

**ROSS VALLEY FIRE DEPARTMENT  
STAFF REPORT**

For the meeting of: July 10, 2019

**To:** Board of Directors  
**From:** Jason Weber, Fire Chief  
**Subject:** Rental Lease between Marin County Flood Control and Water Conservation (MCFCWC)

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**Recommendation:**

It is recommended that the Board authorize the Fire Chief to execute the lease agreement between Ross Valley Fire Department and Marin County Flood Control and Water Conservation District.

**Discussion:**

Recently the expanded Defensible Space program was begun, and with that several seasonal inspectors were hired to educate residents in the Ross Valley how they can help protect their properties against wildfires. In addition to the inspectors, this new office across the street from Station 19 will house the new Countywide Disaster Coordinator and the Fire Prevention and Inspection services of both Ross Valley and Marin County.

The building at 800 and 804 San Anselmo is the ideal size and location and will enable these services to be run centrally from within the Ross Valley area. The building is part of the bridge and flood control project being studied and may be demolished, but we expect to be able to lease this building for the next several years on a month to month basis until the bridge and flood project is scheduled to begin. This lease has been reviewed by RVFD Counsel.

**Fiscal Impact:**

The rental shall be one dollar (\$1.00) per month, payable in advance on a yearly basis.

Attachment: Lease Agreement with MCFCWCD

AGENDA ITEM # 7  
Date 7/11/19

## LEASE AGREEMENT

**THIS LEASE** is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between **MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a Public District of the State of California, hereinafter called "District" and **ROSS VALLEY FIRE DEPARTMENT**, hereinafter called "RVFD".

### WITNESSETH

**WHEREAS**, District is the owner of certain real property frequently referred to as 800 San Anselmo Avenue, San Anselmo, County of Marin, State of California, and commonly referred to as Assessor Parcel No. 006-103-04, hereinafter called "the Property"; and

**WHEREAS**, District acquired the Property which abuts San Anselmo Creek as an opportunity purchase with the intent to preserve the Property for potential future flood control and future Town of San Anselmo, hereinafter called "Town", public roadway purposes although no decisions have been made by either the District or Town regarding the Property; and

**WHEREAS**, the Property and the commercial building on the Property were intended to remain vacant and closed for public use until a project scope is determined and after CEQA has been completed; and

**WHEREAS**, the Town's proposed project has been delayed from its original timeline and CEQA is not expected to be completed until 2022; and

**WHEREAS**, the Ross Valley Fire Department has a need for temporary office space for staff and requested use of the building and Property until such time that a decision is made regarding the future use of the Property; and

**WHEREAS**, District and RVFD, collectively referred to as "the PARTIES", wish to enter into an agreement whereby RVSD will rent the building and Property and provide those repairs, updates, building code compliance, maintenance and management of the Property until such time the Town acquires the Property; and

**WHEREAS**, the PARTIES agree that there is a public benefit to allow for use and management of said Property through a Lease Agreement between the PARTIES.

**NOW, THEREFORE**, District, for and in consideration of the rents, covenants

and promises contained herein, does hereby lease unto RVFD and RVFD hereby rents from District the Property.

This Lease is made upon the following terms, covenants and conditions to which the PARTIES hereby agree.

### **1. ADMINISTRATION**

This Lease shall be administered on behalf of District by the Chief, Real Estate Division, Department of Public Works, whose mailing address is:

Marin County Department of Public Works  
Real Estate Division  
Attn: Eric Lueder  
P.O. Box 4186  
San Rafael, CA 94913

and on behalf of RVFD by:

Ross Valley Fire District  
c/o Marin County Fire  
Attn: Kevin Yeager  
777 San Anselmo Avenue  
San Anselmo, CA 94960

Any notice or notices provided by this Lease, or required by law to be given or served upon District or RVFD, may be given or served by depositing the same in the United States Mail, postage prepaid, addressed as set out in this section.

### **2. DESCRIPTION OF PROPERTY**

The Property herein leased are more particularly described as all that real property commonly referred to as 800 San Anselmo Avenue, San Anselmo also known as Assessor's Parcel 006-103-04, being a portion of San Anselmo Creek and approximately 4,500 square feet together with a one story commercial retail building (the "Premises") split into two units comprising approximately 1,860 square feet as shown on Exhibit "A", attached hereto and by reference made a part hereof.

### **3. TERM, TERMINATION**

The term of this Lease shall be month-to-month commencing on the date this

Lease is entered into and terminating upon thirty (30) days' notice provided by either Party. Either Party may terminate the agreement by notifying the other Party in writing at least thirty (30) days prior to the end of any such month that the Party elects to terminate this Lease. RVFD acknowledges that this tenancy is temporary because District has acquired the Property for future flood control or public roadway purposes subject to a project scope determination and CEQA approval. However, termination of this Lease is not contingent upon a future project or CEQA approval.

#### **4. RENT**

RVFD shall pay to District monthly rent in the amount of ONE DOLLAR (\$1.00) for the Property. Rent payments shall be made in advance on a yearly basis and made payable to **Marin County Flood Control and Water Conservation District** and sent to:

Department of Public Works  
Real Estate Division  
P.O. Box 4186  
San Rafael, CA 94913  
Reference: 800 San Anselmo Ave.

#### **5. USE**

District agrees to lease the Property to RVFD specifically for fire inspection staff offices, which shall include day-to-day interior and exterior building maintenance, repairs and all activities necessary to occupy the building at no expense to District, subject to the limitations described herein.

Excepting the herein described uses, no public use, personal property or occupancy of any kind will be allowed on the Property. No enlargement of the structures or additional improvements shall be allowed.

Any other uses by the RVFD not specifically granted herein shall be requested by written notice to District. RVFD agrees there shall be no unreasonable interference with District's use of the Property by any work herein authorized. RVFD agrees to comply with all applicable laws and regulations when using the Property for said purposes. No other uses will be allowed under this Lease.

#### **6. SPECIAL CONDITIONS**

District and RVFD further agree to the following special conditions:

- (a) By acceptance of this Lease, RVFD accepts the Property and Premises AS-IS and agrees on the last day of said term of this Lease to surrender unto

District said Property and Premises in the same or better condition as when received, Act of God or by the elements excepted. District makes no warranty or claim that the Property or Premises is suitable for occupancy or use by RVFD for any purpose and will not make any repairs or improvements to the Property under any circumstances.

- (b) RVFD acknowledges and is aware that the Premises and the Property is in a special hazard flood area and destruction, damage and flooding of the Premises is possible during the term of this Lease.
- (c) RVFD shall be responsible to provide for, at its sole expense, all utilities necessary for its occupancy of the Premises. District shall not be responsible for any costs associated with utilities or upgrades or repairs thereto.
- (d) RVFD agrees and warrants that it shall comply, at its sole expense, with all applicable laws, codes, regulations and ordinances, including securing any required permits, of the Town of San Anselmo, County of Marin, District and any other agency with jurisdiction while occupying the Premises and for any and all construction, repairs, tenant improvements and maintenance that may be necessary during its use of the Premises, and that all work will be performed by licensed contractors. RVFD agrees and warrants that it will insure the Property is accessible to persons with disabilities.
- (e) RVFD shall not interfere with District's use of Property to maintain San Anselmo Creek, as needed and at the sole discretion of District.
- (f) RVFD understands that the building is within a Town of San Anselmo bridge project study area and may require demolition once a project scope is determined after CEQA is complete.

## **7. MAINTENANCE OF PROPERTY**

RVFD shall furnish at its sole expense all maintenance, repairs, tenant improvements, code compliance construction, nuisance abatement (if necessary), and vandalism repair services which may be required by its use of the Property. Such services shall be provided at the level necessary to maintain the Property in a clean and orderly condition.

## **8. INSURANCE**

If RVFD hires a contractor to perform maintenance or repairs of the Property, it will provide a Certificate of Insurance from the contractor naming the "Marin County Flood Control and Water Conservation District" as additional insured. RVFD shall also provide District with

its own Certificate of Insurance naming the District as additional insured. RVFD shall warrant that during construction on the Property and Premises, RVFD and its contractor shall maintain the insurance as specified in said certificates and shall retain responsibility to ensure that said contractor abides by all terms and conditions of this right of entry. The District shall consider any failure of contractor to do as a failure of RVFD and shall be its responsibility to remedy. The following insurance requirements shall apply:

Commercial general liability insurance, with limits of not less than \$1,000,000 per occurrence for broad form property damage, and bodily injury, personal injury, and products and completed operations coverage of the same limits as the policy limits, with a general aggregate or excess of not less than \$2,000,000. RVFD must have the insurance endorsed to include the "Marin County Flood Control and Water Conservation District" and its officers, employees, agents, and volunteers as additional insureds.

- Workers' compensation insurance, as statutorily required by the State of California, and employer's liability insurance with limits of not less than \$1,000,000.
- Automobile liability insurance covering owned, non-owned, and hired vehicles with a limit of no less than \$2,000,000 per occurrence combined single limit for both bodily injury and property damage.

RVFD, at RVFD's own cost and expense, shall maintain commercial general liability insurance, with coverage in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage on an "occurrence" basis for the benefit of the RVFD as named insured and the Marin Flood Control and Water Conservation District, its officers, elected and appointed officials, agents, boards, commissions, and employees as additional insureds against claims for bodily injury, death, personal injury and property damage liability in connection with the any negligent acts or omissions of the RVFD related to the RVFD's use of the Property.

RVFD, at RVFD's own cost and expense, shall maintain auto liability insurance for owned vehicles, with coverage in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage.

RVFD, at RVFD's own cost and expense, shall maintain workers' compensation insurance for its employees as required by the State of California and Employer's Liability insurance in an amount not less than \$1,000,000 per occurrence.

RVFD, at RVFD's own cost and expense, shall maintain real property insurance for the replacement cost value of the Property with the County of Marin and Marin Flood Control and Water Conservation District, its officers, elected and appointed officials, agents, boards, commissions, and employees named as the Loss Payee for such policy.

The RVFD may satisfy all of the insurance obligations contained in this section by providing self-insurance equivalents for the coverage requirements. The District shall receive thirty (30) days written notice from the insurer prior to any cancellation of coverage or diminution of limits except ten (10) days notice of cancellation for nonpayment of premium.

On or before the commencement date of this Lease, RVFD shall furnish District with certificates evidencing the aforesaid insurance coverages and renewal policies or certificates shall be furnished to the District at least thirty (30) days prior to the expiration date of each policy.

#### **9. WAIVER OF SUBROGATION RIGHTS**

District and RVFD hereby grant to each other, on behalf of an insurer providing insurance other than workers compensation, both primary, self-insurance or excess insurance of District with respect to the Property and Premises, a waiver of any right of Subrogation, which an insurer of one party may acquire against the other by virtue of payment of any loss under such insurance except coverage as it may relate to benefits payable under District's workers' compensation program.

#### **10. ALTERATIONS AND IMPROVEMENTS**

No RVFD improvements or alterations permanently affecting the Property shall be made without District's prior written approval. RVFD shall submit plans of any proposed improvements or alteration to District for review and possible approval. In no event shall any permanent improvements or alterations be made or approved that in any way interfere with the District's use of the Property. RVFD shall provide the District with a minimum of 24 hours prior notice before commencing construction, repairs or tenant improvements to the Premises. It is understood and agreed by the parties hereto that District shall retain the right to inspect and approve the work performed by RVFD upon completion or require additional work to the reasonable satisfaction of District.

#### **11. DAMAGE TO THE IMPROVEMENTS**

It is agreed that while using, maintaining and/or improving the Property or adjoining lands (San Anselmo Creek), District shall take reasonable care to not damage the existing improvements. It is further agreed that the District shall not be held responsible for any damages to the Property caused by members of the public, whether said damages occur through negligent or intentional acts of the public. Reasonable precautions will be exercised by RVFD to avoid damage to existing improvements upon the Property and Premises.

## **12. COVENANT FOR MECHANIC'S LIENS**

RVFD will save District free and harmless, and indemnify it against any and all claims for labor and materials in connection with any improvements, repairs, or alterations to the Property made by RVFD and also the cost of defending against any and all such claims including reasonable attorneys' fees and court costs.

## **13. WASTE, QUIET CONDUCT**

RVFD shall not dispose of, or store, any waste, including but not limited to hazardous waste, upon said Property, nor commit, or suffer to be committed any nuisance, or other act or thing which may disturb the quiet enjoyment of others. Likewise, RVFD, by paying said rent and performing the conditions and agreements under this Lease, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the Property according to the terms and conditions set forth in this Lease.

## **14. ABANDONMENT OF PROPERTY**

RVFD shall not vacate or abandon the Property at any time during the term.

## **15. ACCEPTANCE OF PROPERTY AS IS. SURRENDER AT END OF TERM**

By entry hereunder, RVFD accepts the Property and Premises AS-IS and agrees on the last day of said term, or upon sooner termination of this Lease, to surrender unto District said Property and Premise in the same condition, or better, as when received, reasonable use and wear thereof, Act of God or by the elements excepted. District makes no warranty or claim that the property or Premises is suitable for occupancy or use by RVFD for any purpose and will not make any repairs or improvements to the property. RVFD specifically acknowledges that the Premises and the Property is in a special hazard flood area and is subject to flooding, damage and possible destruction.

## **16. DISTRICT TO BE HELD HARMLESS**

RVFD shall defend, indemnify and hold the District, its agents, contractors, representatives, officers, directors, and employees harmless from any and all liability for damages or injuries arising out of the activities involved in this Lease, including but not limited to any liability for injury or damage to the person or property of RVFD, its agents, contractors, or invitees. RVFD shall bring no claims or actions against the District or its agents, contractors, representatives, officers, directors, and employees in connection



with any such damages or injuries to RVFD employees, contractors or property. RVFD's duties, agreements and responsibilities addressed in this paragraph shall not apply to damages or injuries arising solely from the intentional misconduct or sole active negligence of the District, its officers, agents, or employees.

District shall defend, indemnify and hold the RVFD, its agents, contractors, representatives, officers, directors, and employees harmless from any and all liability for damages or injuries arising out of District's access of or use of the Property involved in this Lease, including but not limited to any liability for injury or damage to the person or property of District, its agents, contractors, or invitees. District shall bring no claims or actions against RVFD or its agents, contractors, representatives, officers, directors, and employees in connection with any such damages or injuries to District employees, contractors or property. District's duties, agreements and responsibilities addressed in this paragraph shall not apply to damages or injuries arising solely from the intentional misconduct or sole active negligence of the RVFD, its officers, agents, or employees.

### **17. CONDEMNATION**

If all or any part of the Property shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with such public or quasi-public use, either party hereto shall have the right at its option exercisable within thirty (30) days of receipt of notice of such taking to terminate this Lease as of the date possession is taken by the condemning authority, provided, however, that before RVFD may terminate this Lease by reason of taking or appropriation as provided hereinabove, such taking or appropriation shall be of such an extent and nature as to substantially handicap, impede, or impair RVFD's use of the Property. If any part of the Property shall be so taken or appropriated, District shall have the right at its option to terminate this Lease. No award for any or entire taking shall be apportioned, and RVFD hereby assigns to District any award which may be made in such taking or condemnation, together with any and all rights of RVFD now or hereafter arising in or to the same or any part thereof. In the event of a partial taking, which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of the Property so made unusable bears to the rented area of the Property immediately prior to the taking. No temporary taking of the Property and/or of RVFD's rights therein or under this Lease shall terminate this Lease or give RVFD any right to any abatement of rent thereunder; any award made to RVFD by reason of any such temporary taking shall belong entirely to RVFD and District shall not be entitled to share therein.

### **18. ENTRY BY DISTRICT**

RVFD shall permit District and its agents to enter onto and upon said Property at

all times for the purpose of inspecting the same and maintaining District's Property as deemed necessary at District's sole discretion.

#### **19. ASSIGNMENT OR SUBLETTING**

No assignment or sublet of the Property shall be permitted.

#### **20. CONTINUATION OF LEASE AFTER BREACH**

Should RVFD breach this Lease, the Lease will continue in effect so long as District does not terminate RVFD's right to possession at District's option. District may enforce all its rights and remedies under this Lease including the right to recover rent as it becomes due hereunder.

#### **21. DEFAULT**

In the event that District or RVFD shall default in the performance of any term or condition of this Lease and shall fail to cure such default within 30 days following service upon the defaulting party of a written notice of such default specifying the default or defaults complained of, the complaining party may forthwith terminate this Lease by serving the defaulting party written notice (per paragraph 1, Administration) of such termination.

#### **22. WAIVER**

The waiver by District of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition contained herein. The subsequent acceptance of rent hereunder by District shall not be deemed to be a waiver of any preceding breach by RVFD of any term, covenant, or condition of this Lease, other than the failure of RVFD to pay the particular rental so accepted, regardless of District's knowledge of such preceding breach at the time of acceptance of such rent.

#### **23. HOLDING OVER**

There shall be no holding over without the express written consent of District. Any holding over so granted after the term of this Lease shall be construed to be a tenancy from month-to-month, subject to the terms of this Lease so far as applicable.

#### **24. DISTRICT' S LIABILITY**

The term "District" as used herein shall mean only the owner or owners of the fee title, at the time in question, and in the event of any transfer of such title, District herein named (and in case of any subsequent transfers, the then grantor) shall be relieved from and after the date of such transfer of all liability as respects District's obligations thereafter to be performed. The obligations contained in this Lease to be performed by District shall, subject as aforesaid, be binding on District's successors and assigns only during their respective periods of ownership.

#### **25. INUREMENT**

The terms, covenants and conditions of this Lease shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

#### **26. ORDINANCES AND STATUTES**

RVFD further agrees to comply with the following:

RVFD shall comply with the requirements of all Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the Property, and shall faithfully observe in the use of the Property all Municipal Ordinances and State and Federal Statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of RVFD in any action or proceeding against RVFD whether District be a party thereto or not, that RVFD has violated any such ordinance or statute in the use of the Property, shall be conclusive of that fact as between District and RVFD.

RVFD agrees to abide by Marin County Code, Chapter 23.19 (Integrated Pest Management Policy). If there is a conflict with another code or law then the more restrictive language will control.

#### **27. DISTRICT'S RIGHT**

It is understood and agreed by RVFD that District's rights to Property are paramount to this Lease. RVFD understands that the building is within a Town of San Anselmo bridge project study area and may require demolition once a project scope is determined after CEQA is complete. RVFD shall in no way interfere, or permit or tolerate interference with District's right to use, access or possess the Property including District's termination rights upon written notice as provided for in paragraph 3. Term and

Termination.

**28. NO PRESUMPTION REGARDING DRAFTER**

The Parties acknowledge and agree that the terms and provisions of this Lease have been negotiated and discussed between the Parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Lease, and therefore no presumption for or against validity or as to any interpretation hereto, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Lease.

**29. ENTIRE AGREEMENT**

This Lease contains the entire agreement between the Parties hereto and no term or provision thereof may be changed, waived, discharged or terminated unless the same be in writing executed by both Parties hereto.

SIGNATURE PAGE TO FOLLOW

**IN WITNESS WHEREOF**, on the day and year first above written, the Parties hereto have caused this Lease to be executed.

**DISTRICT:  
MARIN COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

\_\_\_\_\_  
Kathrin Sears  
President, Board of Supervisors

Approved as to form.

\_\_\_\_\_  
Deputy County Counsel  
Deputy Clerk

ATTEST \_\_\_\_\_

**RVFD:  
ROSS VALLEY FIRE DEPARTMENT**

\_\_\_\_\_ Date \_\_\_\_\_

Approved as to form.

\_\_\_\_\_  
RVFD Counsel

Exhibit "A"

