



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: San Rafael Fire Department

**Prepared by: Quinn Gardner,
Emergency Manager**

City Manager Approval: _____

TOPIC: MARINWOOD WILDFIRE PREVENTION SERVICES AGREEMENT

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SAN RAFAEL AND THE MARINWOOD COMMUNITY SERVICES DISTRICT FOR WILDFIRE PREVENTION SERVICES, INCLUDING DEFENSIBLE SPACE EVALUATIONS

RECOMMENDATION:

Adopt the resolution approving the Agreement between the City of San Rafael and Marinwood Community Services District for defensible space services.

BACKGROUND:

The City of San Rafael and the Marinwood Community Services District (District) have maintained a successful partnership since 1973 to provide shared fire protection and emergency services throughout their unified operational area. The current arrangement between the City and the District is articulated in a joint powers agreement that was approved by the City Council in 2014. The Fire Chief Officer Services amendment was added and approved by the City Council in 2018. The existing agreements focus on fire administration, fire suppression, Emergency Medical Services and structural prevention services, not wildfire prevention or mitigation. The District and the City now wish to enter an agreement relating to wildfire prevention and mitigation services, including defensible space evaluations.

In 2020, Marin County voters approved Measure C, a parcel tax to fund the establishment of the Marin Wildfire Prevention Authority (MWPA), a joint powers authority tasked with improving wildfire safety for all Marin residents, businesses, and visitors. The MWPA consists of 17 Marin county agencies, including the City and the District. The tax revenue collected for the MWPA is dedicated to three funding categories: core, local, and defensible space. "Core" monies are designated for five distinct geographic zones and account for 60 percent of the tax revenue. The City and the District are within the same designated zone, which also incorporates County Service Areas (CSAs) (see Attachment 4-zone map). "Local" and "defensible space" monies account for 20 percent each and are designated to each participating agency individually. As a member agency, the District receives a sum of money for their local and defensible

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

space categories to be spent on local fire mitigation projects of their choice and residential home evaluations.

As the City and the District become more aligned and unified in their operations, which include 9-1-1 call services, joint training opportunities, fire prevention, emergency management, environmental management services, records management, equipment support, and administrative support services, the inclusion of MWPA-funded services for defensible space evaluations and fuel reduction projects is a logical next step in the existing relationship between the City and District.

ANALYSIS:

The District and the City have abutting operational areas and have thus developed a successful working relationship over time. The District's jurisdiction and operational area lies directly north of the City's borders. Due to proximity, wildfire prevention efforts undertaken by the District have direct impacts on the City.

Over the past year, the City has used its local and defensible space funds to build a comprehensive Wildfire Mitigation Team to provide defensible space evaluations and fuel reduction project planning and implementation within the City and District unified operational area. The District has used a portion of the MWPA funds it receives to compensate the City for services provided within the District. Formalizing the Agreement to continue coordinating MWPA-funded services like defensible space evaluations and vegetation management projects as workload and costs increase is consistent with the City and District's history of cooperative fire services and current shared services agreements. Coordinating services within the unified operational area will provide simplified and unified public service by eliminating duplicated costs associated with recruitment, training, scheduling and managing employees, and acquisition of supplies and equipment needed to provide services.

During the start-up phase of increased wildfire prevention activity associated with the creation of the MWPA, the City and District established a process for work to be completed and reimbursed. This agreement formalizes those terms in perpetuity, or until either party gives notice.

Through this agreement, the City will bill the District for defensible space evaluations provided to residents in the District, and for employee time spent planning and implementing fuel reduction projects that occur on District-owned open space lands. The City will assume costs, not to be billed to Marinwood, for the following: recruitment, hiring, and training of staff; uniforms; vehicle maintenance; and fuel. These fixed costs will be assumed by the City and budgeted for as part of its existing wildfire mitigation program that also includes defensible space evaluations and fuel reduction project planning.

By way of example,

The City will bill Marinwood on a time and materials basis for the following examples of work:

- Defensible space evaluations in District jurisdiction.
- Fuel reduction project planning on Marinwood open space. This includes site visits and office work, implementation, and contractor supervision.
- Coordination and supervision of resident direct assistance work. Work will typically be undertaken by a City-sponsored AmeriCorps Team.

Billable time includes:

- Travel time to and from evaluation area or fuel reduction project site.
- Defensible space evaluations.
- In-office completion and delivery of evaluation reports to resident.
- Coordination and scheduling of inspectors for work in the District.
- In office planning and development of fuel reduction projects.
- Fuel reduction project layout, and contractor supervision.

COMMUNITY OUTREACH:

The City and District will coordinate outreach efforts for specific projects.

FISCAL IMPACT:

The proposed Agreement articulates that the District will compensate the City for all agreed-upon services for defensible space evaluations and fuel reduction projects on a time and materials basis at the hourly rate plus benefits of each City employee providing services. The City will track employee time and expenses separately for each fuel reduction project. The District will make payment to the City on a quarterly basis within 30 days of receipt of an itemized invoice from the City.

Staff time for all services performed and required materials may be covered by Measure C/MWPA defensible space and local funds allocated to the District. While it is assumed that MWPA funds will be the primary source of funding, Marinwood retains the discretion of how to reimburse the City for billed costs.

The City will be providing services on a time and materials basis but will not be profiting from those services or recouping any costs associated with personnel training, outfitting, and vehicle upkeep. The City will already be assuming all fixed costs associated with personnel onboarding and daily operations to run its own defensible space evaluation program and fuel reduction projects and will not be building those costs into the time and materials rate. While this agreement does not provide a fiscal benefit to the City, the intent of the agreement is to continue building upon the existing partnership between the City and the District as the need for increased wildfire mitigation services arises.

City and District Projected MWPA FY 2021-22 Annual Budget

| Agency | JPA Core 60% | JPA D-Space 20% | JPA Local 20% | Total Estimated Revenues |
|--------------------|-------------------------|----------------------------|--------------------------|-------------------------------------|
| City of San Rafael | \$2,739,679 | \$913,226 | \$913,226 | \$4,566,132 |
| Marinwood CSD | \$193,236 | \$64,412 | \$64,412 | \$322,060 |

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the resolution approving the Agreement as written.
2. Approve the Agreement with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Staff recommends the City Council adopt the resolution approving and authorizing the City Manager to execute the Agreement with the Marinwood Community Services District.

ATTACHMENTS:

1. Resolution Approving and Authorizing the City Manager to Execute an Agreement between the City of San Rafael and the Marinwood Community Services District for Defensible Space Services
2. Agreement
3. Exhibit A to Agreement-San Rafael Hourly Rate Plus Benefits
4. MWPA Zone Map

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SAN RAFAEL AND THE MARINWOOD COMMUNITY SERVICES DISTRICT FOR WILDFIRE PREVENTION SERVICES, INCLUDING DEFENSIBLE SPACE EVALUATIONS

WHEREAS, the City of San Rafael and the Marinwood Community Services District (District) have maintained a successful partnership since 1973 to provide shared fire protection and emergency services throughout their unified operational area; and

WHEREAS, the existing agreements between the City and the District focus on fire administration, fire suppression, Emergency Medical Services and structural prevention services, not wildfire prevention or mitigation; and

WHEREAS, in 2020, Marin County voters approved Measure C, a parcel tax to fund the establishment of the Marin Wildfire Prevention Authority (MWPA), a joint powers authority tasked with improving wildfire safety for all Marin residents, businesses, and visitors, and a portion of the tax is allocated to each member agency, including the City and the District for use for local and defensible space projects; and

WHEREAS, the District and the City now wish to build upon their existing relationship and enter into an agreement relating to shared wildfire prevention and mitigation services, including defensible space evaluations;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael approves and authorizes the City Manager to execute an agreement between the City of San Rafael and the Marinwood Community Services District for defensible space services in the form included with the staff report for this resolution, subject to final approval as to form by the City Attorney.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 3rd day of May 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**AGREEMENT BETWEEN THE CITY OF SAN RAFAEL AND THE MARINWOOD
COMMUNITY SERVICES DISTRICT FOR DEFENSIBLE SPACE SERVICES**

THIS AGREEMENT is made and entered into this _____ day of _____, 2021 by and between the CITY OF SAN RAFAEL (“CITY”) and the MARINWOOD COMMUNITY SERVICES DISTRICT (“DISTRICT”)

WHEREAS, CITY and DISTRICT are contiguous local governmental agencies which each provide fire protection and emergency services within their respective jurisdictions; and

WHEREAS, since 1973 and as permitted by applicable law including but not limited to Government Code Sections 55631 through 55634, CITY and DISTRICT have entered into a series of cooperative agreements for the effective and efficient provision of fire and emergency services throughout a unified operational area, to their mutual advantage; and

WHEREAS, CITY and DISTRICT currently operate under agreements pursuant to which they share certain fire and emergency personnel and chief officers for the provision of fire and emergency services in their unified operational area; and

WHEREAS, as part of their fire and emergency services, CITY and DISTRICT each also perform property inspections and various vegetation management operations to provide and/or increase defensible space near structures, for the purpose of mitigating the risk of destructive wildfires (hereafter, “defensible space operations”); and

WHEREAS, the CITY and DISTRICT are both members of the Marin Wildfire Prevention Authority (“MWPA”), a joint powers authority established in 2019 to develop and implement a comprehensive wildfire prevention and emergency preparedness plan throughout almost all of Marin County; and

WHEREAS, the operations of the MWPA are funded by a parcel tax measure (“Measure C”) adopted by the voters of Marin County on March 3, 2020; and

WHEREAS, the MWPA has authorized Measure C tax proceeds to be used to fund qualifying activities of MWPA member agencies, including funding for defensible space operations; and

WHEREAS, CITY has hired additional Fire Department staff to perform defensible space operations funded by the MWPA, and has sufficient capacity to be able to provide similar services to DISTRICT for properties within DISTRICT’s jurisdiction, on a contract basis; and

WHEREAS, DISTRICT also receives funds from MWPA for defensible space operations and wishes to use a portion of those funds to compensate CITY for providing those services; and

WHEREAS, consistent with their history of cooperative fire protection services and their current shared services agreements, CITY and DISTRICT now wish to coordinate

their MWPA-funded defensible space operations on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES as follows:

1. PROJECT COORDINATION.

A. CITY'S Project Manager. Quinn Gardner is hereby designated the Project Manager for CITY and shall supervise all aspects of the progress and execution of this Agreement at the sole expense of CITY. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Project Manager, for any reason, CITY shall notify DISTRICT within ten (10) business days of the substitution.

B. DISTRICT'S Project Manager. Eric Dreikosen is hereby designated as the Project Manager for DISTRICT. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Project Manager, for any reason, DISTRICT shall notify CITY within ten (10) business days of the substitution.

2. SERVICES COVERED BY AGREEMENT.

CITY and DISTRICT intend this Agreement to apply only to services determined by DISTRICT, in its sole discretion, to qualify for funding by the MWPA's local and defensible space funding categories. CITY will not provide any services for DISTRICT under this Agreement unless CITY first provides DISTRICT with a cost estimate for the services, if available, and, regardless of whether such cost estimate is available or not, DISTRICT provides CITY with a written notice to proceed. Notwithstanding the parties' intention that services under this Agreement will qualify for MWPA local and defensible space funding, once DISTRICT provides CITY with a notice to proceed and the requested services are performed by CITY, DISTRICT will be required to compensate CITY as provided in this Agreement regardless whether such MWPA funding is finally provided to DISTRICT by the MWPA.

3. DUTIES OF CITY.

CITY will perform annual defensible space inspections and specific fuel reduction projects within DISTRICT'S jurisdiction as specifically requested by DISTRICT'S Project Manager. CITY at their sole expense will recruit, hire, and train staff to perform such services, and will have sole discretion over the salary and expenses paid to such staff. In connection with performing defensible space inspections, once CITY has prepared an inspection report for a particular property, CITY shall not be required to pursue any enforcement actions as to that property absent express agreement between the parties.

4. DUTIES OF DISTRICT.

DISTRICT shall not be required to request services from CITY pursuant to this Agreement, and it is understood that DISTRICT intends to contract directly with other service

providers for local and defensible space services whenever it is reasonably able to do so. Should DISTRICT decide to seek the services of another agency or vendor for specific projects, especially those that have historically been performed by CITY, DISTRICT shall give advance notice so that CITY can hire and plan for work accordingly. This notice shall be provided as soon as DISTRICT determines it will not utilize the services of CITY, but no less than 30 days beforehand.

5. COMPENSATION.

In consideration for the full performance of the services described herein by CITY DISTRICT will compensate CITY as follows:

A. For defensible space inspections, DISTRICT shall pay CITY on a time and materials basis at the then current Hourly Rate Plus Benefits of each CITY employee providing such direct services. The Hourly Rate Plus Benefits document attached hereto as Exhibit A and incorporated herein by reference is an example of the current Hourly Rate Plus Benefits amount. For purposes of this Agreement, the Hourly Rate Plus Benefits means the employee's hourly rate plus direct benefits paid or provided by CITY, inclusive of health and retirement benefits. CITY will track employee time and expenses when performing such defensible space inspections within DISTRICT'S jurisdiction. Rates will be subject to change in accordance with CITY publicly available pay schedule.

B. For services on fuel reduction projects, DISTRICT shall pay CITY on a time and materials basis at the then current Hourly Rate Plus Benefits of each CITY employee providing such direct services. CITY will track employee time and expenses separately for each fuel reduction project.

C. CITY will rebill DISTRICT for any costs incurred from third party vendors for work completed in DISTRICT provided DISTRICT has provided written notice to proceed with respect to such work in accordance with this Agreement.

D. DISTRICT will make payment to CITY quarterly within 30 days after receipt of itemized invoices submitted by CITY.

6. TERM OF AGREEMENT.

This Agreement shall be effective as of July 1, 2020 and shall continue in effect until such time as either party provides not less than 30 days' written notice of termination to the other party, or upon the effective date of the termination of the MWPA.

7. INSPECTION AND AUDIT.

Upon reasonable notice, CITY shall make available to DISTRICT, or its agent, for inspection and audit, all documents and materials maintained by CITY in connection with its performance of its duties under this Agreement.

8. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

9. INSURANCE.

CITY is self-insured for general liability up to \$750,000 and belongs to an excess insurance pool for additional coverage beyond that amount. CITY is self-insured for worker's compensation insurance coverage up to \$1,000,000 and has an excess liability policy for additional coverage. Upon request, CITY will provide DISTRICT with certificates evidencing such coverage.

10. INDEMNIFICATION.

To the fullest extent allowed by law, DISTRICT shall defend, indemnify and hold harmless CITY, its officers, agents and employees, while acting within the course and scope of their employment under this Agreement, from any liability or damage, including but not limited to reasonable attorneys' fees, arising from any acts or omissions of DISTRICT, its officers, agents and employees, except such liability or damage caused by the gross negligence or willful misconduct of CITY. 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.

To the fullest extent allowed by law, CITY shall defend, indemnify and hold harmless DISTRICT, its officers, agents and employees, while acting within the course and scope of their employment under this Agreement, from any liability or damage, including but not limited to reasonable attorneys' fees, arising from any acts or omissions of CITY, its officers, agents and employees, except such liability or damage caused by the gross negligence or willful misconduct of DISTRICT. 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.

11. NONDISCRIMINATION.

CITY and DISTRICT shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

12. COMPLIANCE WITH ALL LAWS.

CITY shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. CITY shall release, defend, indemnify and hold harmless DISTRICT, its officers, agents, employees, and volunteers from any and all damages, liabilities, penalties,

fees, including reasonable attorneys' fees and costs, and all other consequences from any claims arising from or related to allegations of noncompliance or violation of any laws, ordinances, codes or regulations by CITY or any of its officers, agents and employees in connection with their performance of any work under this Agreement.

13. NO THIRD PARTY BENEFICIARIES.

CITY and DISTRICT do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

14. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO CITY Project Manager: Quinn Gardner, Emergency Manager
1375 Fifth Avenue
San Rafael, CA 94901

TO DISTRICT Project Manager: Eric Dreikosen, District Manager
775 Miller Creek Road
San Rafael, CA 94903

15. STATUS OF CITY EMPLOYEES UNCHANGED.

DISTRICT and CITY expressly intend and agree that any services provided by CITY employees, agents, and volunteers pursuant to this Agreement are in the nature of contract services, and nothing in this Agreement shall be deemed to create an employment relationship between DISTRICT and CITY employees, agents, and volunteers.

16. 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 between the DISTRICT and the CITY.

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 the DISTRICT and the CITY.

17. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

18. COSTS AND ATTORNEY'S FEES.

In any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, each party shall bear its own attorney's fees and costs expended in connection with such action.

19. COUNTERPARTS AND ELECTRONIC SIGNATURE.

This Agreement may be executed by electronic signature and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by telecopier, email or other means of electronic transmission.

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

CITY OF SAN RAFAEL

MARINWOOD COMMUNITY SERVICES DISTRICT

Jim Schutz, City Manager

Eric Dreikosen, District Manager

ATTEST:

ATTEST:

Lindsay Lara, City Clerk

Secretary to the Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Robert F. Epstein, City Attorney

District Counsel

