



TOWN OF FAIRFAX

STAFF REPORT

February 1, 2023

TO: Mayor and Town Council

FROM: Rico Tabaranza, Chief of Police
Heather Abrams, Town Manager

SUBJECT: Authorize the Town Manager to enter into an agreement with the Town of Ross to provide and receive occasional and intermittent police services during the period February 1, 2023 through June 30, 2023

RECOMMENDATION

It is recommended that the Town Council authorize the Town Manager to enter into an agreement with the Town of Ross to provide and receive occasional and intermittent police services during the period February 1, 2023 through June 30, 2023.

BACKGROUND

The Town of Fairfax Police Department has enjoyed a strong partnership with the Town of Ross Police Department for several years. Ross contracts with Fairfax for dispatch services. The departments have informally shared police staffing, borrowed vehicles and equipment, use the same report incident management software, use the same vendor for policies and procedures, and train together. Over the past few years, the ability of law enforcement agencies to recruit qualified police officers, especially in the Bay Area, has been severely challenged. Ross is currently experiencing a staffing shortage in its police department that has been exacerbated by an officer recently placed on medical leave. The department is in urgent need of temporary police staffing and has asked the Town of Fairfax to provide assistance through June 30, 2023. Similar shared services arrangements have been implemented successfully between other small cities in Marin County such as Tiburon, Belvedere, Sausalito, and Mill Valley.

DISCUSSION

Attached is a draft agreement that would enable Fairfax and Ross to provide each other with temporary police staffing services. Highlights of the agreement include:

- The term would commence immediately upon Town Council approval and continue until June 30, 2023. Upon mutual agreement, the term may be extended for additional renewal periods to be determined by both Town Managers.
- Sergeants, corporals and officers will provide customary police services related to enforcement of state and local law, crime prevention, detection and investigation and other public safety activities deemed necessary by the Police Chief of the jurisdiction in which they are assigned and in accordance with the established policies of their respective Police Departments.
- Either party may terminate the agreement with thirty days' notice.
- The jurisdiction receiving the services will pay the providing agency all the actual costs including overtime pay based on the applicable policies, procedures or MOUs.
- Mutual hold harmless and indemnification

In regard to implementation, when a police department is in need of staffing support, the vacant shifts will be offered to the officers and sergeants from the other police department. Typically, an officer that volunteers to work the vacant shift will be working on an overtime basis. The officer will remain in the

Town they are serving for the duration of their shift and will wear the uniforms and safety equipment issued by their home police department.

Fairfax and Ross can assist each other in maintaining appropriate staffing levels in their respective Police Departments by permitting sergeants, corporals, and officers from either Fairfax or Ross to perform their duties and exercise authority in either community.

FISCAL IMPACT

There will be no cost to the Town of Fairfax when providing police staffing to the Town of Ross. It is not anticipated that the Fairfax Police Department will need police staffing from the Town of Ross prior to June 30, 2023. In the event that a staffing shortage occurs, the Fairfax Police Department will need to cover the cost for the police staffing it receives from the Town of Ross.

ATTACHMENT

Agreement

AGREEMENT FOR POLICE SERVICES

This Agreement for Police Services (“Agreement”) is made and entered into this ____ day of _____, 2023, by and between the TOWN OF FAIRFAX (hereinafter "FAIRFAX"), and the TOWN OF ROSS (hereinafter "ROSS") (sometimes referred to herein individually as a “Party” or “Jurisdiction” and collectively as the “Parties”).

RECITALS

WHEREAS, Ross and Fairfax employ full time Police Sergeants, Police Corporals and Police Officers; and

WHEREAS, Ross and Fairfax occasionally experience personnel shortages that place an undue burden on staffing in either Police Department; and

WHEREAS, Ross and Fairfax can assist each other in maintaining appropriate staffing levels in their respective Police Departments by permitting Sergeants, Corporals, and Officers from either Ross or Fairfax to perform their duties and exercise authority in either community.

AGREEMENT

NOW, THEREFORE, the Parties hereby agree as follows:

1. **PROJECT COORDINATION.**

The Fairfax Police Chief is hereby designated the PROJECT MANAGER for Fairfax, and the Ross Police Chief is hereby designated the PROJECT MANAGER for Ross and each shall, within their respective jurisdictions, supervise all aspects of the progress and execution of this Agreement as to all police related activity carried out by any Sergeant, Corporal, or Officer temporarily assigned from the one jurisdiction to the other.

2. DUTIES OF SERGEANTS, CORPORALS & OFFICERS.

SERGEANTS, CORPORALS and OFFICERS shall perform the duties and/or provide services as follows: Customary police services related to enforcement of state and local law, crime prevention, detection and investigation and other public safety activities deemed necessary by the Police Chief of the jurisdiction in which they are assigned and in accordance with the established policies of their respective Police Departments.

3. DUTIES OF FAIRFAX AND/OR ROSS.

Fairfax shall pay the compensation as provided in Paragraph 4, and continue to maintain sole and primary responsibility for all aspects of, and all services provided by the Fairfax Police Department, subjected to the requirements and restrictions under Section 7 of the Agreement.

Ross shall pay the compensation as provided in Paragraph 4, and continue to maintain sole and primary responsibility for all aspects of, and all services provided by the Ross Police Department, subjected to the requirements and restrictions under Section 7 of the Agreement.

4. COMPENSATION.

For the full performance of the services described herein by Sergeants, Corporals and Officers, the jurisdiction receiving the services will pay all the actual cost, including but not limited to, overtime pay based on the applicable policies, procedures or MOUs, incurred because of the services performed and upon receipt of an invoice, to the jurisdiction providing the services.

5. TERM OF AGREEMENT.

The Term of this Agreement shall be from February 1, 2023 through June 30, 2023. Upon mutual agreement of the parties, and subject to the approval of the Ross Town Manager and the Fairfax Town Manager, the Term of this Agreement may be extended for additional renewal periods to be determined by both Town Managers.

6. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

7. HOLD HARMLESS AND INDEMNIFICATION.

A. To the fullest extent permitted by law, Ross assumes liability for and shall save and protect, defend, hold harmless and indemnify Fairfax, its elected and appointed officials, officers, agents, and/ or employees from and against any and all claims, suits, demands, damages, losses, expenses, and liabilities of any kind whatsoever including, but not limited to, attorneys' fees, expert fees and all other costs and fees of litigation, filed by a person who is not a Party to this Agreement, for injuries to persons and/or damage to property, arising out of, resulting from, relating to, or claimed to have arisen out of, resulted from or related to the negligent acts, omissions, recklessness, or willful misconduct of Ross, its officers, agents and/or employees in connection with performance of this Agreement.

B. To the fullest extent permitted by law, Fairfax assumes liability for and shall save and protect, defend, hold harmless and indemnify Ross, its elected and appointed officials, officers, agents, and/or employees from and against any and all claims, suits, demands, damages, losses, expenses, and liabilities of any kind whatsoever including, but not limited to, attorneys' fees, expert fees and all other costs and fees of litigation, filed by a person who is not a Party to this Agreement, for injuries to persons and/or damage to property, arising out of, resulting from,

relating to, or claimed to have arisen out of, resulted from or related to the negligent acts, omissions, recklessness, or willful misconduct of Fairfax, its officers, agents and/or employees in connection with performance of this Agreement.

C. In the event of the concurrent negligence of Fairfax, its officers, agents and/or employees, and Ross, its officers, agents and/or employees, the liability for any and all claims for injuries or damages which arise out of, result from, relate to or claimed to have arisen out of, resulted from or related to the negligent acts, omissions, recklessness, or willful misconduct of both Parties in connection with performance of this Agreement shall be apportioned under California's theory of comparative negligence as presently established or may be hereafter modified, and the Party responsible for liability to the other will indemnify the other Party to this Agreement for the percentage of liability determined, following a determination of the percentage of fault and/or liability by agreement between the Parties or a court of competent jurisdiction.

D. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

8. INSURANCE.

Both parties shall maintain sufficient insurance, self-insurance or a combination thereof to comply with the following requirements, and, if requested, each party shall furnish the other party with certificates of insurance evidencing the required coverage. Thirty (30) days' notice must be given, in writing, to either party of any pending change in the limits of liability or of any cancellation or modification of the policy.

A. **Worker's Compensation and Employer's Liability Insurance.** Both parties shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance, or an acceptable program of self-insurance providing full statutory coverage. In signing this Agreement, both parties certify that they are aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability

for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and parties will comply with such provisions before commencing the performance of the work of this Agreement.

B. **Liability Insurance.** Fairfax and Ross shall secure and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance for services covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Fairfax's and Ross' operations under this Agreement, whether such operations be by itself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified on Exhibit A hereto.

9. **NOTICES.**

All notices and other communications required or permitted to be given under this Agreement shall be in writing and given by personal delivery to Fairfax's Town Manager or to Ross' Town Manager.

10. **INDEPENDENT CONTRACTOR.** The jurisdiction providing services pursuant to this Agreement is acting hereunder as an independent contractor so that:

10.1 **Service Provided by Employees of the Jurisdiction Providing Services.** All employees of the jurisdiction providing services ("Service Jurisdiction") providing services hereunder shall be considered the common law employees of the Service Jurisdiction for all purposes.

10.2 **Control of Personnel.** With the exception of law enforcement services described in paragraph 2 above, the Service Jurisdiction shall control the conduct of its personnel, including standards of performance, discipline, hiring, promotion, retention, compensation, and all other aspects of the employment relationship.

11. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter of this Agreement.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by Fairfax's Town Manager and Ross' Town Manager.

12. GOVERNING LAW.

This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws.

13. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

TOWN OF FAIRFAX

TOWN OF ROSS

HEATHER ABRAMS, Town Manager

CHRISTA JOHNSON, Town Manager

ATTEST:

MICHELLE GARDNER, Town Clerk

CYNDIE MARTEL, Town Clerk

APPROVED AS TO FORM:

JANET E. COLESON, Fairfax Town Attorney

BENJAMIN L. STOCK, Ross Town Attorney

EXHIBIT A

(Insurance)

Each agency will maintain the following insurance coverage:

General Liability: \$2 million per occurrence

Auto Liability: \$1 million per occurrence

Workers Compensation*: statutory limits and \$1 million in Employer's Liability

*Each agency will be responsible for their own employees regarding Worker's Compensation claims that arise out of activities of this contract.