parties each hereby expressly waive any and all rights to have disputes under this agreement decided by court action, court trial, jury trial, or any other legal action of any kind or type, other than the mandatory mediation and binding arbitration process specified above. However, in emergency or extraordinary circumstances, the parties may seek equitable or injunctive relief to preserve the status quo pending occurrence of the mediation/arbitration process set forth herein. It is the express intent of each party to have any and all disputes under this agreement resolved by the above-specified mediation/arbitration process and in as timely and economical manner as possible.

ATTACHMENT B

RESOLUTION 20-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AUTHORIZING THE MAYOR TO SIGN THE DISSOLUTION AGREEMENT OF THE MARIN COUNTY MAJOR CRIMES TASK FORCE

WHEREAS, the Marin County Major Crimes Task Force (MCMCTF) was originally created in 1977, and in 1979 was expanded and formalized at the behest of the Marin County Police Chiefs' Association by entry into a Joint Powers Agreement (JPA) among all the cities, towns and the County of Marin; and

WHEREAS the MCMCTF thereafter was successfully operated for many years as a general investigations unit charged with assisting local agencies investigating resource-intensive crimes as well as narcotics offenses, and it operated across jurisdictional boundaries within the County; and

WHEREAS, over the years, the MCMCTF was restructured by multiple amendments to its JPA Agreement, centralizing control with the Marin County Sheriff's Office; and

WHEREAS the current, operative version of the amended JPA Agreement was executed by the County of Marin and all the City/Town Member Agencies and is dated February 25, 2016. Section 7.1 of this amended JPA Agreement provides that it shall be deemed terminated when member agencies representing fifty percent or more of the population of Marin County file their notices of intent to withdraw; and

WHEREAS, on June 19, 2020, the Chair of the Marin Managers' Association advised the Sheriff in writing that, because of the COVID-19 pandemic and the extreme stress it imposed upon the budgets of the City/Town Member Agencies, it was soon likely that agencies representing more than fifty percent (50%) of the County's population would file notices of intent to withdraw from the Task Force, thereby resulting in termination of the JPA Agreement; and

WHEREAS, in late June, 2020, the City Managers of Member Agencies Novato, San Rafael, Mill Valley, Ross, Belvedere, Fairfax, Tiburon, Larkspur, San Anselmo and Corte Madera advised the Board Chair of the MCMCTF Oversight Committee in writing that they were formally providing their notices of intent to withdraw and thereby invoked Article 7.1's termination process; and

WHEREAS, the parties hereto now desire to enter into this Agreement in order to (1) formally terminate the MCMCTF JPA Agreement dated February 25, 2016; (2) provide for the dissolution of the MCMCTF and its operations; (3) liquidate MCMCTF assets and distribute such assets and property (including all asset forfeiture funds, monies and grants) pursuant to Article 7.2 and as hereinafter agreed.

NOW, THEREFORE BE IT RESOLVED, that the Town Council does hereby approve this Resolution authorizing the Mayor to sign the Dissolution Agreement as set forth in Exhibit A.

The foregoing is a full, true and complete copy of a resolution duly passed and adopted by the Town Council of the Town of Fairfax at a regular meeting thereof held on the 4th day of November, by the following vote:

AYES:
NOES:
ABSENT:

RENEE GODDARD, Mayor

Attest: _____
Michele Gardner, Town Clerk

Exhibit A