



AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, JULY 6, 2020

REGULAR MEETING AT 7:00 P.M.

Telephone: (669) 900-9128,

ID: 859-7732-5943

CORONAVIRUS (COVID-19) ADVISORY NOTICE

In response to Executive Order N-29-20, the City of San Rafael will no longer offer an in-person meeting location for the public to attend. This meeting will be streamed through YouTube Live at www.youtube.com/cityofsanrafael. Comments submitted via YouTube Live must be submitted according to the directions located on the YouTube video description. The City is not responsible for any interrupted service. To ensure the City Council receives your comments, submit written comments to the City Clerk prior to the meeting. For more information regarding real-time public comments, please visit our Live Commenting Pilot page at <https://www.cityofsanrafael.org/live-commenting-pilot/>.

Want to listen to the meeting and comment in real-time over the phone? Call the telephone number listed on this agenda and dial the Meeting ID when prompted. Feel free to contact the City Clerk's office at 415-485-3066 or by email to lindsay.lara@cityofsanrafael.org if you have any questions.

Any member of the public who needs accommodations should contact the City Clerk (email lindsay.lara@cityofsanrafael.org or phone at 415-485-3066) who will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.

OPEN SESSION

1. None.

CLOSED SESSION

2. Closed Session: - None.

CITY MANAGER'S REPORT:

3. City Manager's Report:

OPEN TIME FOR PUBLIC EXPRESSION – 7:00 PM

The public is welcome to address the City Council at this time on matters not on the agenda that are within its jurisdiction. Please be advised that pursuant to Government Code Section 54954.2, the City Council is not permitted to discuss or take action on any matter not on the agenda unless it determines that an emergency exists, or that there is a need to take immediate action which arose following posting of the agenda. Comments may be no longer than two minutes and should be respectful to the community.

CONSENT CALENDAR:

The opportunity for public comment on consent calendar items will occur prior to the City Council's vote on the Consent Calendar. The City Council may approve the entire consent calendar with one action. In the alternative, items on the Consent Calendar may be removed by any City Council or staff member, for separate discussion and vote.

4. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council / Successor Agency Regular Meeting of Monday, June 15, 2020 and Special Meeting of June 29, 2020 (CC)

Recommended Action – Approve minutes as submitted

b. **Statement of Economic Interests Annual Filings**

Report on Fair Political Practices Commission Form 700, Statement of Economic Interests, 2019 Annual Filings, for Section 87200 Filers and Designated Employees, Including Consultants, Design Review Board, and Park and Recreation Commission (CC)

Recommended Action – Accept report

c. **Legal Services Contract**

Resolution Approving and Authorizing the City Manager to Execute an Agreement with Burke, Williams & Sorensen, LLP for Essential Legal Services to Supplement Staff in the City Attorney's Office, In An Amount Not to Exceed \$150,000 (CA)

Recommended Action – Adopt Resolution

d. **General Plan 2040 / Downtown Precise Plan Project Manager Agreement Amendment**

Resolution Authorizing the City Manager to Execute the Second Amendment to the Agreement for Professional Planning Services with Barry J. Miller to Serve as Project Manager for General Plan 2040 and Downtown Precise Plan (CD)

Recommended Action – Adopt Resolution

e. **Local Early Action Planning (LEAP) Grant Application**

Resolution Authorizing the City Manager to Submit an Application for, and Receipt of, Local Early Action Planning (LEAP) Grant Funds in the Amount of \$300,000, and to Execute Documents or Amendments Once the Grant is Awarded (CD)

Recommended Action – Adopt Resolution

f. **Crime Analyst Services**

Resolution Authorizing the City Manager to Execute an Agreement for Crime Analysis Services with LexisNexis Risk Solutions, Inc., in an Amount Not to Exceed \$140,979, and Appropriating this Amount from the Safety Grant Fund to Support the Agreement (PD)

Recommended Action – Adopt Resolution

g. **Grant Funding for 9-1-1 Equipment Upgrade**

Resolution Granting the Chief of Police Authority to Use Funding in the Amount of \$287,000 from the California Office of Emergency Services, 9-1-1 Emergency Communications Branch to Upgrade the Police Departments Emergency and Non-Emergency Telephone Equipment in Fiscal Year 2020/2021 (PD)

Recommended Action – Adopt Resolution

h. **Caltrans Maintenance Agreement**

Resolution Approving and Authorizing the City Manager to Execute a First Amendment to the Project Specific Maintenance Agreement with the State of California Department of Transportation (Caltrans) for Maintenance of Portions of Lucas Valley Road and Smith Ranch Road Within State Right-Of-Way (PW)

Recommended Action – Adopt Resolution

SPECIAL PRESENTATIONS:

5. Special Presentation:

a. **Juneteenth**

Resolution in Annual Commemoration and Proclamation of Juneteenth

Recommended Action – Adopt Resolution

PUBLIC HEARINGS

6. Public Hearings:

a. **1499 Lucas Valley Road Environmental and Design Review Permit and Exception**

Resolution Approving Environmental and Design Review Permit (ED19-099) and Exception (EX20-001) for the Construction of a 901 Sq. Ft. Bathroom/Closet Addition to an Existing 8,592 Sq. Ft. Single-Family Residence Located at 1499 Lucas Valley Rd. (APN: 165-010-89) (CD)

Recommended Action – Adopt Resolution

OTHER AGENDA ITEMS:

7. Other Agenda Items:

a. **General Plan 2040 Transportation Standards**

Recommended Standards for Vehicle Miles Traveled (VMT) and Transportation Level of Service (LOS) for General Plan 2040 (CD)

Recommended Action – Accept report

b. **Grand Jury Report on Cyberattacks**

Resolution Approving and Authorizing the Mayor to Execute the City of San Rafael's Response to the 2019-2020 Marin County Civil Grand Jury Report Entitled, "Cyberattacks: A Growing Threat to Marin Government" (DS)

Recommended Action – Adopt Resolution

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:
(including AB 1234 Reports on Meetings and Conferences Attended at City Expense)

8. Councilmember Reports:

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

Any records relating to an agenda item, received by a majority or more of the Council less than 72 hours before the meeting, shall be available for inspection online. Sign Language interpreters may be requested by calling (415) 485-3066 (voice), emailing Lindsay.lara@cityofsanrafael.org or using the California Telecommunications Relay Service by dialing "711", at least 72 hours in advance of the meeting. Copies of documents are available in accessible formats upon request.

MINUTES

Minutes subject to approval at the City Council meeting of Monday, July 6, 2020



SAN RAFAEL CITY COUNCIL – MONDAY, JUNE 15, 2020

REGULAR MEETING AT 7:00 P.M.

Telephone: (669) 900-9128,

ID: 878 4083 1894

CORONAVIRUS (COVID-19) ADVISORY NOTICE

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Present: Mayor Phillips
Vice Mayor Colin
Councilmember Bushey
Councilmember McCullough

Absent: Councilmember Gamblin

Also Present: City Manager Jim Schutz
City Attorney Rob Epstein (Closed Session only)
Assistant City Attorney Lisa Goldfien
City Clerk Lindsay Lara

OPEN SESSION – (669) 900-9128, ID 886-1182-5128# – 6:00 PM

1. Mayor Phillips announced Closed Session items.

CLOSED SESSION – (669) 900-9128, ID: 886-1182-5128# – 6:00 PM

2. Closed Session:
 - a. Conference with Labor Negotiators – Government Code Section 54957.6

Lead Negotiator: Timothy L. Davis (Burke, Williams & Sorensen)
Agency Designated Representatives: Jim Schutz, Cristine Alilovich, Nadine Hade, Shibani Nag, Diana Bishop
Employee Organizations: SEIU - Childcare; San Rafael Police Mid-Management Association; Public Employee Union, Local 1; San Rafael Firefighters' Association; San Rafael Police Association; SEIU Local 1021; Western Council of Engineers; San Rafael Fire Chief Officers' Association

REGULAR MEETING - VIRTUAL MEETING

Telephone: (669) 900-9128,

ID: 878 4083 1894

Mayor Phillips called the meeting to order at 7:04 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present.

City Clerk Lindsay Lara informed the community the meeting would be streamed live to YouTube and members of the public would provide public comment either on the telephone or through YouTube live chat. She explained the process for community participation through the telephone and on YouTube.

Assistant City Attorney Lisa Goldfien announced that no reportable action was taken in Closed Session

CITY MANAGER'S REPORT:

3. City Manager's Report:

City Manager Jim Schutz spoke on the murder of George Floyd at the hands of the Minneapolis Police and spoke on what the City is doing at this time in policing and government.

Police Chief Diana Bishop also spoke on condemning the violence that ended George Floyd's life and expressed assurance that the SRPD is committed to being part of the solution in working with City leaders and the community to find better ways to serve all people.

City Manager Jim Schutz provided a brief update on the City's response to COVID-19.

Mayor Phillips thanked and expressed support for both Jim Schutz and Chief Bishop's comments and announced formalizing a committee to review police policies and procedures.

OPEN TIME FOR PUBLIC EXPRESSION – 7:00 PM

Mayor Phillips invited public comment

Correspondence in real-time through YouTube or telephone

- Crystal addressed the City Council regarding police expenditures in the budget
- Name withheld asked the City Council for the ethnic/racial breakdown of the SRPD's use of force incidents

- Susan McKinney addressed the City Council expressing support for non-police involvement with mental health, drug addiction and homelessness issues
- Chadwich Harber addressed the City Council regarding optimizing voting experiences
- Name withheld addressed the City Council regarding the SRPD
- Name withheld thanked the City Council for addressing BLM and racial justice
- Name withheld addressed the City Council regarding the SRPD Association asking for donations
- Name withheld addressed the City Council regarding divesting funds from the police and investing in community services
- Name withheld addressed the City Council regarding defunding the police
- D Uzarski addressed the City Council regarding 104 Shaver and community comments
- Name withheld addressed the City Council regarding police funding
- Michael Reynolds addressed the City Council regarding the SRPD budget
- Name withheld addressed the City Council regarding pressures and campaign contributions

CONSENT CALENDAR:

Mayor Phillips held item 4.j from the Consent Calendar

Mayor Phillips invited public comment on the Consent Calendar

Correspondence in real-time through YouTube or telephone

- Elissa Gensburn addressed the City Council regarding the budget, police and racial disparity
- Dave Olson addressed the City Council regarding item 4.h

Councilmember McCullough moved and Councilmember Bushey seconded to approve the remainder of the Consent Calendar

AYES: Councilmembers: Bushey, Colin, McCullough & Mayor Phillips
 NOES: Councilmembers: None
 ABSENT: Councilmembers: Gamblin

4. Consent Calendar Items:

- a. **Approval of Minutes**
Approve Minutes of City Council / Successor Agency Regular Meeting of Monday, June 1, 2020 (CC)
Approved as submitted

- b. **Proposing General Municipal Election 2020**
Resolution Calling and Giving Notice of At-Large Elections, By-District Elections, By-District Elections for Districts 1/Southern and 4/Northern, and San Rafael Board of Education Trustee Area Elections for Areas 1, 3 and 5, to Be Held on November 3, 2020, Requesting the Marin County Board of Supervisors to Consolidate with Any Other Election Conducted on Said Date, and Requesting Election Services (CC)

Resolution 14814 - Resolution Calling and Giving Notice of At-Large Elections, By-District Elections, By-District Elections for Districts 1/Southern and 4/Northern, and San Rafael Board of Education Trustee Area Elections for Areas 1, 3 and 5, to Be Held on November 3, 2020, Requesting the Marin County Board of Supervisors to Consolidate with Any Other Election Conducted on Said Date, and Requesting Election Services

c. **Professional Service Agreement for Permit Management System**

Resolution Authorizing the City Manager to Execute an Agreement for Professional Services with Camino Technology Solutions, Inc. to Develop a Permit Management System, with a Three-Year Term for a Contract Amount Not to Exceed \$175,000 (CD)

Resolution 14815 - Resolution Authorizing the City Manager to Execute an Agreement for Professional Services with Camino Technology Solutions, Inc. to Develop a Permit Management System, with a Three-Year Term for a Contract Amount Not to Exceed \$175,000

d. **Paramedic Tax Rate for Fiscal Year 2020-21**

Second Introduction and Final Adoption of Ordinance No. 1985: An Ordinance Amending the Paramedic Service Special Tax Rates Within the Voter-Approved Limit, Commencing with Fiscal Year 2020-2021, for improved Residential and Non-Residential Properties in the City of San Rafael, County Service Area No. 13, County Service Area No. 19, and the Marinwood Community Services District (Fin)

Ordinance No. 1985 - An Ordinance Amending the Paramedic Service Special Tax Rates Within the Voter-Approved Limit, Commencing with Fiscal Year 2020-2021, for improved Residential and Non-Residential Properties in the City of San Rafael, County Service Area No. 13, County Service Area No. 19, and the Marinwood Community Services District

e. **City Investment Policy**

Annual Review and Resolution to Approve the City of San Rafael Investment Policy (Fin)

Accepted Report and Resolution 14816 - Resolution to Approve the City of San Rafael Investment Policy

f. **Annual Adjustment to the Library Parcel Tax**

Report Concerning the Annual Consumer Price Index (CPI) Rate Adjustment for the Special Library Services Parcel Tax for the Fiscal Year July 1, 2020 Through June 30, 2021 as Specified in Voter-Approved Measure D (San Rafael Municipal Code Chapter 3.36) (Fin)

Accepted Report

g. **Special Tax on Properties at the Village at Loch Lomond Marina – Mello-Roos District No. 2**

Resolution Setting the Special Tax for City of San Rafael Community Facilities District No. 2 (The Village at Loch Lomond Marina) for Fiscal Year 2020-21 (PW)

Resolution 14817 - Resolution Setting the Special Tax for City of San Rafael Community Facilities District No. 2 (The Village at Loch Lomond Marina) for Fiscal Year 2020-21

h. **Baypoint Lagoons Assessment District**

Baypoint Lagoons Landscaping and Lighting Assessment District Annual Assessment: (PW)

- i. **Resolution Directing Filing of Engineer's Annual Report FY 2020-21**
Resolution 14818 - Resolution Directing Filing of Engineer's Annual Report FY 2020-21
- ii. **Resolution Approving Engineer's Annual Report FY 2020-21**
Resolution 14819 - Resolution Approving Engineer's Annual Report FY 2020-21
- iii. **Resolution of Intention to Order Improvements and Setting a Public Hearing on the Annual Assessment for the City Council Meeting of July 20, 2020**
Resolution 14820 - Resolution of Intention to Order Improvements and Setting a Public Hearing on the Annual Assessment for the City Council Meeting of July 20, 2020

i. **Point San Pedro Road Median Landscaping Assessment District Annual Assessment: (PW)**

- i. **Resolution Directing Filing of Engineer's Annual Report FY 2020-21**
Resolution 14821 - Resolution Directing Filing of Engineer's Annual Report FY 2020-21
- ii. **Resolution Approving Engineer's Annual Levy Report FY 2020-21**
Resolution 14822 - Resolution Approving Engineer's Annual Levy Report FY 2020-21
- iii. **Resolution of Intention to Order Improvements and Setting a Public Hearing on the Annual Assessment for the City Council Meeting of July 20, 2020**
Resolution 14823 - Resolution of Intention to Order Improvements and Setting a Public Hearing on the Annual Assessment for the City Council Meeting of July 20, 2020

j. **[Francisco Boulevard West - Rice Drive to Second Street Project](#)**

Adopt Resolutions Related to the Francisco Boulevard West – Rice Drive to Second Street Project, City Project No. 11364: (PW)

- i. **Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Francisco Boulevard West - Rice Drive to Second Street Project, City Project No. 11364, to Ghilotti Bros., Inc., In the Amount of \$2,259,787 and Authorizing Contingency Funds In the Amount of \$253,498, for a Total Appropriated Amount of \$2,513,285**
- ii. **Resolution Authorizing the City Manager to Execute a Deductive Change Order for the Francisco Boulevard West – Rice Drive to Second Street Project, City Project No. 11364, in the amount of \$575, 285**

This item was held from the Consent Calendar (and heard afterwards)

Mayor Phillips invited Todd Hedin to address the City Council

Mayor Phillips asked Bill Guerin, Director of Public Works to comment

Bill Guerin responded to questions from the Councilmembers

Mayor Phillips invited public comment

Speaker: Name withheld

Bill Guerin responded to public comment and Councilmember questions

Assistant City Attorney Lisa Goldfien provided comment

Todd Hedin provided comment

Bill Guerin provided comment

Mayor Phillips returned to public comment

Speakers: Name withheld, Maika Llorens Gulati, Name withheld

There being no further comment, Mayor Phillips closed the public comment period

Bill Guerin responded to Councilmember questions

Councilmembers provided comment

Councilmember Bushey moved and Councilmember McCullough seconded to adopt the resolution

AYES:	Councilmembers:	Bushey, Colin, McCullough & Mayor Phillips
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	Gamblin

Resolution 14827 - Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Francisco Boulevard West - Rice Drive to Second Street Project, City Project No. 11364, to Ghilotti Bros., Inc., In the Amount of \$2,259,787 and Authorizing Contingency Funds In the Amount of \$253,498, for a Total Appropriated Amount of \$2,513,285

Councilmember McCullough moved and Councilmember Bushey seconded to adopt the resolution

AYES:	Councilmembers:	Bushey, Colin, McCullough & Mayor Phillips
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	Gamblin

Resolution 14828 - Resolution Authorizing the City Manager to Execute a Deductive Change Order for the Francisco Boulevard West – Rice Drive to Second Street Project, City Project No. 11364, in the amount of \$575, 285

- k. **Marin County Stormwater Pollution Prevention Program
Resolution Approving and Authorizing the City Manager to Execute a Memorandum of Understanding with the County of Marin for the Marin County Stormwater Pollution Prevention Program Control Infrastructure Project (PW)**
Resolution 14824 - Resolution Approving and Authorizing the City Manager to Execute a Memorandum of Understanding with the County of Marin for the Marin County Stormwater Pollution Prevention Program Control Infrastructure Project
- l. **Public Safety Center Street Resurfacing
Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Public Safety Center Street Resurfacing Project, City Project No. 11377, to Era Construction, Inc., In the Amount Of \$539,899, and Authorizing Contingency Funds In the Amount of \$90,101, for a Total Appropriated Amount of \$630,000 (PW)**
Resolution 14825 - Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Public Safety Center Street Resurfacing Project, City Project No. 11377, to Era Construction, Inc., In the Amount Of \$539,899, and Authorizing Contingency Funds In the Amount of \$90,101, for a Total Appropriated Amount of \$630,000
- m. **Southern Heights Bridge Replacement
Resolution Approving and Authorizing the City Manager to Execute a Third Amendment to the Agreement with Mark Thomas and Company, Inc. for Construction Support and Additional Right of Way Services, in an Additional Contract Amount Not to Exceed \$180,198 (PW)**
Resolution 14826 - Resolution Approving and Authorizing the City Manager to Execute a Third Amendment to the Agreement with Mark Thomas and Company, Inc. for Construction Support and Additional Right of Way Services, in an Additional Contract Amount Not to Exceed \$180,198

OTHER AGENDA ITEMS:

5. Other Agenda Items:
- a. **[Plan Bay Area 2050 – Priority Development Areas \(PDA\)](#)
Resolution Authorizing the Submittal of a Letter of Interest Nominating the Northgate and Southeast San Rafael/Canal Neighborhoods as Priority Development Areas as Part of the Plan Bay Area 2050 Program (CD)**

Ethan Guy, Principal Analyst presented the Staff Report

Staff responded to comments and questions from Councilmembers

Mayor Phillips invited public comment

Speakers: Bill Carney Sustainable San Rafael, Name withheld, Name withheld, Name withheld, Shirley Fisher, Name withheld, Name withheld, David Smith, Name withheld, Eric Boales, Nimalan Mahendran, Name withheld, Dave Bonfilio, Name withheld, Name withheld, Name withheld, Name withheld, Name withheld, Name withheld, Greg Knell, Pam Reaves

Staff responded to comments and questions from Councilmembers

Councilmember Bushey moved and Councilmember Colin seconded to adopt the resolution

AYES: Councilmembers: Bushey, Colin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: Gamblin

Resolution 14829 - Resolution Authorizing the Submittal of a Letter of Interest Nominating the Northgate and Southeast San Rafael/Canal Neighborhoods as Priority Development Areas as Part of the Plan Bay Area 2050 Program

Meeting called to recess

Meeting called back into session

- b. **Final Citywide Proposed Budget for Fiscal Year 2020-2021 and Legal Spending Limit:**
(Fin)
 - i. **Resolution Approving the Citywide Budget and Capital Improvement Program for the Fiscal Year 2020-2021 and Providing for the Appropriations and Expenditure of All Sums Set Forth in the Budget in the Amount of \$127,943,913;**
 - ii. **Resolution Approving Fiscal Year 2020-2021 Gann Appropriations Limit at \$143,208,909**

Nadine Hade, Finance Director presented the Staff Report

Mayor Phillips invited public comment

Speakers: Jill Harris, Matthew Spiegel, Irene Langlamet, Eder Ruiz, Michael Reynolds, Brian Duncan, Jennifer Ghidinelli

Staff responded to public comment

Councilmembers provided comment

Councilmember McCullough moved and Councilmember Colin seconded to adopt the resolution

AYES: Councilmembers: Bushey, Colin, McCullough & Mayor Phillips

NOES: Councilmembers: None
ABSENT: Councilmembers: Gamblin

Resolution 14830 - Resolution Approving the Citywide Budget and Capital Improvement Program for the Fiscal Year 2020-2021 and Providing for the Appropriations and Expenditure of All Sums Set Forth in the Budget in the Amount of \$127,943,913

Councilmember McCullough moved and Councilmember Colin seconded to adopt the resolution

AYES: Councilmembers: Bushey, Colin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: Gamblin

Resolution 14831 - Resolution Approving Fiscal Year 2020-2021 Gann Appropriations Limit at \$143,208,909

c. **Public Opinion Polling Survey Results for Potential Local Sales Tax Ballot Measure**
Informational Report on the Results of a Recent Public Opinion Poll Conducted to Evaluate the Feasibility of a Potential Ballot Measure to Increase the Local Sales Tax Rate (CM)

Cristine Alilovich, Assistant City Manager introduced Bryan Godbe, Godbe Research and Charles Heath, TBWBH Props & Measures who presented the Staff Report

Mayor Phillips invited public comment

Speakers: Name withheld, Name withheld

Councilmembers provided comment

Councilmember McCullough moved and Councilmember Bushey seconded to accept the report

AYES: Councilmembers: Bushey, Colin, McCullough & Mayor Phillips
NOES: Councilmembers: None
ABSENT: Councilmembers: Gamblin

Accepted Report

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:
(including AB 1234 Reports on Meetings and Conferences Attended at City Expense)

6. Councilmember Reports: - None.

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

Mayor Phillips adjourned the City Council meeting at 10:17 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2020

GARY O. PHILLIPS, Mayor

DRAFT



MINUTES

SAN RAFAEL CITY COUNCIL SPECIAL MEETING

MONDAY, JUNE 29, 2020 AT 5:00 P.M.

Join Online:

<https://us02web.zoom.us/j/82830068678?pwd=bkNiYzRobHBFcm9nR0FLNE05cFIGQT09>

Password: 415

Telephone: (669) 900-9128,

ID: 828-3006-8678

Present: Mayor Phillips
Vice Mayor Colin
Councilmember Bushey
Councilmember Gamblin
Councilmember McCullough

Absent: None.

Also Present: City Manager Jim Schutz
City Clerk Lindsay Lara
Community Development Director Paul Jensen
Planning Manager Raffi Bolyan
Library and Recreation Director Susan Andrade-Wax
Assistant Library and Recreation Director Henry Bankhead

Mayor Phillips called the meeting to order at 5:15 p.m.

1. Planning Commission Interviews

Interview Applicants and Make Appointments to Fill One Four-Year Term to the End of June 2024 and Two Unexpired Four-Year Terms to the End of June 2021 and June 2022 on the Planning Commission Due to the Expiration of Terms of Barrett Schaefer and the Resignation of Jeffrey Schoppert and Sarah Loughran (CC)

The City Council interviewed the following applicants: Elias Hill, John Stanko, Jon Previtali, Karen Strolia, Lisa Hanson, Samina Saude, Sharon Leckie and Timothy O'Dwyer. Dave Burt withdrew his application.

Councilmember Bushey moved, and Councilmember McCullough seconded, to appoint Samina Saude to the end of June 2024, Jon Previtali to the end of June 2021 and Elias Hill to June 2022 on the San Rafael Planning Commission.

AYES: Councilmembers: Bushey, Gamblin, McCullough & Mayor Phillips

NOES: Councilmembers: Colin

ABSENT: Councilmembers: None

2. Board of Library Trustee Interviews

Interview Applicants and Make an Appointment to Fill One Unexpired Four-Year Term on the Board of Library Trustees to the End of April 2023 Due to the Resignation of Catherine Sumser (CC)

The City Council interviewed the following applicants: Adriana Duque Hughes, Cheryl Lentini and Yvette Lozano. Daniel Bacon did not attend the interview.

After discussion, there was City Council consensus to appoint Adriana Duque Hughes to the end of April 2023.

ADJOURNMENT:

Mayor Phillips adjourned the City Council meeting at 7:31 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2020

GARY O. PHILLIPS, Mayor

DRAFT



SAN RAFAEL

THE CITY WITH A MISSION

Agenda Item No: 4.b

Meeting Date: July 6, 2020

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Clerk's Office

Prepared by: Lindsay Lara, City Clerk

City Manager Approval: 

TOPIC: STATEMENT OF ECONOMIC INTERESTS ANNUAL FILINGS

SUBJECT: REPORT ON FAIR POLITICAL PRACTICES COMMISSION FORM 700, STATEMENT OF ECONOMIC INTERESTS, 2019 ANNUAL FILINGS, FOR SECTION 87200 FILERS AND DESIGNATED EMPLOYEES, INCLUDING CONSULTANTS, DESIGN REVIEW BOARD, AND PARK AND RECREATION COMMISSION

RECOMMENDATION: Accept report.

BACKGROUND:

On February 19, 2019, the City Council, by [Resolution No. 14636](#), updated/adopted a Conflict of Interest Code for Designated Employees as required by the Fair Political Practices Commission (FPPC).

The City Council is the Code Reviewing Body for all Forms 700, "Conflict of Interest Statement for Designated Employees", and the City Clerk is the Filing Officer.

The annual filings of Form 700 for designated employees, including the Design Review Board, Park and Recreation Commission, and the City's consultants, due June 1, 2020, were for the most part filed in a timely manner, substantially complying with filing requirements, and have been verified for completeness. These documents are available for review in the City Clerk's office.

All Forms 700, Statement of Economic Interests filed by the Mayor and City Council, City Manager, City Treasurer/Finance Director and City Attorney were filed by the deadline of Monday, June 1, 2020 with the exception of one Planning Commissioner who received their first non-filer notification and filed their Form 700 on June 15, 2020. Originals were forwarded to the FPPC on June 15, 2020, with copies retained on file for public review.

ATTACHMENTS:

1. Conflict of Interest Code
 - a. Exhibit A – Designated Employee List
 - b. Exhibit B – Disclosure Categories

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18730. Provisions of Conflict of Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories

are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

(D) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$470.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$470 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected

officer has been elected or over which that elected officer's agency has direction and control.

This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed \$500 at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of \$100 or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action.

Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$470 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be

made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

² See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14).
Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).

9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).

19. Editorial correction of subsection (a) (Register 98, No. 47).

20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).

22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).

23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District,

nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of*

Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

32. Amendment of section heading and subsections (a)-(b)(1), (b)(3)-(4), (b)(5)(C), (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) and amendment of footnote 1 filed 1-8-2013; operative 2-7-2013.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 2).

33. Amendment of subsections (b)(8.1)-(b)(8.1)(A), (b)(8.2)(E)3. and (b)(9)(E) filed 12-15-2014; operative 1-1-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations.

Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2014, No. 51).

34. Redesignation of portions of subsection (b)(8)(A) as new subsections (b)(8)(B)-(D), amendment of subsections (b)(8.1)-(b)(8.1)(A), redesignation of portions of subsection (b)(8.1)(A) as new subsections (b)(8.1)(B)-(C) and amendment of subsection (b)(9)(E) filed 12-1-2016; operative 12-31-2016 pursuant to Cal. Code Regs. tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision,

April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 49).

APPENDIX A
Designated Employees

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>
All Departments	Management Analyst Series	1, 2
	Administrative Analyst	1, 2
	Professional Analyst (Fixed Term)	1, 2
	Business Systems Analyst (Fixed Term)	1, 2
City Attorney	Assistant City Attorney	1, 2
	Deputy City Attorney II	1, 2
City Clerk	City Clerk	1, 2
	Deputy City Clerk	1, 2
City Manager	Assistant City Manager	1, 2
	Director of Homeless Planning & Outreach	1, 2
	Director of Economic Development and Innovation	1, 2
	Economic Development Program Coordinator	1, 2
	Sustainability and Volunteer Program Coordinator	1, 2
Community Development	Community Development Director	1, 2
	Planning Manager	1, 2
	Senior Planner	1, 2
	Associate Planner	1, 2
	Assistant Planner	1, 2
	Planning Technician	1, 2
	Senior / Code Enforcement Supervisor	1, 2
	Code Enforcement Official III	1, 2
	Code Enforcement Official II	1, 2
	Code Enforcement Official I	1, 2
	Chief Building Official	1, 2
	Permit Services Coordinator	1, 2
	Senior Building Inspector	1, 2
	Building Inspector II	1, 2
	Building Inspector I	1, 2
Community Services	Community Services Director	1, 2
	Senior Recreation Supervisor	3a, 3b, 3f, 3g
	Recreation Supervisor	3a, 3b, 3f, 3g
	Program Coordinator	3a, 3b, 3f, 3g
	Recreation Coordinator	3a, 3b, 3f, 3g
	Events Coordinator	1, 2
Digital Service and Open Government	Director of Digital Service and Open Government	1, 2
	Technology Operations Manager	1, 2
	Data & Infrastructure Manager	1, 2
	Civic Design Manager	1, 2
	Network Analyst	3a, 3d, 3g
	GIS Analyst	3e, 3g
Fire	Fire Chief	1, 2
	Deputy Fire Chief	1, 2
	Battalion Chief - Operations	1, 2
	Battalion Chief - Administration	1, 2

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>
	Administrative Fire Captain	2, 3d, 3e, 3g
	Deputy Fire Marshal	1, 2
	Fire Prevention Specialist	2, 3d, 3e, 3g
	Fire Prevention Inspector II	2, 3d, 3e, 3g
	Fire Prevention Inspector I	2, 3d, 3e, 3g
	Environmental Management Coordinator	2, 3d, 3e, 3g
	Emergency Management Coordinator	2, 3d, 3e, 3g
	Vegetation Management Specialist	2, 3d, 3e, 3g
Finance	Accounting Manager	1, 2
	Revenue Supervisor	1, 2
	ERP Project Manager (Fixed Term)	1, 2
	Principal Accountant	1, 2
	Senior Accountant	1, 2
	Payroll Administrator	3a, 3c, 3g
Library	Library Director	1, 2
	Assistant Library Director	1, 2
Management Services	Human Resources Director	1, 2
	Human Resources Coordinator	1, 2
	Parking Services Manager	1, 2
	Parking Operations Supervisor	2, 3a, 3d, 3g
Police	Chief of Police	1, 2
	Police Captain	1, 2
	Police Lieutenant	1, 2
	Police Support Services Supervisor	3d, 3e, 3f, 3g
	Police Community Services Officer	3d, 3f, 3g
	Youth Services Program Supervisor	3d, 3f, 3g
Public Works / Sanitation District	Public Works Director	1, 2
	Assistant Public Works Director / City Engineer	1, 2
	Deputy Public Works Director	1, 2
	Senior Civil Engineer	1, 2
	Associate Civil Engineer	1, 2
	Assistant Civil Engineer	1, 2
	Sr. Associate Engineer	1, 2
	Jr. Engineer	3e, 3g
	Engineering Technician I	3e, 3g
	Engineering Technician II	3e, 3g
	Traffic Engineer	1, 2
	Traffic Engineering Technician I	3e, 3g
	Traffic Engineering Technician II	3e, 3g
	Streets Maintenance Supervisor	1, 2
	Parks Maintenance Supervisor	1, 2
	Operations and Maintenance Manager	1, 2
	Facility Repair Supervisor	3d, 3e, 3f
	Shop & Equipment Supervisor	3d, 3e, 3f
	District Manager / District Engineer, Sanitation District	1, 2

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>
	Sr. Civil Engineer, Sanitation District	1, 2
	Associate Civil Engineer	1, 2
	Jr. Engineer	1, 2
	Sewers Maintenance Supervisor	3d, 3e, 3f
	Sewer Maintenance Superintendent	3d, 3e, 3f
Boards & Commissions	Design Review Board	1, 2
	Park & Recreation Commission	1, 2
Consultants **		1, 2

** With respect to Consultants, the relevant department director may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in these categories. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The department director shall forward a copy of this determination to the City Clerk. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

Designated Employees 2019

APPENDIX B

Disclosure Categories

Category 1: All investments and sources of income.

Category 2: All interests in real property in the jurisdiction of San Rafael or within 2 miles of the jurisdiction of San Rafael.

Category 3: Investments in business entities and sources of income of the type which have or foreseeably could contract with the City to provide services, supplies, materials, machinery, or equipment; or which could be enhanced when a designated employee makes or participates in making a decision.

- a. Personnel agencies or personnel consultants;
- b. Municode and Marin County newspapers;
- c. Financial institutions;
- d. Department record forms, communications equipment, safety equipment, firefighting or fire detection equipment, automotive or rolling stock sales, automotive parts or equipment, general departmental supplies or equipment;
- e. Building supplies or building, contractor, or construction firms;
- f. Travel agencies, recreation and athletic supplies, building maintenance and cleaning supplies;
- g. Book, software, and audio-visual publishers and distributors; computer equipment manufacturers and distributors.

NOTE: PENALTY FOR LATE FILING:

As required under the Political Reform Act of 1974, as amended, section 91013, if any person files an original statement after any deadline, he shall be liable in the amount of \$10.00 per day after the deadline until the statement is filed, up to a maximum of \$100.00, whichever is greater.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney

Prepared by: Lisa Goldfien, Asst. City Attorney

City Manager Approval: _____

TOPIC: LEGAL SERVICES CONTRACT

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH BURKE, WILLIAMS & SORENSEN, LLP FOR ESSENTIAL LEGAL SERVICES TO SUPPLEMENT STAFF IN THE CITY ATTORNEY’S OFFICE, IN AN AMOUNT NOT TO EXCEED \$150,000

RECOMMENDATION:

Adopt resolution approving the legal services agreement.

BACKGROUND:

The Deputy City Attorney II essential position was vacated at the end of May 2019, and staff has determined not to advertise for a new attorney for the next fiscal year due to the economic downturn related to COVID-19. Since June 2019 the City Attorney’s office has had an agreement to obtain “on-call” legal services from the firm of Burke, Williams & Sorensen, LLP, mainly from partner Nira Doherty. The part-time services that Nira and her firm have provided have enabled the office to function without a fulltime deputy city attorney. The [current agreement for services](#) expires on July 6, 2020 and Staff now wishes to enter into a new agreement for these legal services during fiscal year 2020-2021.

ANALYSIS:

Nira Doherty is an experienced city attorney, litigator, and land use expert. Her litigation and transactional practices emphasize general municipal law, land use and development, CEQA, and code enforcement issues. She serves as General Counsel for the Tahoe Transportation District, and Assistant City Attorney for the cities of Benicia, Ross and Capitola. Nira advises city councils and staff in all areas of municipal law including complex land use, zoning, and development matters, open meeting laws, the Public Records Act, conflicts of interest, CEQA, elections, initiatives, contracts and torts, and conflicts of interest. She also advises municipal clients throughout the state on issues related to cannabis. Nira has spoken extensively on cannabis issues and has successfully represented municipalities in cannabis-related litigation.

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

Staff recommends entering into an agreement with Burke, Williams & Sorensen for general municipal law services during fiscal year 2020-2021. Payment would be made at the firm's standard public entity hourly rates, in a not-to-exceed amount of \$150,000. This would provide approximately 40 hours of legal services per month. City Attorney staff expects that most services would be provided by Nira, but this agreement would also provide the City Attorney's office with the benefit of access to subject-matter experts in the Burke firm when needed.

FISCAL IMPACT:

Funds to cover the recommended contract amount are available due to budget savings from the vacant Deputy City Attorney II essential position. Although the sum of \$201,000 is budgeted for these services, in recognition of the City's pressing need to reduce expenses, Staff is proposing to cap the fees for the 12-month term of this agreement at \$150,000. Staff expects this amount to be sufficient; however, if unanticipated events result in a need for additional contract legal services during the fiscal year, Staff will return to the City Council for approval of any increase in total contract fees.

OPTIONS:

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

1. Adopt the resolution approving the legal services agreement as recommended.
2. Adopt the resolution with modifications to the agreement.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt the resolution.

ATTACHMENTS:

1. Resolution
2. Proposed Agreement for Legal Services

RESOLUTION NO. _____

A RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH BURKE, WILLIAMS & SORENSEN, LLP FOR ESSENTIAL LEGAL SERVICES TO SUPPLEMENT STAFF IN THE CITY ATTORNEY'S OFFICE, IN AN AMOUNT NOT TO EXCEED \$150,000

WHEREAS, the Deputy City Attorney II essential position was vacated at the end of May 2019; and

WHEREAS, for assistance with overflow work pending the hiring of a new deputy city attorney, the City Attorney's office has had an agreement since June 2019 to obtain "on-call" legal services from the firm of Burke, Williams & Sorensen, LLP (BW&S); and

WHEREAS, the part-time services provided by BW&S have enabled the City Attorney's office to function, on a temporary basis, without a fulltime deputy city attorney; and

WHEREAS, to achieve budget savings, City staff have determined to continue to rely upon contract legal services rather than to fill the Deputy City Attorney II position during Fiscal Year 2020-2021; and

WHEREAS, funds to cover the recommended contract amount are available due to budget savings from the vacant Deputy City Attorney II position;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael hereby approves and authorizes the City Manager to execute an Agreement for General Municipal Legal Services with Burke, Williams & Sorensen, LLP for essential legal services to supplement staff in the City Attorney's office during Fiscal Year 2020-2021, in an amount not to exceed \$150,000 and in the form presented in the staff report accompanying 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 Council of said City on Monday, the 6th day of July 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**AGREEMENT FOR PROFESSIONAL SERVICES
FOR GENERAL MUNICIPAL SERVICES**

This Agreement is made and entered into this _____ day of _____, 20____, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and BURKE, WILLIAMS & SORENSEN, LLP (hereinafter "**CONTRACTOR**").

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** The Assistant City Attorney is hereby designated the PROJECT MANAGER for the **CITY**, and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

B. **CONTRACTOR'S Project Director.** **CONTRACTOR** shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONTRACTOR**. Nira Doherty is hereby designated as the PROJECT DIRECTOR for **CONTRACTOR**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR, for any reason, the **CONTRACTOR** shall notify the **CITY** within ten (10) business days of the substitution.

2. **DUTIES OF CONTRACTOR.**

CONTRACTOR shall perform the duties and/or provide services as follows:

- a. Representation and advice regarding general municipal matters for the City Attorney's office and for the City Council, City Manager, Boards and Commissions and City staff as directed and delegated by the City Attorney's office.
- b. Attendance at Council meetings and staff meetings as directed and delegated by the City Attorney's office.
- c. Occasional office hours at City Hall during Assistant City Attorney vacation, in an agreed upon schedule by the parties.

This Agreement shall include all general municipal legal services which includes all legal services with the exception of special counsel services. Special counsel services include:

- Litigation
- Arbitration
- Complex construction

- Eminent domain
- Complex personnel matters including disciplinary actions (routine personnel matters and advice are included within the Agreement.)
- Imposition of fees and taxes pursuant to Props 26 and 218

3. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 4.

4. COMPENSATION.

For the full performance of the services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** on a time and materials basis at **CONTRACTOR's** standard public agency rates as follows:

- \$325/hour - partners
- \$295/hour – associates

In no event shall the compensation payable to **CONTRACTOR** hereunder exceed the sum of \$150,000 except by written amendment to this Agreement.

Payment will be made monthly upon receipt by PROJECT MANAGER of itemized invoices submitted by **CONTRACTOR**.

5. TERM OF AGREEMENT.

The term of this Agreement shall commence on July 1, 2020 and end on June 30, 2021.

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.

D. **Return of Documents.** Upon termination, any and all **CITY** documents or

materials provided to **CONTRACTOR** and any and all of **CONTRACTOR's** documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to **CITY** as soon as possible, but not later than thirty (30) days after termination.

7. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the **CONTRACTOR** in connection with the performance of its duties under this Agreement, shall be the sole property of **CITY**. **CITY** may use said property for any purpose, including projects not contemplated by this Agreement.

8. INSPECTION AND AUDIT.

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

9. 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.

10. INSURANCE.

A. **Scope of Coverage.** During the term of this Agreement, **CONTRACTOR** shall maintain, at no expense to **CITY**, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) dollars per occurrence.

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, to cover any claims arising out of the **CONTRACTOR's** performance of services under this Agreement. Where **CONTRACTOR** is a professional not required to have a professional license, **CITY** reserves the right to require **CONTRACTOR** to provide professional liability insurance pursuant to this section.

4. If it employs any person, **CONTRACTOR** shall maintain worker's compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. **CONTRACTOR's** worker's compensation insurance shall be specifically endorsed to waive any right of subrogation against **CITY**.

B. Other Insurance Requirements. The insurance coverage required of the **CONTRACTOR** in subparagraph A of this section above shall also meet the following requirements:

1. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under **CONTRACTOR'S** insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **CONTRACTOR'S** policies shall be at least as broad as ISO form CG20 01 04 13.

3. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, **CONTRACTOR** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONTRACTOR** may acquire against **CITY** by virtue of the payment of any loss under such insurance. **CONTRACTOR** agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not **CITY** has received a waiver of subrogation endorsement from the insurer.

5. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

6. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement.

7. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of **CITY** (if agreed to in a written contract or agreement) before **CITY'S** own insurance or self-insurance shall be called upon to protect it as a named insured.

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to CITY or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONTRACTOR** under this agreement.

C. **Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONTRACTOR's** insurance policies must be declared to and approved by the PROJECT MANAGER and City Attorney, and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or **CITY** or other additional insured party. At **CITY's** option, the deductibles or self-insured retentions with respect to **CITY** shall be reduced or eliminated to **CITY's** satisfaction, or **CONTRACTOR** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. **Proof of Insurance.** **CONTRACTOR** shall provide to the PROJECT MANAGER or **CITY'S** City Attorney all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this Agreement; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this Agreement. **CITY** reserves the right to obtain a full certified copy of any insurance policy and endorsements from **CONTRACTOR**. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by PROJECT MANAGER and the City Attorney.

11. INDEMNIFICATION.

A. Except as otherwise provided in Paragraph B., **CONTRACTOR** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **CITY**, and hold harmless **CITY**, its officers, agents, employees and volunteers (collectively, the "**City Indemnitees**"), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "**CLAIMS**"), arising out of **CONTRACTOR'S** performance of its obligations or conduct of its operations under this Agreement. The **CONTRACTOR's** obligations apply regardless of whether or not a liability is caused or contributed to by the active or passive negligence of the **City Indemnitees**. However, to the extent that liability is caused by the active negligence or willful misconduct of the **City Indemnitees**, the **CONTRACTOR's** indemnification obligation shall be reduced in proportion to the **City Indemnitees'** share

of liability for the active negligence or willful misconduct. In addition, the acceptance or approval of the **CONTRACTOR**'s work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONTRACTOR**'s indemnification obligations. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONTRACTOR**'S performance of or operations under this Agreement, **CONTRACTOR** shall provide a defense to the **City Indemnitees** or at **CITY'S** option reimburse the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

B. Where the services to be provided by **CONTRACTOR** under this Agreement are design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, then, to the extent permitted by law including without limitation, Civil Code sections 2782, 2782.6 and 2782.8, **CONTRACTOR** shall indemnify and hold harmless the **CITY** and its officers, officials, and employees (collectively **City Indemnitees**) from and against damages, liabilities or costs (including incidental damages, Court costs, reasonable attorney's fees as may be determined by the Court, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) to the extent they are caused by the negligence, recklessness, or willful misconduct of **CONTRACTOR**, or any subconsultants, or subcontractor or anyone directly or indirectly employed by them, or anyone for whom they are legally liable (collectively Liabilities). Such obligation to hold harmless and indemnify any indemnity shall not apply to the extent that such Liabilities are caused in part by the negligence or willful misconduct of such City Indemnitee.

C. 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.

12. NONDISCRIMINATION.

CONTRACTOR 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.

13. COMPLIANCE WITH ALL LAWS.

CONTRACTOR 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. **CONTRACTOR** shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. **CONTRACTOR** shall release, defend, indemnify and hold harmless **CITY**, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

14. NO THIRD PARTY BENEFICIARIES.

CITY and **CONTRACTOR** 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.

15. 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**'s Project Manager: Lisa Goldfien
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

TO **CONTRACTOR**'s Project Director: Nira Doherty
Burke, Williams & Sorensen, LLP
181 Third Street
San Rafael, CA 94901

16. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, **CONTRACTOR**, its officers, agents and employees shall act in the capacity of an Independent Contractor, and not as employees of the **CITY**. **CONTRACTOR** and **CITY** expressly intend and agree that the status of **CONTRACTOR**, its officers, agents and employees be that of an Independent Contractor and not that of an employee of **CITY**.

17. 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 **CONTRACTOR** 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 **CONTRACTOR** and the **CITY**.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

18. SET-OFF AGAINST DEBTS.

CONTRACTOR agrees that **CITY** may deduct from any payment due to **CONTRACTOR** under this Agreement, any monies which **CONTRACTOR** owes **CITY** under any ordinance, agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

19. 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.

20. COSTS AND ATTORNEY'S FEES.

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.

21. CITY BUSINESS LICENSE / OTHER TAXES.

CONTRACTOR shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code **CONTRACTOR** shall pay any and all state and federal taxes and any other applicable taxes. **CITY** shall not be required to pay for any work performed under this Agreement, until **CONTRACTOR** has provided **CITY** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

22. SURVIVAL OF TERMS.

ROBERT F. EPSTEIN, City Attorney

Title:

Name:

By:

[If Contractor is a corporation, add signature of second corporate officer]

APPROVED AS TO FORM:

LINDSAY LARA, City Clerk

ATTEST:

Title: Partner

Name: Nira F. Doherty

By:



JIM SCHUTZ, City Manager

By:

CONTRACTOR

CITY OF SAN RAFAEL

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

This Agreement may be executed 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.

24. COUNTERPARTS AND ELECTRONIC SIGNATURE.

The laws of the State of California shall govern this Agreement.

23. APPLICABLE LAW.

Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled, and shall apply to both Parties' respective successors and assigns.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Raffi Boloyan,
Planning Manager

City Manager Approval: _____

TOPIC: GENERAL PLAN 2040 / DOWNTOWN PRECISE PLAN PROJECT MANAGER AGREEMENT AMENDMENT

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL PLANNING SERVICES WITH BARRY J. MILLER TO SERVE AS PROJECT MANAGER FOR GENERAL PLAN 2040 AND DOWNTOWN PRECISE PLAN

RECOMMENDATION:

Staff recommends that the City Council adopt the attached Resolution, authorizing the City Manager to sign the Second Amendment to the Professional Service Agreement (PSA) with Barry Miller to serve as Project Manager for the General Plan 2040 /Downtown Precise Plan.

EXECUTIVE SUMMARY:

As part of the City's General Plan update and Downtown Precise Plan, staff is seeking approval of a second amendment to the PSA to extend the contract with Barry Miller Consulting by one additional year (through June 30, 2021) and increase the total budget by \$75,000, from \$295,000 to \$370,000. One-third, \$25,000, of the \$75,000 budget increase would be a contingency, to cover unexpected costs/services that may arise during the public review phase of the Draft Plan.

The City has sufficient fund balance allocated in the General Plan Special Revenue account (Fund 218) to support this contract and budget amendment.

BACKGROUND:

On February 14, 2017, a Request for Qualifications (RFQ) for General Plan update project management was released, inviting planning firms/consultants to submit their statement of qualifications for consideration, to which the City received two submittals, and ultimately selecting the proposal from Barry J. Miller doing business as *Barry Miller Consulting*. On June 19, 2017, the City Council adopted Resolution No. [14357](#) approving a Professional Service Agreement (PSA) with Barry J. Miller, with a term of one year (through June 20, 2018), and two one year extensions (through June 20, 2020) and a total not-to-exceed budget of \$275,000.

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

In February 2018, the City received a \$500,000 One Bay Area (OBAG) grant to prepare a Precise Plan for Downtown San Rafael for which the management was assigned to *Barry Miller Consulting*, in conjunction with the General Plan update. On July 15, 2019, the City Council adopted Resolution No. [14690](#), approving the first amendment to the PSA with Barry Miller to cover project management of the Downtown Precise Plan by increasing the budget by \$25,000 (from \$270,000 to \$295,000).

Over the past three years, extensive work has been performed on the preparation of the General Plan 2040, Downtown Precise Plan and the Environmental Impact Report (EIR) for both plans. While staff is very close to having a Draft General Plan and EIR ready for public release, the original schedule anticipated a release earlier in the year, with adoption by July 1, 2020. Several factors have impacted the original timeline of anticipated adoption by July 2020, including the addition of Downtown Precise Plan management to the scope of work and the disruptions caused by the COVID-19 pandemic. Therefore, work has proceeded at a slower pace than was forecast.

ANALYSIS:

The updated schedule anticipates release of the Plan during Summer 2020, with adoption hearings to follow. The goal is to achieve final approval this calendar year but, depending on review, it is possible that approvals could take place as late as Spring 2021. Given the current contract with Barry Miller expires June 30, 2020, a second amendment to the PSA is requested for one additional year (through June 20, 2021), in the amount of \$75,000 to cover continued services. The amendment would include \$50,000 for further work on the General Plan/ Downtown Precise Plan and a \$25,000 contingency in the event the need for supplemental services arises during the adoption process. Only the amount actually used would be spent, depending on the final, actual review and approval schedule. In addition, Mr. Miller has offered a reduction in the hourly billing rate from \$135/hour to \$125/hour, to support of the City's cost-reduction goals resulting from the recent pandemic

The scope of work performed during the extended time period will primarily cover tasks related to Plan adoption. This includes revisions to the Draft General Plan and Downtown Precise Plan, responses to comments on the EIR, production of the Final General Plan, Downtown Plan, and FEIR, and attendance at Board and Commission meetings, Council meetings, and other community meetings that may be scheduled during the adoption process.

FISCAL IMPACT:

Staff is requesting approval for a second amendment to the PSA. The increased funding of \$75,000 for the amendment to the Barry J. Miller PSA has already been appropriated from General Plan Special Revenue Fund (fund no. 218). This fund includes revenue for both the implementation of the current General Plan, as well as the General Plan update process. The current fund balance of the General Plan Special Revenue Fund is approximately \$1,359,111.

OPTIONS:

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

1. Adopt the resolution as presented, approving the amendments to the PSA.
2. Adopt the resolution with modifications, revising all or a portion of the amendments to the PSA.
3. Do not adopt the resolution and reject all or a portion of the amendment to the PSA and direct staff to solicit additional proposals for the corresponding services.
4. Direct staff to return with additional information.

RECOMMENDED ACTION:

Adopt a resolution authorizing the City Manager to execute the second amendment to the PSA for professional planning services with Barry J. Miller.

ATTACHMENTS:

1. Resolution authorizing City Manager to sign Second Amendment to PSA for Barry J. Miller.
2. Draft Second Amendment to PSA with Barry J. Miller with Exhibit A: Proposal dated June 1, 2020

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL PLANNING SERVICES WITH BARRY J. MILLER TO SERVE AS PROJECT MANAGER FOR GENERAL PLAN 2040 AND DOWNTOWN PRECISE PLAN.

WHEREAS, on June 19, 2017, the City Council adopted Resolution No. 14397, authorizing the execution of an Agreement between the City of San Rafael and the Barry J Miller for professional planning services to serve as Project Manager for the General Plan 2040. The Agreement was subsequently executed and established a maximum billing cap of \$270,000 and a term of July 1, 2017 through June 30, 2020, subject to a review and extension after each year of the term; and

WHEREAS, the City of San Rafael has twice exercised the option in the Agreement to extend the term by one (1) year and the current expiration date is June 30, 2020; and

WHEREAS, in February 2018, the City of San Rafael received a \$500,000 One Bay Area (OBAG) grant to prepare a Precise Plan for Downtown San Rafael (City Council Resolution No. 14469), for which the management was assigned to Barry J. Miller, in conjunction with the General Plan update; and

WHEREAS, on July 15, 2019, the City Council adopted Resolution No. 14690, approving the first amendment to the PSA with Barry J. Miller to cover project management of the Downtown Precise Plan by increasing the budget by \$25,000 (from \$270,000 to \$295,000); and

WHEREAS, the originally anticipated completion date for the General Plan 2040 and Downtown Precise Plan was July 2020, but this will not be achieved due to greater time, effort and outreach required to complete tasks to date, and the recent COVID-19 pandemic impacts. Therefore, there is a need for additional time and budget for **CONTRACTOR** to complete the project; and

WHEREAS, Barry J. Miller has submitted an updated scope of work, budget and billing rate to cover the additional services necessary to complete the project, including: a) an increase to term of the agreement by one (1) year (through June 30, 2021), b) a reduction of the billing rate from \$135/hr. to \$125/hr., and c) an increase to the total budget of an additional \$75,000 (from \$295,000 to \$370,000), including a \$25,000 contingency to cover additional work, revisions or tasks that may arise during the unpredictable public review process; and

WHEREAS, the City of San Rafael has appropriated sufficient funds in the General Plan Special Revenue Fund # 218 for FY 2020/21 to support the second amendment to the Agreement to include the additional work by Barry J. Miller needed in connection with the General Plan 2040 and Downtown Precise Plan;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby authorizes the City Manager to execute a Second Amendment to the

Professional Services Agreement with Barry J. Miller, in a form approved by the City Attorney, to extend the term of agreement by one (1) year, through June 30, 2021, and increase the maximum budget by \$75,000, including a \$25,000 contingency, from \$295,000 to \$370,000.

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 6th day of July 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**SECOND AMENDMENT TO AGREEMENT FOR
PROFESSIONAL PLANNING SERVICES**

This Second Amendment to Agreement for Professional Planning Services (“Second Amendment”) is made and entered into as of the ____ day of ____ 2020, by and between the CITY OF SAN RAFAEL (hereinafter "CITY"), and BARRY J. MILLER (hereinafter "CONTRACTOR").

WHEREAS, on June 19, 2017, **CITY** and **CONTRACTOR** entered into an Agreement for Professional Planning Services pursuant to which **CONTRACTOR** agreed to provide services as Project Manager for the **CITY’S** General Plan 2040 (the “Agreement”). The Agreement provided for a maximum contract amount of \$270,000 and a term of July 1, 2017 through June 30, 2020, subject to annual review and extension after each year of the term; and

WHEREAS, **CITY** has twice approved extensions to the Agreement and it is now due to expire on June 30, 2020; and

WHEREAS, in February 2018, **CITY** received a \$500,000 One Bay Area (OBAG) grant to prepare a Precise Plan for Downtown San Rafael (City Council Resolution No. 14469), for which the project management was assigned to **CONTRACTOR**, in conjunction with the General Plan update; and

WHEREAS, on July 15, 2019, pursuant to City Council approval, the parties entered into a First Amendment to the Agreement to include **CONTRACTOR’S** additional services for project management of the Downtown Precise Plan, and increasing the total compensation under the Agreement by \$25,000 (from \$270,000 to \$295,000); and

WHEREAS, the originally anticipated completion date for the General Plan 2040 and Downtown Precise Plan was July 2020, but this will not be achieved due to greater time, effort and outreach required to complete tasks to date, and the recent COVID-19 pandemic impacts. Therefore, there is a need for additional time and budget for **CONTRACTOR** to complete the project; and

WHEREAS, the **CONTRACTOR** has submitted an updated scope of work, budget and billing rate dated June 1, 2020, to cover the additional services necessary to complete the project, as provided in Exhibit A to this Second Amendment, including: a) an extension of the term of the Agreement by one (1) year (through June 30, 2021); b) the reduction of **CONTRACTOR’S** billing rate from \$135/hr. to \$125/hr. during the extended term; and c) increasing the total contract amount by \$75,000 (from \$295,000 to \$370,000), including a \$25,000 contingency to cover additional work, revisions or tasks that may arise during the unpredictable public review process; and

WHEREAS, the **CITY** has appropriated sufficient funds in the General Plan Special Revenue Fund # 218 for FY 2020/21 to support the amendment of the Agreement to include the additional work by **CONTRACTOR** needed to complete the General Plan 2040 and Downtown Precise Plan;

AGREEMENT

NOW, THEREFORE, the parties hereby agree to amend the Agreement, as amended on July 15, 2019 by the First Amendment, as follows:

1. Section 2 of the Agreement, entitled “DUTIES OF CONTRACTOR” is hereby amended to include the additional services described in **CONTRACTOR’S** June 1, 2020 letter attached as Exhibit A to this Second Amendment and incorporated herein by reference.
2. Section 4 of the Agreement, entitled “COMPENSATION”, is hereby amended to read in its entirety as follows (amendments noted in ~~strike thru~~/underline format):

4. COMPENSATION.

For the performance of services pursuant to this Agreement, **CONTRACTOR** shall bill for services on a “time and material” basis, as work is needed by **CITY**. **CONTRACTOR’S** billing rate shall be \$135 an hour through June 30, 2020 and then \$125 an hour for the period July 30, 2020 through June 30, 2021. Any reimbursable expenses shall be billed at cost, with no administrative mark-up. Notwithstanding the foregoing, **CONTRACTOR’S** compensation hereunder shall be subject to the following not-to-exceed limits:

- A. **CONTRACTOR’S** monthly billings shall not exceed \$7,500 in any given calendar month, excluding reimbursable expenses, without prior approval in writing by the PROJECT MANAGER.
- B. **CONTRACTOR’S** billings during the term of this Agreement, and during any subsequent extension of the term hereof, shall not exceed \$90,000 per year, excluding reimbursable expenses, without prior approval by the Project Director, provided that in no event shall **CONTRACTOR’S** total compensation of this contract, over the ~~three (3)~~ year period four (4) year period shall be ~~\$270,000-\$370,000~~, excluding reimbursable expenses. The total compensation limit includes a \$25,000 contingency reserved to cover additional work, research or revisions that arise during the public review process. The need for the use of the contingency shall be requested by the CONTRACTOR and approved by the PROJECT MANAGER, prior to performing the work.
- C. Reimbursable expenses for purposes of this Agreement shall include, but not be limited to: reproduction costs, graphics preparation, supplies and materials necessary for performing tasks, etc.

Payment will be made monthly upon receipt by PROJECT MANAGER of itemized invoices submitted by **CONTRACTOR**.

3. Section 5 of the Agreement, entitled “TERM OF AGREEMENT” is hereby amended to read in its entirety as follows (amendments noted in ~~strike thru~~/underline format):

5. TERM OF AGREEMENT.

The services to be performed under this Agreement shall commence on July 1, 2017 and shall continue ~~for one (1) year~~ through June 30, ~~2018~~ 2021, unless earlier terminated as provided in Section 6 of this Agreement. ~~Upon mutual agreement of the parties, and subject to the approval of the City Manager, this Agreement may be extended for up to two (2) additional one (1) year terms, provided that such no such extension shall increase the total compensation authorized in Section 4 of this Agreement.~~

4. Except as specifically amended herein, all of the other sections, provisions, terms and obligations of the Agreement for Professional Planning Services, executed on June 19, 2017 and amended on July 15, 2019, shall remain valid and shall be in force with the execution of this Second Amendment.

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

CITY OF SAN RAFAEL

CONTRACTOR

JIM SCHUTZ, City Manager

By: _____

Name: _____

Title: _____

ATTEST:

LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

Exhibit A: Letter from Barry Miller Re: Extension of Contract with Barry Miller, FAICP, with San Rafael General Plan 2040: Scope of Work for July 1, 2020 forward, dated June 1, 2020,

EXHIBIT A



June 1, 2020

Raffi Boloyan, Planning Manager
City of San Rafael Community Development Department
1400 Fifth Avenue, 3rd Floor
San Rafael, CA 94901

Re: Extension of Contract with Barry Miller, FAICP

Dear Raffi:

My contract with the City of San Rafael is scheduled to expire on June 30, 2020. While we are very close to having a Draft General Plan and EIR ready for public release, the original schedule anticipated a release earlier in the year, with adoption by July 1, 2020. As a result of several factors, including the addition of Downtown Precise Plan management to the scope of work and the disruptions caused by the COVID-19 pandemic, work on the Plan has proceeded at a slower pace than was forecast.

We are now anticipating release of the Plan during Summer 2020, with adoption hearings in the Fall. Accordingly, I am requesting an extension of my contract for one year, and a budget supplement not to exceed \$75,000 to cover continued services. The budget supplement would include \$50,000 for further work on the General Plan/ Downtown Precise Plan and a \$25,000 contingency in the event that the need for supplemental services arises during the adoption process. Please note that in support of the City's cost-reduction goals, I am reducing my rate by \$10/hour for the duration of the project.

The scope of work performed during the extended time period will primarily cover tasks related to Plan adoption. This includes revisions to the Draft General Plan and Downtown Precise Plan, responses to comments on the EIR, production of the Final General Plan, Downtown Plan, and FEIR, and attendance at Board and Commission meetings, Council meetings, and other community meetings that may be scheduled during the adoption process.

It has been a pleasure working with the City of San Rafael, and it's exciting to contemplate the release and adoption of the Plan in the months ahead. Thank you for your consideration.

Best regards,

A handwritten signature in cursive script that reads "Barry J Miller".

Barry Miller, FAICP

EXHIBIT A

San Rafael General Plan 2040 Scope of Work for July 1, 2020 forward for Barry Miller, FAICP

Task 1: Plan Publication

- A. *Draft General Plan.* Barry Miller will make necessary edits to Admin Draft General Plan 2040 to incorporate final changes and Staff comments. He will prepare the formatted Public Review Draft General Plan, including finalized maps, photos, and graphics. He will coordinate final review/ screencheck of the document as well as publication and notification of appropriate parties upon its release.
- B. *Draft EIR.* Barry Miller will coordinate release of the Public Review Draft EIR, including relaying edits and revisions to the Admin Draft EIR to the consultant preparing that document. He will work as the staff point of contact for filing notices related to that document, and initiating the public review process.
- C. *Draft Downtown Precise Plan.* Barry Miller will coordinate revision of the Admin Draft Downtown Precise Plan. He will work with City staff, General Plan Steering Committee members, the consultant team, and City commissions and stakeholders to identify necessary edits prior to publication of the document as a Public Review Draft.

Task 2: Plan Adoption

This task includes all work conducted between the time the General Plan, Downtown Precise Plan, and EIR are released and the point where they are adopted. Barry will continue to serve as Project Manager and represent the General Plan team during this process. This task includes attendance at all public meetings, preparation of staff reports and resolutions, and revisions to the Plan. Again, close coordination with members of the consultant team will be necessary, particularly during tasks such as Planning Commission and City Council hearings and the preparation of responses to comments.

The specific sub-tasks include:

- Managing communication about the Plan, including organizing and attending Plan-related meetings between the release of the Public Draft and the hearings

EXHIBIT A

- Working as a liaison between Fehr and Peers, Community Development, and Public Works during the update of the traffic mitigation fee (included in Fehr and Peers' scope as a task to be completed early in the adoption process)
- Responding to questions about the Plan, and collecting comments
- Preparing Plan addenda and identifying proposed changes to the Draft document to reflect public comment. More than one Plan addenda may be prepared as the adoption process transpires.
- Preparing responses to EIR comments, in collaboration with the EIR consultant
- Attending Planning Commission and City Council adoption hearings
- Attending other Commission hearings to provide briefings on the Plan and gather input
- Preparing resolutions and staff reports supporting Plan adoption

Task 3: Revisions to Document and Production of Final Plan

This task will take place after the City Council adopts the Plan. Barry Miller will prepare a Final General Plan which incorporates edits made through the public hearing process. This will involve flowing the Plan Addendum into the General Plan and finalizing all graphics and photographs.

Task 4: Project Management

Project management tasks include participation in regular team meetings and City staff meetings, project management conference calls, tracking of budget, monitoring the performance of other contractors, and general administrative duties related to the project.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Paul A. Jensen

Prepared by: Paul Jensen (EG)
Community Development Director

City Manager Approval: _____

AS

TOPIC: LOCAL EARLY ACTION PLANNING GRANT (LEAP) APPLICATION

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR, AND RECEIPT OF, LOCAL EARLY ACTION PLANNING (LEAP) GRANT FUNDS IN THE AMOUNT OF \$300,000, AND TO EXECUTE DOCUMENTS OR AMENDMENTS ONCE THE GRANT IS AWARDED

RECOMMENDATION:

Adopt a Resolution authorizing the City Manager to submit an application for the State Local Early Action Planning (LEAP) Grant Program in the amount of \$300,000, and to execute documents or amendments once the grant is awarded.

BACKGROUND:

In the 2019-20 Budget Act, Governor Gavin Newsom allocated \$250 million for all regions, cities, and counties to prioritize planning activities that accelerate housing production to meet the identified needs of every community. With this allocation, [the State Department of Housing and Community Development \(HCD\) established LEAP](#), with \$119 million allocated for cities and counties. LEAP provides one-time grant funding to update planning documents and implement process improvements that facilitate the acceleration of housing production and help local governments prepare for their sixth-cycle Regional Housing Needs Allocation (RHNA). [The LEAP funds are in addition to the \\$310,000 the City was awarded earlier this year from the State's SB 2 Planning Grant Program.](#)

The City of San Rafael is eligible to receive a LEAP award in the amount of \$300,000 based on local population. An application from the City Manager with a basic program outline is required to access these funds. Also, to apply for the 2020 LEAP grant, City Council must adopt and submit the attached Resolution by July 1, 2020. HCD has given the City of San Rafael approve to approve this resolution after the July 1, 2020 deadline.

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

ANALYSIS:

\$200,000 of the \$300,000 of the LEAP funds available will be allocated for the update of the City's General Plan Housing Element. The City of San Rafael Housing Element serves as the City's framework for housing goals, policies, and programs required to meet existing and future housing needs and increase affordable housing opportunities. The City of San Rafael is on an eight-year Housing Element update cycle and the current Housing Element was adopted in 2015. California's Department of Housing and Community Development (HCD) has determined that Housing Element updates for jurisdictions within the Association of Bay Area Governments (ABAG) are due by January 2023. The Housing Element update is anticipated to include the preparation of an Environmental Impact Report. Staff anticipates that preparation of the Housing Element Update for the sixth RHNA cycle will require more effort than previous updates due to increased regional housing needs, new requirements for identifying eligible housing sites, and more factors to consider in allocations (such as overcrowding, greenhouse gas emissions, and jobs-housing balance).

\$100,000 of the \$300,000 of the LEAP funds availability will be allocated to help supplement the costs of conducting planning processes addressing housing and sea level rise vulnerability in the Canal neighborhood of San Rafael. This planning will be centered in social equity, specifically procedural and distributional equity, and addresses sustainability in our most vulnerable community. The intended outcomes of these planning processes will be to identify measures and recommendations that can be implemented to protect the Canal neighborhood from flooding associated with sea level rise in the near to mid-term, including:

- zoning changes
- housing opportunity areas
- adaptation measures for a future Specific or Precise Plan for the Canal Neighborhood.

Staff is including both the Housing Element and planning processes for the Canal neighborhood as part of the LEAP application to ensure LEAP funding eligibility for both projects. However, as staff is still waiting on the sixth-RHNA cycle housing allocations there is still high uncertainty around the scope and cost to update the City's Housing Element. Due to this uncertainty, the final LEAP funding allocations for the Housing Element and Specific or Precise Plans is likely to change.

FISCAL IMPACT:

The City will receive \$300,000 from the State of California that will go towards completing the City's General Plan Housing Element update (required to be completed by December 2022) and the development of Specific or Precise Plans for the Canal and Northgate neighborhoods. There is no requirement for local matching funds.

OPTIONS:

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

1. Adopt Resolution
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt Resolution

ATTACHMENTS:

1. Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR, AND RECEIPT OF, LOCAL EARLY ACTION PLANNING (LEAP) GRANT FUNDS IN THE AMOUNT OF \$300,000, AND TO EXECUTE DOCUMENTS OR AMENDMENTS ONCE THE GRANT IS AWARDED

WHEREAS pursuant to Health and Safety Code Sections 50515 et seq, the State Department of Housing and Community Development (Department) is authorized to issue a Notice of Funding Availability (NOFA) as part of the Local Government Planning Support Grants Program (hereinafter referred to by the Department as the Local Early Action Planning Grants program or LEAP); and

WHEREAS, the City Council of the City of San Rafael desires to submit a LEAP grant application package (Application), on the forms provided by the Department, for approval of grant funding for projects that assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment; and

WHEREAS, the Department has issued a NOFA and Application on January 27, 2020 in the amount of \$119,040,000 for assistance to all California jurisdictions;

NOW THEREFORE BE IT RESOLVED that the City Council of the City of San Rafael approves and authorizes the City Manager or their designee to submit to the Department the LEAP grant application package; and

BE IT FURTHER RESOLVED, that in connection with the LEAP grant, if the Application is approved by the Department, the City Manager of the City of San Rafael is authorized to submit the Application, enter into, execute, and deliver on behalf of the Applicant, a State of California Agreement (Standard Agreement) for the amount of \$300,000 and any and all other documents required or deemed necessary or appropriate to evidence and secure the LEAP grant, the Applicant's obligations related thereto, and all amendments thereto; and

BE IT FURTHER RESOLVED, that the Applicant shall be subject to the terms and conditions as specified in the NOFA, and the Standard Agreement provided by the Department after approval. The Application and any and all accompanying documents are incorporated in full as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the Application will be enforceable through the fully executed Standard Agreement. Pursuant to the NOFA and in conjunction with the terms of the Standard Agreement, the Applicant hereby agrees to use the funds for eligible uses and allowable expenditures in the manner presented and specifically identified in the approved Application.

I, Lindsay Lara, City 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 the 6th day of July, 2020 by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:


LINDSAY LARA, City Clerk



Agenda Item No: 4.f
Meeting Date: July 6, 2020

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Police Department

Prepared by: Glenn McElderry, Captain **City Manager Approval:** 

TOPIC: CRIME ANALYST SERVICES

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR CRIME ANALYSIS SERVICES WITH LEXISNEXIS RISK SOLUTIONS, INC., IN AN AMOUNT NOT TO EXCEED \$140,979, AND APPROPRIATING THIS AMOUNT FROM THE SAFETY GRANT FUND TO SUPPORT THE AGREEMENT

RECOMMENDATION: Staff recommends that the City Council adopt a resolution to renew an agreement for grant-funded crime analyst services as a resource for Marin County law enforcement agencies.

BACKGROUND: In 2011, California Governor Brown signed Assembly Bill 109 (AB 109), establishing the California Prison Realignment Plan, under which low-level offenders and parole violators are sent to county jail instead of state prison to serve their sentence. In FY 2012-13 the Board of State and Community Corrections (BSCC) allotted funds to cities throughout the state to address front line law enforcement needs arising from AB 109 offenders in our communities. Each county was to elect one city/town to be the fiscal agent for the funds. The City of San Rafael is the fiscal agent for Marin County. The goal of the funding is to enable a collective effort by municipal law enforcement agencies in each county to address criminal activity and an increase in calls for service due to realignment.

Law enforcement agencies in Marin County are challenged to investigate crimes in a time of shrinking resources. As a result, the law enforcement agencies in Marin County face the challenge of deploying patrol resources and crime prevention units in the highest yield manner possible, focusing on those locations and times when crimes are most likely to occur. One means of addressing this challenge has been to create a regional information sharing crime analyst position where participating agencies can share crime data to analyze trends, build crime

_____ **FOR CITY CLERK ONLY** _____

File No.: _____

Council Meeting: _____

Disposition: _____

pattern predictions and execute regional – as opposed to jurisdictional – response strategies while collaborating with resources. All parties share their crime information for a regional approach to recognizing trends and collaborating on solutions.

Accordingly, the Marin County Police Chiefs agreed in 2014 to use the BSCC funds, with additional funds from the Marin County Probation Department’s AB 109 funds, to hire a regional crime analyst to provide crime data analysis to all the Marin law enforcement agencies. On March 3, 2014 the City Council approved a resolution authorizing an agreement, using these AB 109 funds, for professional services with BAIR Analytics, Inc. to provide a crime analyst for a period of one year as a countywide resource. Each year since 2014, on request of the Police Chiefs and recommendation of staff, the City Council has approved a resolution authorizing the City Manager to renew the professional services agreement with LexisNexis Risk Solutions, Inc. (“LexisNexis”), the legal successor to BAIR Analytics, to extend the crime analyst services under the agreement through the following year. The current agreement covers through June 30, 2020.

ANALYSIS: During the contract, the analyst has:

- Conducted research and strategic crime analysis and identified crime patterns and trends;
- Analyzed long term crime patterns and trends using probability studies and complex statistical analyses;
- Developed and tested hypotheses; developed victim and suspect profiles;
- Forecasted future criminal activity;
- Prepared strategic action plans;
- Assisted operations and management personnel in planning deployment of resources;
- Made written and oral presentations;
- Identified series of crimes;
- Gathered data on criminal activity, probation and parole information to analyze crime trends;
- Used and maintained general and specialized computer applications to gather, categorize and analyze crime data as well as assist in dissemination of information pertinent to law enforcement; and
- Coordinated and participated in regional meetings of law enforcement management and crime analysis professionals to share information on crime patterns, risk analysis of known offenders, new methodologies and developing tools.

Each of Marin County’s police agencies, as well as the Sheriff’s Office and Adult Probation, have shared their records management data (including report narratives) with the crime analyst via secure computer links. The data has been used to compile various analytic reports. None of the data analyzed and used by Marin County law enforcement in association with this agreement is used to racially profile individuals.

The Marin County Police Chiefs have again decided to use the Marin County Police Chief’s BSCC and the Marin County Probation AB 109 funds to renew the contract for the LexisNexis crime analyst for a new term of twelve months, through June 30, 2021. (Attachment 2).

FISCAL IMPACT: There is no direct fiscal impact to the City of San Rafael because the contract is funded by Marin County Probation AB 109 funds and the Marin County Police Chiefs' BSCC funds. The funds to support this contract will be deposited to and appropriated from the Safety Grant Fund. The proposed new agreement with LexisNexis is for 12 months, beginning July 1, 2020 and ending June 30, 2021, for a total contract amount not to exceed \$140,979.

OPTIONS: The City Council has the following options to consider relating to this item:

1. Approve the Resolution as proposed to approve a new agreement for crime analyst services.
2. Give direction to staff for changes to the recommendations.
3. Direct staff to develop alternatives to the recommendations.

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute an agreement with LexisNexis Inc. for crime analyst services from July 1, 2020 through June 30, 2021, in an amount not to exceed \$140,979.

ATTACHMENTS:

1. Resolution
2. Proposed Analyst for Hire Agreement

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR CRIME ANALYSIS SERVICES WITH LEXISNEXIS RISK SOLUTIONS, INC., IN AN AMOUNT NOT TO EXCEED \$140,979, AND APPROPRIATING THIS AMOUNT FROM THE SAFETY GRANT FUND TO SUPPORT THE AGREEMENT

WHEREAS, in 2011, California Governor Brown signed Assembly Bill 109 (AB 109), establishing the California Prison Realignment Plan, under which low-level offenders and parole violators are sent to county jail instead of state prison to serve their sentence; and

WHEREAS, in Fiscal Year 2012-13 the California Board of State and Community Corrections (BSCC) allotted funds to cities throughout the state to enable a collective effort by municipal law enforcement agencies in each county to address criminal activity and an increase in calls for service due to realignment; and

WHEREAS, each county was to elect one city/town to be the fiscal agent for the funds and the City of San Rafael was chosen as the fiscal agent for Marin County; and

WHEREAS, in 2014, the Marin County Police Chiefs agreed to use their departments' BSCC funds, with additional funds from the Marin County Probation Department's AB 109 funds, to hire a regional crime analyst to provide crime data analysis to all the Marin County law enforcement agencies; and

WHEREAS, on March 3, 2014 the City Council approved a resolution authorizing an agreement to use these funds to obtain professional crime analyst services from BAIR Analytics, Inc. for a period of one year, as a countywide resource; and the agreement has been renewed with BAIR Analytics, Inc. and subsequently to that company's successor, LexisNexis Risk Solutions, Inc. (LexisNexis), continuously since; and

WHEREAS, the current agreement with LexisNexis is scheduled to expire on June 30, 2020 and the Marin County Police Chiefs wish to renew the agreement for another one-year term; and

WHEREAS, the City of San Rafael will again act as the fiduciary agent and project manager for the agreement, on behalf of the law enforcement agencies in Marin County; and

WHEREAS, the cost of the crime analysis services under the renewed agreement will again be supported by funds provided by Marin County Probation AB 109 funds and the Marin County Police Chiefs' BSCC funding, to be deposited in the City's Safety Grant Fund;

NOW THEREFORE, BE IT RESOLVED, that the San Rafael City Council hereby authorizes the City Manager to execute an Analyst for Hire Agreement with LexisNexis Risk Solutions Inc., in form approved by the City Attorney, and in an amount not to exceed \$140,979 for a one-year term;

BE IT FURTHER RESOLVED, that the San Rafael City Council appropriates \$140,979 from the City's Safety Grant Fund to support this Agreement.

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 on the 6th day of July 2020, by the following vote, to wit:

AYES: **COUNCILMEMBERS:**

NOES: **COUNCILMEMBERS:**

ABSENT: **COUNCILMEMBERS:**

Lindsay Lara, City Clerk



ANALYST FOR HIRE AGREEMENT

This ANALYST FOR HIRE AGREEMENT ("Agreement") made effective as of _____ (the "Effective Date") between LexisNexis Risk Solutions FL Inc. ("LN") and the City of San Rafael, via its Police Department with its principal place of business at _____ (hereinafter "Customer").

WHEREAS LN is in the business of providing analytical software and services dedicated to providing public safety, national security and defense entities the innovative tools and subject-matter expertise needed to identify, analyze and resolve problems created by the actions of offenders and their networks that threaten citizens and communities; and

WHEREAS Customer is the municipal law enforcement agency and utilizes LN's products in its law enforcement efforts; and

WHEREAS Customer has determined it would be in Customer's best interest to have dedicated full-time crime analysts and technical personnel to support its law enforcement efforts; and

WHEREAS LN and Customer wish to enter into an agreement pursuant to which LN will arrange with such crime analysts and technical personnel for them to provide their services to Customer;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, LN and Customer agree as follows:

1. **SERVICES PROVIDED UNDER STATEMENT OF WORK.** For any analysts/technical personnel who will be performing services for Customer pursuant to this Agreement, LN will issue and Customer will execute a Statement of Work in the form attached as Appendix A hereto referencing its incorporation of the terms and conditions of this Agreement and stating the name(s) and the payment rate(s) and/or Fee for the personnel, duration of services, brief description of project, authorization of additional costs beyond the payment rate(s) (such as travel, parking, drug testing), and any other terms to which LN and the Customer may choose to agree. In the event of a conflict between the terms of this Agreement and the terms of any Statement of Work, the terms of this Agreement shall control unless the Statement of Work specifically (and not generally) identifies the conflicting terms in this Agreement and explicitly states that such terms shall not apply but shall instead be superseded by the Statement of Work. The Statement of Work will be signed by an authorized representative of Customer. Upon expiration of a Statement of Work, to the extent that any services performed by one or more analysts/technical personnel are thereafter provided on the same or a different project, they shall be provided under the terms of this Agreement.

2. **BILLING AND PAYMENT.** LN will bill Customer through invoices issued to Customer in arrears on a monthly basis with one-twelfth (1/12) of the Fee, along with such other associated costs, as approved by Customer, except that LN has sole discretion to bill on a less frequent basis if it deems it appropriate to do so. Customer agrees that it may be electronically invoiced for those fees. Payments must be received by LN within thirty (30) days of the invoice date. Any balance not timely paid will accrue interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by applicable law, whichever is less.

3. **ACCEPTANCE OF SERVICES.** Customer's project manager or other agent shall review at regular intervals the time records and work product of analysts and/or technical personnel. Customer's approval of such time records (including, but not limited to, costs of any applicable overtime rates, travel, per diem and other costs stated thereon) and/or work product shall be deemed granted unless Customer provides notice to LN of some objection to the time records or work product of the analysts and/or technical personnel. Acceptance by Customer shall not be unreasonably withheld and any refusal to accept shall be noted on the time record for the relevant period, with a written explanation of the reasons that the work was not acceptable and failure to so note such refusal shall constitute acceptance. Nothing herein shall eliminate Customer's obligation to pay LN for any services provided by analysts/technical personnel which Customer has approved by some other means.

4. **ANALYSTS/TECHNICAL PERSONNEL NOT EMPLOYEES OF CUSTOMER.** LN and Customer agree that for purposes of FICA, FUTA and income tax withholding, as well as for purposes of any pension plan or health benefit plan maintained by Customer for its own employees; the analysts/technical personnel supplying services under this Agreement are not employees of Customer.

RESERVED

5. DUTIES AND SUBSTITUTION OF ANALYSTS/TECHNICAL PERSONNEL. LN will locate analysts/technical personnel for Customer according to the qualifications, experience, and project requirements set forth by Customer and given to LN. The work to be performed by the analysts/technical personnel providing services under this Agreement shall be set out by Customer and stated in the Statement of Work. The analysts/technical personnel shall report the results of the work, to the extent required by Customer, to Customer's Project Manager or other designated official, but the primary control over such personnel shall be exercised by LN or, in the case of such personnel who is a valid independent contractor, by that personnel itself. Because Customer has the opportunity to interview all analysts/technical personnel located by LN prior to their commencement of any services for Customer, LN shall have no liability to Customer if such personnel are determined by Customer not to meet its requirements and Customer shall not be relieved of making payments to LN for the services provided by such personnel up to the time that they are terminated in accordance with this Agreement.

6. NOTICE OF TERMINATION OF SERVICES. Customer agrees to notify LN prior to its termination of any services of the analysts/technical personnel covered by this Agreement regardless of whether such termination comes before, is coincident with, or follows the duration date set forth in a written Statement of Work covering such services. Customer can terminate analysts/technical personnel with a 30-day notice to LN. Payment is due to LN through analysts/technical personnel termination date. If any analysts/technical personnel providing services under this Agreement has terminated the relationship with LN, and whether or not such termination is in violation of such personnel's agreement with LN, LN shall notify Customer of such termination within three days of receipt of notice from such personnel.

7. INTELLECTUAL PROPERTY RIGHTS. Customer agrees that all material, documentation, deliverables and other tangible expressions of information including but not limited to software programs and software documentation, designs, technical data, formulae, and processes, whether in final production or draft, which result from any work performed by any analysts/technical personnel providing services under this Agreement and all rights, title and interest, including any copyright, patent rights and all other intellectual property rights, shall belong exclusively to LN unless some other arrangements have been agreed to by both parties in writing. LexisNexis will return all copies of Customer Data provided upon termination of this contract and shall remove all such Customer Data, including back up and archival copies, maintained by LexisNexis except Customer Data that LexisNexis is required to retain to meet its legal and regulatory requirements. Where such retention is required, LexisNexis shall delete all Customer Data promptly upon such requirements permitting deletion. LexisNexis will continue to maintain the confidentiality of any Customer Data during the period of retention. No Confidential Information will be used by LexisNexis for any future purposes that are not specifically authorized by the Customer.

8. CONFIDENTIALITY. Customer and LN acknowledge that they each may have access to confidential information of the disclosing party ("Disclosing Party") relating to the Disclosing Party's business including, without limitation, technical, financial, strategies and related information, computer programs, algorithms, know-how, processes, ideas, inventions (whether patentable or not), schematics, Trade Secrets (as defined below) and other information (whether written or oral), and in the case of LN's information, product information, pricing information, product development plans, forecasts, the LN Services, and other business information ("Confidential Information"). Confidential Information shall not include information that: (i) is or becomes (through no improper action or inaction by the Receiving Party (as defined below) generally known to the public; (ii) was in the Receiving Party's possession or known by it prior to receipt from the Disclosing Party; (iii) was lawfully disclosed to Receiving Party by a third-party and received in good faith and without any duty of confidentiality by the Receiving Party or the third-party; or (iv) was independently developed without use of any Confidential Information of the Disclosing Party by employees of the Receiving Party who have had no access to such Confidential Information. "Trade Secret" shall be deemed to include any information which gives the Disclosing Party an advantage over competitors who do not have access to such information as well as all information that fits the definition of "trade secret" set forth under applicable law. Each receiving party ("Receiving Party") agrees not to divulge any Confidential Information or information derived therefrom to any third-party and shall protect the confidentiality of the Confidential Information with the same degree of care it uses to protect the confidentiality of its own confidential information and trade secrets, but in no event less than a reasonable degree of care. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information solely to the extent required by subpoena, court order or other governmental authority, provided that the Receiving Party shall give, if permitted by law, the Disclosing Party prompt written notice of such subpoena, court order or other governmental authority so as to allow the Disclosing Party to have an opportunity to obtain a protective order to prohibit or restrict such disclosure at its sole cost and expense. Confidential Information disclosed pursuant to subpoena, court order or other governmental authority shall otherwise remain subject to the terms applicable to Confidential Information. Each party's obligations with respect to

Confidential Information shall continue for the term of this Agreement and for a period of five (5) years thereafter, provided however, that with respect to Trade Secrets, each party's obligations shall continue for so long as such Confidential Information continues to constitute a Trade Secret. Notwithstanding the foregoing, if Customer is bound by the Freedom of Information Act, 5 U.S.C. 552, the California Public Records Act [Cal. Gov. Code sections 6250, *et seq.*], or other federal, state, or municipal open records laws or regulations which may require disclosure of information, and disclosure thereunder is requested, Customer agrees that it shall notify LN in writing and provide LN an opportunity to object, if so permitted thereunder, prior to any disclosure.

Customer shall not request of the analysts/technical personnel providing services under this Agreement any information regarding the rate(s) and other terms of remuneration agreed to between LN and such analysts/technical personnel, nor shall Customer induce such analysts/technical personnel to provide such information, nor shall Customer disclose or permit to be disclosed to such personnel, directly or through another party, any information regarding the rate(s) or other terms of remuneration agreed to between Customer and LN, unless otherwise required by court order, subpoena, public records act request, or other federal, state, or local law. As LN considers such information to be "Confidential", Customer agrees to notify LN immediately if such rate(s) or other terms are disclosed to it by any analysts/technical personnel or any other party, or if it learns that any analysts/technical personnel have received information about the rate(s) or other such terms agreed to between Customer and LN.

9. EXCISE, SALES, ETC. TAXES ON SERVICES. The charges for all services under this Agreement are exclusive of any state, local, or otherwise applicable sales, use, or similar taxes. If any such taxes are applicable, they shall be charged to Customer's account.

10. LICENSES; PERMITS, ETC. LN represents and warrants that LN has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for LN to practice its profession or provide any services under the Agreement. LN represents and warrants that LN shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for LN to practice its profession or provide such Services. Without limiting the generality of the foregoing, if LN is an out-of-state corporation, LN warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. LN NOT AN AGENT. Except as Customer may specify in writing, LN and LN's personnel shall have no authority, express or implied, to act on behalf of Customer in any capacity whatsoever as an agent. LN and LN's personnel shall have no authority, express or implied, to bind Customer to any obligations whatsoever.

12. LIABILITY AND INDEMNIFICATION. EXCEPT FOR A PARTY'S OBLIGATIONS UNDER SECTIONS 9 CONFIDENTIALITY OR 12 INDEMNIFICATION FOR THIRD PARTY CLAIMS, NEITHER PARTY SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF AN SOW, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. EXCEPT FOR A PARTY'S OBLIGATIONS UNDER SECTIONS 9 OR 12, EACH PARTY'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL AT ALL TIMES AND IN THE AGGREGATE AMOUNT BE LIMITED TO THE AMOUNT ACTUALLY PAID UNDER THE RELATED SOW UNDER WHICH SUCH LIABILITY AROSE. NEITHER PARTY SHALL BRING ANY CLAIM ARISING HEREUNDER MORE THAN 12 MONTHS AFTER SUCH CLAIM ACCRUES.

LN shall assume the defense of and indemnify and hold harmless Customer from and against all third party actions or third party claims against Customer, its officers, agents or employees from any and all loss, including reasonable attorneys' fees, sustained by Customer by virtue of any damages to any person(s), firm or corporation who may be injured by or to any property that may be damaged arising out of the performance of this Agreement, except for actions or claims alleged to have occurred in full, or in part, as a result of negligence or deliberate, willful, or criminal acts by the Customer, its officers, agents or employees and except for actions or claims alleging dangerous conditions of Customer property which arise out of the acts or failure to act by the Customer, its officers, agents or employees which are not created by an LN employee or LN invitee. LN shall have the right to defend any such claim and Customer shall extend reasonable cooperation in connection with such defense, which shall be at LN's expense. LN or its designated representative shall also have the sole right to settle any such claim for indemnification if such settlement includes a complete release of Customer. Customer may at its expense, participate in the defense of any such claim for indemnification if its position is not materially inconsistent with that of LN and if in its reasonable judgment such claim or the resolution thereof would have an ongoing material effect on Customer. In the event LN fails to defend the same within a reasonable length of time, Customer shall be entitled to assume the sole defense

thereof, and LN shall be liable to repay Customer for all expenses reasonably incurred in connection with said defense (including reasonable attorney's fees and settlement payments) if it is determined that such request for indemnification was proper.

Customer shall assume the defense of and indemnify and hold harmless LN from and against all third party actions or third party claims against LN, its officers, agents or employees from any and all loss, including reasonable attorneys' fees, sustained by LN by virtue of any damages to any person(s), firm or corporation who may be injured by or to any property that may be damaged arising out of the performance of this Agreement, except for actions or claims alleged to have occurred in full, or in part, as a result of negligence or deliberate, willful, or criminal acts by LN, its officers, agents or employees and except for actions or claims alleging dangerous condition of LN property which arise out of the acts or failure to act by LN, its officers, agents or employees which are not created by a Customer employee or Customer invitee.

The indemnification provisions contained in this Agreement include but are not limited to any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of either party to this Agreement, or any of their agents, officers or employees or their performance under the terms of this Agreement.

It is the intent of the parties that where negligence or responsibility for injury or damages is determined to have been shared, principles of comparative negligence will be followed, and each party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that party's negligence.

Each party shall establish procedures to notify the other party which shall include prompt written notice to the other party upon its initial receipt of information that could reasonably support any such claims, administrative actions or legal actions with respect to any of the matters described in this indemnification section. The parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this Agreement.

Nothing set forth in this Agreement shall establish a standard of care for or create any legal rights for any person not a party to this Agreement.

The indemnity provisions of this Agreement shall survive the expiration or earlier termination of this Agreement.

12.1. **INSURANCE.** During the term of this Agreement, LN shall comply with the insurance provisions set forth in Addendum 1 to this Agreement, attached hereto and incorporated herein by reference.

13. **TERMINATION OF THIS AGREEMENT.** This Agreement will continue in effect until terminated by Customer or LN which termination shall occur only at the expiration of the term provided for in the Statement of Work or otherwise for a material breach of this Agreement. Customer can terminate all or part of the Agreement with LN with a 30-day notice. Payment is due to LN through Agreement termination date.

14. **ASSIGNMENT.** Neither this Agreement nor any interest hereunder may be assigned or otherwise transferred by either party to third parties other than affiliates of either party without the prior written consent of the other party which shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, and delegates of the parties hereto.

15. **NOTICES.** Any requirement to "notify" , or for "notice" or "notification", in connection with the subject matter of this Agreement shall be in writing and shall be effective when delivered personally (including by Federal Express, Express Mail, or similar courier service) to the party for whom intended, or five (5) days following deposit of the same into the United States mail, certified mail, return receipt requested, first class postage prepaid, addressed to such party at the address set forth below its signature to this Agreement. Either party may designate a different address by notice to the other given in accordance herewith.

16. **NONDISCRIMINATION.** LN, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. LN shall not participate either directly or indirectly in discrimination prohibited by federal, state, or local regulations.

17. SEVERABILITY. If any term or provision of this Agreement shall be found to be illegal or otherwise unenforceable, the same shall not invalidate the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary by the adjudication to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

18. ECONOMIC SANCTIONS LAWS. Customer acknowledges that LN is subject to economic sanctions laws, including but not limited to those enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), the European Union, and the United Kingdom. Accordingly, Customer shall comply with all economic sanctions laws of the United States, the European Union, and the United Kingdom. Customer shall not provide access to LN Services to any individuals identified on OFAC's list of Specially Designated Nationals ("**SDN List**"), the UK's HM Treasury's Consolidated List of Sanctions Targets, or the EU's Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions. Customer shall not take any action which would place LN in a position of non-compliance with any such economic sanctions laws.

19. COMPLETE AGREEMENT AND AMENDMENT. This Agreement and any written Statement of Works executed hereunder contain the entire agreement between the parties hereto with respect to the matters covered herein. Customer acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained herein. This Agreement shall not be modified in any way except in writing signed by both parties and stating expressly that it constitutes a modification of this Agreement.

20. WAIVER. Neither Customer's acceptance of, or payment for, any Service or Additional Service performed by LN, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

21. LAW AND DISPUTES. This Agreement shall be governed by the laws of the State of California its conflict of laws provisions notwithstanding. Any lawsuit pertaining to this agreement shall be brought in State or Federal courts in the State of California. The prevailing party in any action brought to enforce the terms of this Agreement shall be entitled to recover its attorney's fees and costs.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

AUTHORIZATION AND ACCEPTANCE

I HEREBY CERTIFY that I am authorized to execute this Agreement on behalf of Customer.

CUSTOMER: City of san Rafael, via its Police Department

Signature: _____


Print: Jim Schutz

Title: City Manager

Date: _____

I HEREBY CERTIFY that I am authorized to execute this Agreement on behalf of Lexis Nexis.

Lexis Nexis Risk Solutions FL Inc.:

Signature: 

Print: Haywood Talcove

Title: CEO (LNSSI)

Date: June 12, 2020

ADDENDUM 1 TO ANALYST FOR HIRE AGREEMENT
BETWEEN THE CITY OF SAN RAFAEL AND LEXISNEXIS RISK SOLUTIONS FL INC.

INSURANCE.

A. During the term of this Agreement, LN shall maintain, at no expense to CUSTOMER, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) dollars per occurrence.

3. If it employs any person, LN shall maintain worker's compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. LN's worker's compensation insurance shall be specifically endorsed to waive any right of subrogation against CUSTOMER.

B. The insurance coverage required of the LN in this section shall also meet the following requirements:

1. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the CUSTOMER, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under LN'S insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by CUSTOMER and shall not call upon CUSTOMER's insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in LN'S policies shall be at least as broad as ISO form CG20 01 04 13.

3. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, LN hereby grants to CUSTOMER a waiver of any right to subrogation which any insurer of LN may acquire against CUSTOMER by virtue of the payment of any loss under such insurance. LN agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not CUSTOMER has received a waiver of subrogation endorsement from the insurer.



**SCHEDULE A
Analyst for Hire**

Customer Name: San Rafael Police Dept., CA
Billgroup #: ACC-1616930
LN Account Manager: Mark Staniak

This Schedule A sets forth additional or amended terms and conditions for the use of the Analyst for Hire services ("LN Services"), as set forth in the services agreement between Customer and LN or LN's affiliate(s) for the LN Services ("Agreement"), to which this Schedule A is incorporated by reference. The LN Services herein shall be provided by LexisNexis Risk Solutions FL Inc. ("LN"). Customer acknowledges that the services provided under this Schedule A are non-FCRA services and are not "consumer reports" within the meaning of the FCRA and Customer agrees not to use such reports in any manner that would cause them to be characterized as "consumer reports".

1. SCHEDULE A TERM

The term of this Schedule A will be 12 months beginning July 1, 2020 and ending June 30, 2021 (the "Term"). If an account is activated after the first day of a calendar month, charges will not be pro-rated.

2. ANALYST FOR HIRE FEES

During the Term, Customer shall pay to LN a license fee of \$140,979.00 ("Analyst for Hire License Fee"), which shall be invoiced in twelve (12) equal monthly installments of \$11,748.25 per month, in exchange for the professional services of one (1) Analyst for Hire.

3. EXPIRATION

Unless otherwise accepted by LN, the terms herein are valid if the Schedule A is signed by the Customer and received by LN on or before **June 17, 2020**.

4. CONFIDENTIAL INFORMATION

This Schedule A contains the confidential pricing information of LN. Customer acknowledges that the disclosure of such pricing information could cause competitive harm to LN, and as such, Customer agrees to maintain this Schedule A in trust and confidence and take reasonable precautions against disclosure to any third party to the extent permitted by local and state law.

AGREED TO AND ACCEPTED BY: San Rafael Police Dept., CA

Signed: _____

Name: _____

Title: _____


Date: _____



Agenda Item No: 4.g
Meeting Date: July 6, 2020

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: POLICE

Prepared by: Glenn McElderry, Police Captain **City Manager Approval:** 

TOPIC: GRANT FUNDING FOR 9-1-1 EQUIPMENT UPGRADE

SUBJECT: RESOLUTION GRANTING THE CHIEF OF POLICE AUTHORITY TO USE FUNDING IN THE AMOUNT OF \$287,000 FROM THE CALIFORNIA OFFICE OF EMERGENCY SERVICES, 9-1-1 EMERGENCY COMMUNICATIONS BRANCH TO UPGRADE THE POLICE DEPARTMENTS EMERGENCY AND NON-EMERGENCY TELEPHONE EQUIPMENT IN FISCAL YEAR 2020/2021

RECOMMENDATION:

Staff recommends the City Council adopt the resolution granting the Chief of Police authority to execute a contract with AT&T to use funding in the amount of \$287,000 from the California 9-1-1 Emergency Communications Branch to upgrade the Police Department’s Dispatch emergency telephone equipment in fiscal year 2020/2021.

BACKGROUND:

The current Police Department’s Dispatch telephone communications equipment was purchased and placed into service in 2013. The equipment is now in need of an upgrade in technology. The California 9-1-1 Emergency Communications Branch has determined, based on the San Rafael public safety answering point (PSAP) call volume for E911 (Emergency 911) and non-emergency calls, the Police Department has been awarded a fixed allotment of \$287,000 in 2020/2021. (See Attachment A)

ANALYSIS:

The Police Department customer premise equipment will provide a complete E911 system solution from a high-level perspective by deploying Call-Processing and Data-Management related system equipment. The functionality of these system components when coupled together enable the Police Department the capability to process E911 and administrative type calls and other various PSAP emergency and non-emergency functions and retrieve long term recordings. The equipment also has the capability for next generation 911 texting. The State has implemented a master purchase agreement (MPA) that provides PSAP’s an effective procurement vehicle for certified upgrade of the E911 telephone system customer service equipment and services. Therefore, no bidding is required for this purchase under San Rafael Municipal Code Section 2.55.100(E). AT&T is a certified vendor under the State’s MPA and installed the current E911 and non-emergency equipment. The estimate for the installation of the equipment is \$283,371.31 and is based on the quote provided by AT&T. (See Attachment B). The scope of the work

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

provided by AT&T, including equipment, maintenance plan and training is attached to the staff report. (See Attachment C). AT&T will directly bill the State CalOES E911 Branch as per their MPA agreement. The grant funding is therefore adequate to cover 100% of the costs with a small remainder.

FISCAL IMPACT:

The cost for the new E911 system is funded by an allotment provided to San Rafael's PSAP by California Office of Emergency Services, E911 Branch. The vendor (AT&T) will directly bill the State's E911 Branch.

OPTIONS:

N/A

RECOMMENDED ACTION: The City Council adopt the resolution granting the Chief of Police authority execute a contract with AT&T to use funding in the amount of \$287,000 from the California 9-1-1 Emergency Communications Branch to upgrade the Police Department's Dispatch emergency telephone equipment in fiscal year 2020/2021.

ATTACHMENTS:

- A. 23729 CPE Fixed Allotment Letter
- B. San Rafael PD 7 POS_Vesta Quote
- C. San Rafael PD 7 POS_SOW
- D. Resolution



May 13, 2020

Tracking Number: 23729

Charles Taylor, Support Services Manager
San Rafael Police Department
1375 5th Avenue
San Rafael, CA 94901

Subject: Customer Premise Equipment (CPE) Fixed Allotment Funding

Dear Mr. Taylor

The California 9-1-1 Emergency Communications Branch (CA 9-1-1 Branch) has received your April 15, 2020 Advance Notification for CPE Funding letter of intent to replace the 9-1-1 telephone system at your Public Safety Answering Point (PSAP). Acceptance of CPE Allotment funds from the CA 9-1-1 Branch commits your agency to PSAP operations 24 hours-a-day, seven days-a-week, for a minimum of five years. If PSAP operations are not maintained at that level, the San Rafael Police Department may become financially responsible for all subsequent CPE maintenance and 9-1-1 network service charges. Our evaluation of recent 9-1-1 emergency call volume qualifies the San Rafael Police Department for a Fixed Allotment in the amount of \$287,000.00. The Fixed Allotment funding will expire **April 30, 2021 (or upon expiration/cancellation of the current MPA, whichever comes first)** if your CPE approval process has not been initiated. Years six (6) and seven (7) of extended maintenance will not be deducted from your Fixed Allotment. Extended maintenance cost in year eight (8) and beyond is the PSAPs responsibility.

The CA 9-1-1 Branch has implemented a non-mandatory Master Purchase Agreement (MPA) that enables participating vendors to invoice the CA 9-1-1 Branch directly for the purchase of 9-1-1 systems and services. User instructions for the MPA are available at:
<http://www.caloes.ca.gov/for-governments-tribal/public-safety/ca-9-1-1-emergency-communications-branch/ca-9-1-1-services-contracts>

The CA 9-1-1 Branch CPE Funding Policy and Funding Processes are detailed in the 9-1-1 Operations Manual – Chapter III available at:
<http://www.caloes.ca.gov/for-governments-tribal/public-safety/ca-9-1-1-emergency-communications-branch/ca-9-1-1-operations-manual>

Please contact me directly with any questions at yvonne.winn@caloes.ca.gov or (916) 894-5021

Sincerely,

YVONNE WINN, 9-1-1 Advisor
California 9-1-1 Emergency Communications Branch



DATE 6/12/2020

Quote Summary

San Rafael Police Department Call Handling Upgrade

VESTA

Account Manager Kent Ames
Phone (530) 621-6986
Email KentAmes@att.com
Address 3707 Kings Way
Sacramento, CA 95821
CA 9-1-1 MPA # 4156 - VESTA

Summary

Equipment	\$158,388.00
Installation	\$29,156.92
Maintenance	\$83,760.00
Total Call Handling	\$271,304.92
Tax	\$12,066.39

Separate Funding Elements	
<i>Extended Maintenance</i>	
Maintenance Yr 6	\$26,112.00
Maintenance Yr 7	\$26,112.00
Grand Total Maint	\$52,224.00

SYSTEM TOTAL	\$271,304.92
Tax	\$12,066.39

This Quote Valid until 10/10/2020

Grand Total \$283,371.31



DATE 6/12/2020

Quote Summary

San Rafael Police Department Call Handling Upgrade

Account Manager **Kent Ames**
Phone (530) 621-6986
KentAmes@att.com
CA 9-1-1 MPA # 4156 - VESTA

VESTA Upgrade
7 Position VESTA®
Tax Rate 9.000%

9-1-1 CPE BASIC TURN-KEY STAND-ALONE SYSTEM COST WORKSHEET
Turn-key System- Line 6
7 Position VESTA®

Equipment	\$158,388.00
Taxable Equipment	\$134,071.00
Implementation	\$29,156.92
Subtotal	\$187,544.92
\$1,745.00 x 48 Months Maintenance Years 2-5 <i>Year 1 included with system</i>	\$83,760.00
SYSTEM TOTAL	\$271,304.92
Tax	\$12,066.39

This Quote Valid until 10/10/2020

Grand Total \$283,371.31

Considerations:**San Rafael Police Department****Revision History**

Considerations:		San Rafael Police Department	Revision History	
-	Solution	VESTA	Original	5/4/2020
-	Number of IWS positions	7 IWS/0 Laptop	Discount	6/10/2020
-	Number of Admin Phones	0		
-	911 CAMA	7 of 8 Ports		
-	Admin/ Emergency Lines	22 of 24 Ports		
-	PRI Interface	1		
-	SIP Interface	Not supported		
-	MIS Package Included?	Not Included		
-	Mapping Included?	Not Included		
-	Voice Recorder Included?	No - Customer to provide		
-	Standalone Client Workstations?	No		
-	Provider of Monitors	YES-(7)AT&T 24" Monitor		
-	Provider of Positions UPS	Customer Supplied		
-	Provider of Backroom UPS	Customer Supplied		
-	Arbitrators?	Not Included		
-	Genovation Keypads?	YES-(7)48 Button Genovation		
-	NetClock Included	Yes- 4 Ports (1 for VESTA 3 for customer use (CAD, Radio, ect))		
-	Vendor Services	Included		
-	Dispatcher Training	Agent bundle includes (1) 1/2 day class of Agent training for up to 8 students.		
-	Admin Training	9-1-1 Admin bundle includes (1) 1 class of Admin training		
-	Cutover Coaching	AT&T Technician Provided		
-	Text Integration	Not Included		
-	SMS Agent Training	Provided locally on new System		
-	SMS Admin Training	Provided locally on new System		
-	System Printer	Not Included		
-	Busy Lights	Not Included		
-	State 9-1-1 Advisor	Yvonne Winn		
-	Advisor Phone	(916) 657-9470		
-	Advisor Email	yvonne.winn@caloes.ca.gov		
-	Notes	Touchscreen Monitors		
-		0		
-		0		



AT&T

DATE 6/12/2020

Maintenance Quote

San Rafael Police Department
Extended Maintenance

Account Manager Kent Ames
Phone (530) 621-6986
Email KentAmes@att.com
Address 3707 KINGS WAY RM C33
SACRAMENTO, CA 95821
CA 9-1-1 MPA # 4156 - VESTA

VESTA
7 Position VESTA®
YEAR 6 MAINTENANCE

9-1-1 CPE BASIC TURN-KEY STAND-ALONE SYSTEM COST WORKSHEET

Turn-key System

Line

6

Monthly Maintenance \$2,176.00

MIS Maintenance
 Yes No

Term in Months 12

Total Maintenance \$26,112.00

AT&T will continue to provide Service under the Maintenance Plan for as long as parts are available on a commercially reasonable basis.

In the event repair parts are not readily available:

AT&T will advise customer and customer will have the option to replace the Equipment with a similar product.

In the event the customer declines to authorize such replacement, AT&T will cease providing Service for such Equipment.

SYSTEM MAINTENANCE TOTAL \$26,112.00

This Quote Valid until 10/10/2020



AT&T

DATE 6/12/2020

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In the event the customer declines to authorize such replacement, AT&T will cease providing Service for such Equipment.

SYSTEM MAINTENANCE TOTAL \$26,112.00

This Quote Valid until 10/10/2020



San Rafael Police Department

with:



SCOPE OF WORK

for

**CA 9-1-1 MPA #: 4156-6 VESTA
7 Positions (7 IWS, 0 LT)**

Revision: 1.0

Date: 4 May 2020

Prepared By: Shelby Lewis

Application Sales Executive: Kent Ames

CA 911 Advisor: Yvonne Winn

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OVERVIEW

1.1 Purpose & Objectives

The purpose of this document is to describe the work to be performed by AT&T California (herein referred to as Contractor) in satisfying the E911 system requirements for **San Rafael Police Department** (herein referred to as Agency). AT&T will utilize approved 911 Call Handling and other system/service integrators, (herein referred to as Manufacturer and Vendors respectively), to achieve the proposed system design, the following high-level E911 system components are included: Installation of the following E911 system components within agency new communications building: (7) positions, ((7) IWS and (0) Laptop), The above equipment will be used to terminate various trunks, lines and data circuits required to process E9-1-1, and administration calls by the Agency.

Basic System Components

(Table 1)

QTY	Item Description		
7	Call Handling Desktop Positions		
0	Call Handling Laptop Positions (Note: <i>No Redundant Network Interface</i>)		
0	IP Phone Sets		
4 Port	NetClock		
Not Included	MIS Reporting		
Not Included	Long Term Voice Recorder		
Not Included	System Printer	Install Location:	N/A
0	Mapping Positions		
0	ACD Automatic Call Distribution		

1.2 AT&T Provided System Components

Manufacturer Call Processing Components

(Table 2)

QTY	Item Description		
Backroom Equipment			
1	19" Rack		
2	Call Handling Server Hardware		
1	19" LCD Monitor(s) for Call Handling Servers		
1	KVM 8 Port Switch for Call Handling Servers		
2	CDR Module		
1	Cisco 5506 Firewall		
Positions			
7	Intelligent Workstations (IWS) includes: CPU, Backroom Interface Components, Audio Interface Device, Keyboard, Mouse, and license/software).		
7	24" LCD Monitors for Intelligent Workstations (IWS).		

7	IRR Module
7	48 button Genovation keypads
0	Arbitrators
Laptop Positions	
0	Laptop Position(s) includes: CPU, Backroom Interface Components, Audio Interface Device, Keyboard, Mouse, and license/software).
0	24" LCD Monitor
0	IRR Module
0	48 button Genovation keypads
0	Arbitrators
IP Phones	
0	IP Phone
0	IP Phone Expansion Module
LAN Switches	
2	24-Port Switch
Gateways	
2	Gateway Chassis
2	4-Port FXS Gateways
6	4-Port FXO Gateways
1	T1/PRI Single SPAN Gateway

Uninterruptable Power Supply Equipment (UPS)

(Table 3)

QTY	Item Description
0	Equipment Room UPS System
0	Position UPS (1) for Each Position

Not Included -Management Information Systems (MIS) Reporting System

(Table 4)

QTY	Item Description
0	MIS User License
0	MIS Position License
0	Color Printer

Mapping Components

QTY	Item Description

4 Port - NetClock System Support Components

(Table 5)

QTY	Item Description
1	GPS Command Center Package
1	• NetClock Model 9483 with OCXO Oscillator
1	• Display Clock
1	• GPS Outdoor Antenna Model 8225

1	• GPS Antenna Surge Protector Model 8226
1	• Outdoor GPS Antenna Cable, 100 ft.
1	• RS-485 Station Cable, 100 ft.
1	• Multi-port Network Card (3-PORT NTP)

Not Included -Long-Term Recorder

(Table 6)

QTY	Item Description

Training Included with System

(Table 7)

QTY	Item Description
1	Admin Class
1	Agent Class
0	

System line Interface

(Table 8)

QTY Ports	Description	QTY Used	QTY for Growth
8	FXS/CAMA 9-1-1 Trunk Ports	7	1
6	FXO/Admin Line Ports	20	4
1	T1/PRI SPAN Ports	1	0

Trunks & Line

(Table 9)

QTY	Trunk Line Definition
7	E9-1-1 Trunks
6	10DE
	<ul style="list-style-type: none"> • 485-3393 • 485-3394 • 485-3395
	<ul style="list-style-type: none"> • 485-3396 • 485-3098 • 485-3098
7	Admin Lines (as inventoried below)
	<ul style="list-style-type: none"> • 485-3030 • 485-3032 • 485-3001 • 485-3002
	<ul style="list-style-type: none"> • 485-3003 • 485-3179 • 485-3180
9	Ringdowns Lines (as inventoried below)
	<ul style="list-style-type: none"> • Front Door • Back Door
	<ul style="list-style-type: none"> • Red Hill Tow • Valley Tow

- | | |
|--|---|
| <ul style="list-style-type: none"> • MCSO • 2nd Floor Handicap • Terra Linda Tow | <ul style="list-style-type: none"> • American Security • Corte Madera Tow |
|--|---|

****Please refer to price quote in Appendix C****

The equipment provided by ATT will comply with State of California Contract 4145-6 AT&T CALIFORNIA and any FCC requirements for E9-1-1. It will also meet the NENA requirements for displaying ANI/ALI Phase II wireless calls.

1.3 Reutilization of Existing Equipment

The following Agency equipment will be reused by AT&T:

(Table 10)

QTY	Item Description
1	NetClock at back up location

1.4 Agency Provided System Components

Agency shall supply following system components:

(Table 11)

Item Description
Conduit pathways from dispatch location to backroom equipment.
Conduit pathways from backroom equipment to roof for antennae connection.
UPS for backroom and dispatch equipment

Remote Maintenance Circuit

(Table 12)

Remote Maintenance Circuit (To be Provided by the Agency)
Dedicated Internet (T1/MIS/DSL) Circuit for the Contractor
VPN access from the Internet to 911 Equipment via Agency provided network.

1.5 System Components Not Provided by AT&T

(Table 13)

Item Description
CDR, System, or ANI/ALI Printer (Data Management)
Mapping system (Data Management)
Automatic Call Distribution (ACD) (Call Processing)
MIS Reporting Package
Long-term Voice Recorder (LVR)
UPS for backroom or positions

1.6 Equipment Removal & Disposal

Existing 911 Equipment

The following equipment will be removed and left at the Agency site:

(Table 14)

Item Description
911 Controller Equipment Servers.
911 Call Handling Positions

AT&T technicians will work with the Agency's personnel to remove the old equipment (disconnected and powered off by Agency) as identified by the bulleted equipment list above. AT&T technicians will place old IWS equipment in an area designated by the Agency. AT&T technicians will not remove any existing equipment from the Agency's building and AT&T technicians will not remove any existing cabling.

2.0 DESIGN SOLUTION

2.1 System Overview

AT&T will provide a system solution by deploying E911 system equipment capable of performing Call Processing, and System Support related functionality. The combined functionality of these system components enables the Agency to process E911 and administrative type calls and other various PSAP emergency and non-emergency functions.

AT&T will implement a Call-Processing suite of hardware/software applications: for this E9-1-1 system design solution. AT&T will achieve these system objectives by implementing the following managed work operations:

(7) -911 Positions

Install 911 positions in the call-taking/dispatch area. AT&T will install (4) CAT5e cables run to each position from the backroom. The cables are provisioned as follows: (1) Primary network interface, (1) secondary network interface (1) long-term recorder (position-based, if desired), and (1) Future/spare. Agency to provide conduit or cable path from the backroom to each position and dedicated NEMA 5-15/20R (electrical power) per position.

(0) -Laptop Position(s)

Install 911 laptops and docking stations in the call-taking/dispatch area. AT&T will install (4) CAT5e cables run to each laptop position from the backroom. The cables are provisioned as follows: (1) Primary network interface (Laptop does not support dual NIC), (1) long-term recorder (position-based, if desired), and (2) Future/spare. Agency to provide conduit or cable path from the backroom to each position and dedicated NEMA 5-15/20R (electrical power) per position.

(0) -IP Phone(s)

Calls Can be made directly from phone and calls can be transferred from other positions. There is no "Hold" functionality between the phones and the IWS positions. This phone is not recorded at the phone-level (external device can be added to the phone to give this capability; additional costs and hardware apply). The IP Phone will require local power and can utilize position four's UPS

Mapping

Not Included.

Backroom

All back-room equipment shall be installed/mounted in (1) 19 inch 2-post relay rack, which shall contain all the Controller equipment. The Agency is responsible for drilling/bolting of all equipment to Agency floors.

Not Included -System Printer

A system printer will not be installed in N/A. *(This is not a CDR Printer, CDR is provided via Serial output to ECATS)*

IP Network configuration and Interfaces

Local Area Network (LAN)

- 911 LAN – No connectivity to Agency LAN or computers (except if high speed remote access is provided by and via Agency's existing remote access infrastructure).
- Agency LAN - computers/peripherals operating exclusively on Agency LAN.
- Integrated LAN – For remote access via Agency's existing infrastructure, the inter-connectivity between Agency and AT&T LAN will be via secure Firewalls on both LAN segments, and the point of demarcation will be the port on the AT&T provided Firewall.

Wide Area Network (WAN)

- Not Applicable

Remote Access

Please refer to Appendix G: Agency Provided Internet Access, for Agency provided remote access requirements.

Support System

Uninterrupted Power Supply (UPS)

- Agency provided backroom UPS (building), will be connected to backroom call processing equipment to keep backroom equipment operational until Agency Power Generator becomes active during Agency building power outage.
- Agency provided front room UPS (building), will be connected to front room call processing equipment to keep position equipment operational until Agency Power Generator becomes active during Agency building power outage.

4 Port -NetClock

AT&T will install the Spectracom GPS NetClock system in the backroom with the system.

AT&T will install a GPS Antenna on the Agency's roof. AT&T will use the existing antenna coax.

AT&T will provide the installation configuration services related to the NetClock system. The MasterClock (9483) has **4 Port** provided with the Ethernet Time Server. One port will be connected to the AT&T E911 system equipment LAN and configured with an IP address that corresponds to the system IP schema. The remaining three ports (these ports are

hardware isolated) may be used for Agency networks (the Agency must provide an IP address and wiring to the port(s) at the NetClock device location).

System Growth Capabilities

AT&T warrants that the hardware, software, and operating systems sold are current at the time of shipment. Software and hardware manufacturers constantly upgrade their products. This may require the Agency to upgrade hardware, software, or operating systems in the future in order to expand this system. The maintenance package included in this sale does not include software/hardware upgrades required for expansion or integration.

The server-centric and scalable design of the system allows the system to be sized to a finite capacity (lines and positions). The number of servers, gateways, in a system depends on the population of the area served. This system is configured for capacity related above in [table 8](#). Additional hardware may be quoted in the future to increase lines (911 or analog) and/or positions at additional cost.

2.2 Network Elements

[Table 9](#) above defines Agency line and trunk network elements to be connected to the system including: 9-1-1 trunks, 10-digit emergency lines, administration lines, and ring-down/direct connect circuits, that will be configured in the system.

2.3 System Programming

The system will be programmed with a log in ID for each Administrator/Supervisor. The administrators/ Supervisors will have all the capabilities that the dispatchers have as well as additional capabilities requested by the Agency. The “master” speed dial list will be the same for each position and the site supervisor/administrator will have the capability to change, add, and delete speed dials on the “master” list.

The system will be programmed with a log in ID for each dispatcher. There will be a single Agent Profile for all dispatchers that will have the same configuration, colors and icons. Agent profiles can be locked down or unlocked to allow agents to modify individual logins.

The system will be programmed to “ring all” positions in the event of an incoming call for all lines. Although ACD (Automatic Call Distribution) programming is a feature of this system, ACD functionality is not being provisioned.

The system programming requirements may be changed at the request of the Agency during the Installation process. The AT&T Project Manager will work with the Agency to meet their specific needs.

All system-level programming on the system will be handled by AT&T personnel. All initial system-level programming will be to replicate the current operation of Agency as closely as possible. If it is determined during design sessions that changes need to be made, they can be made at that time. Once the system is cutover and accepted, any further adds, moves and changes will be performed on a Time and Materials basis at the prevailing contract rates (An example of add, move and change is: Adding 7 digit emergency lines to the system). The current contract labor rate is \$185.00 per 911-technician per hour.

System administration function on the system will be managed by designated Agency personnel. User-level programming includes, but not limited to, users, speed dials, TTY messages, etc.

2.4 System Integration Description

ALI

Geographic diverse 56K Data circuits (DSO) that carry the Automatic Location Identification (ALI) data will terminate in the AT&T provided router, which is connected via RS-232c cables to the 9-1-1 Servers.

Audio Interface

In order to ensure proper audio functionality at each IWS position and facilitate audio connectivity with third party audio devices at the Agency location. The system design includes an external sound device that hands off telephony audio to a demarcation point for the radio console. This enables the radio console to provide headset sharing between phone and radio. The device is installed for each 911 workstation. AT&T technicians will work with agency's radio vendor (may be required to be present onsite) to wire this and balance audio (telephony and radio) levels. The device also can arbitrate the telephony and radio audio in lieu of the radio console (*Note: Radio vendor integration is preferred*).

CAD

AT&T will provide an interface connection demarcation point between system Server and Agency provided Computer Aided Dispatch (CAD) computer system via a RS-232c cable located in the backroom. If the data rate of this RS-232c connection is set for 9600 bps there is a 50ft limitation imposed on this connection. The demarcation point for the Agency CAD is the designated com port of the BlackBox unit in the equipment room.

Firewall

The 911 system includes a firewall to provide secure remote access, facilitating protected remote support and maintenance. A broadband (DSL or better) connection or interface between the Agency's network and the AT&T firewall is required and to be provided by the Agency as per the terms of State contract 4156-6 VESTA. Minimum speed requirement is 1.5MB down/768k up. Please refer to Appendix G for Agency provided remote access requirements.

2.5 Building Modifications

All building modifications are the responsibility of the Agency. The AT&T Project Manager will work closely with the Agency to determine proper timeline coordination for a smooth system implementation. Please refer to Appendix A for the specific modifications to be performed by the Agency.

3.0 CHANGE REQUESTS

The Agency may at any time, by written order, and without notice to the *Contractor's* sureties, submit a change order to the *Contractor*. Within ten (10) working days of receiving a proposed change order, the *Contractor* will submit a written cost estimate, which will include adjustments to the Project Price, Project Schedule, Statement of Work, Acceptance Criteria, or any other obligations of the *Contractor*, as applicable. The *Contractor* or the Agency may also decline the change order, depending on the nature of the requested changes.

The *Contractor* may also propose a change order involving additions, deletions, or revisions to the work, or any obligations imposed upon the Parties under this agreement. AT&T's changes to the system design or individual component changes will be submitted to the Agency for approval using the Change Request Form shown in Appendix D.

The Agency will appoint a single individual as a Project Manager. Change Orders will be approved in writing, by the Agency's Project Manager. The *Contractor* will not proceed with any work contemplated in any proposed Change Order until it receives written notification to commence such work from the Agency's Project Manager.

ALL Change Orders must be submitted and approved by the Cal OES Emergency Communications Branch.

4.0 ACCEPTANCE TESTING

4.1 System Acceptance Overview

Final system acceptance for the E911 system will occur when the standards of performance of the State contract are met. The standards of performance of the State contract can be viewed at:

<http://www.caloes.ca.gov/cal-oes-divisions/public-safety-communications/ca-9-1-1-emergency-communications-branch/ca-9-1-1-services-contracts>

These will have been met after 240 consecutive hours of operation following the cutover date. During these 240 hours, the system will function without interruption, as defined by contract and according to the project specifications. If the 9-1-1 system fails to meet the standards of performance, then the 240 hour system acceptance period will re-start following correction of the problem.

Please refer to Appendix E for the system acceptance and authorization checklist.

4.2 Moves Adds and Changes

Once the system is accepted, any further moves, adds and changes will be performed on a Time and Materials basis at the prevailing contract rates. The current contract labor rate is \$185.00 per 911-technician per hour.

5.0 PROJECT TEAM

5.1 Contact Information

Contacts			
Role	Name	Phone	E-mail
Application Sales Executive	Kent Ames Phone: (530) 400-1987 ka3169@att.com		
9-1-1 Service Executive	Lisa Wirtanen Phone: 708-925-4207 LB9261@att.com		
9-1-1 Systems Technician	Ross Fanning: (877) 500-4911		
Technical Sales Consultant	Shelby Lewis - Phone: (951) 369-2317 -sl2387@att.com		
PSAP Director	Charles Taylor Phone: (415) 485-3088 charles.taylor@srpd.org		
State 911 Advisor	Yvonne Winn - Phone: (916) 657-9470 - yvonne.winn@caloes.ca.gov		

An AT&T Project Manager will be assigned for this system implementation. The Project Manager is responsible to plan, organize, control, direct and coordinate people and material resources throughout the life of the project.

6.0 Responsibilities

6.1 AT&T Responsibilities

AT&T is responsible for the following:

- Delivery of equipment
- Security of equipment, until equipment is delivered to customer premise.
- Disposal of packaging materials and debris.
- Any damage caused by Contractor (or Contractor's agent) to equipment, building, or other property.
- Installation of common control (server) equipment in racks/cabinets.
- Dressing of all cables.
- Identification and labeling of all cables.
- Training.
- Installation of appropriate cabling from equipment room to all 9-1-1 positions.
- NENA standard ANI/ALI interface supplied to the Agency owned CAD system.
- Installation of demarcation punch block for audio source and logging recorder.
- Installation of interface jacks for radio headsets.
- Installation of Call Taking equipment at each dispatch position.

6.2 Agency Responsibilities

Equipment Room

- Provide locked limited access to the equipment room.
- Provide/verify (2) dedicated 20-amp circuits for equipment cabinet

- Furnish HVAC equipment that will keep the backroom temperature and humidity levels of 72 degrees F +/- 5 and less than 50% relative humidity.
- DSL or high-speed link for remote maintenance/access by AT&T

Dispatch Room

- Furniture selected by Agency is compatible with, or will be modified by the Agency to be compatible with, the selected system equipment.
- Provide/verify (1) dedicated 15 or 20 amp circuit per position.
- Furnish/verify that each AT&T dispatch position has one 15 amp breaker circuit dedicated to emergency call taking position with a quad outlet. Ancillary electrical components such as heaters, lights and furniture should not be on this circuit.

General

- Access to building for AT&T and subcontractors.
- Conduit and coring of walls.
- Lifting floor tiles.
- Adequate power and power outlets and circuit breakers.
- All radio, CAD and recorder equipment.
- Adequate security to prevent theft of computer equipment.
- On-going upkeep for room requirements listed.
- Technical expertise from Agency's other vendor's during planning, installation and cutover.
- The Agency's Project Manager will facilitate the resolution of any problem determined with these interfaces pertaining to the radio, CAD, recorders, or other Agency owned interfaces.

6.3 Cal OES Emergency Communications Branch Responsibilities

- Not Applicable.

Note: The 911 Network and Agency Networks may not share the same LAN Segments. 911 System IP packets must be segregated from CLETS, NCIC, DMV, CWS, and all other Agency network traffic.

7.0 AGENCY PROFILE

During the implementation phase, AT&T Project Manager will work Agency's Project Manager to update the ECaTS Profile and provide a copy of the updated ECaTS Profile to the Cal OES Emergency Communications Branch.

8.0 INSTALLATION SCHEDULE

The following dates are based on the "Final Funding Date" listed below and are offered as a general planning reference. These dates are best estimates at this time. Changes to the "Final Funding Date" will affect all the dates below.

Final Funding Date:	5/30/2020
Equipment Order Date:	6/4/2020
Equipment Delivery Date:	8/13/2020
Site Readiness By PSAP Date:	8/15/2020
Begin Installation Date:	8/18/2020
Programming Change Freeze Date:	8/20/2020
Training Date:	9/10/2020
System Cutover Date:	9/24/2020
PSAP Acceptance Date:	10/4/2020

Final installation schedule will be established by mutual consent of the Contractor and the Agency; however, prior to the installation date, the Agency may defer the installation, and a new installation date will be established by mutual agreement. Such unilateral deferment will not exceed 60 days, except by mutual agreement.

Pricing is based on installation being performed during AT&T's normal business hours (M-F, 8:00am - 5:00pm, excluding AT&T holidays). Installation activities outside of AT&T's normal business hours are available at prevailing after hour tariff. There will be no additional cost to the Agency for an after-hours cutover, if it becomes necessary.

9.0 WARRANTY

AT&T includes one (1) year parts and labor warranty for all equipment, software, features and functionality provided for the Basic Turn-key Configuration. The warranty is for year one (1) year after the date of system acceptance of the installation by the Agency.

10.0 MAINTENANCE PLAN

AT&T includes a one-year warranty and years two through five on a maintenance contract through the State of California Contract referenced at the beginning of this document.

10.1 Remote Access

The 911 system is provisioned to allow authorized remote access the 911 system in order to identify software and hardware problems and make repairs. If the equipment cannot be

repaired remotely, trained technicians will be dispatched to the Agency to facilitate onsite repairs.

10.2 Maintenance Procedures

911 System

- AT&T will provide a “Maintenance Kit” to be kept at a location readily accessible to AT&T Technicians or, in some special cases, due to an Agency's location or system size, kept on site in a secured location. The contents of the Maintenance Kit will be based upon the requirements of the Agency's 9-1-1 system. AT&T absorbs the cost of the Maintenance Kit and the equipment provided within the kit will remain the property of AT&T.
- AT&T includes five-year parts and labor on the 9-1-1 system. The five-year period begins at date of customer acceptance. After the five-year period, the Agency may choose to replace the system, maintain it, or a maintenance contract may be negotiated with agreed terms, conditions, and costs. During the first year warranty and years two through five maintenance period, software service packs and hot fixes will be kept current and upgraded at no charge (additional features and hardware may not be included); new Manufacturer software versions, hardware, and Operating System upgrades are not included.

Post-Installation Support Limitations

AT&T's support obligations hereunder will not apply to any AT&T supported product if adjustment, repair, or parts replacement is required because of:

- Printer ink and paper are not included under maintenance.
- Accident, neglect, tampering, misuse, improper / insufficient grounding, failure of electric power; failure of the PSAP and/or others to provide appropriate environmental conditions, relocation of hardware or software, or causes other than ordinary use
- Repair or alteration, or attempted repair or alteration of any AT&T supported product (hardware and/or software) by the PSAP or others
- Connection of another machine, device, application or interface to AT&T supported equipment (hardware and/or software) by Agency, the PSAP, or others, which has caused damage to AT&T supported equipment
- Degradation of performance to AT&T maintained systems due to excessive heat, humidity, moisture, condensation, dust, EMI, etc. at Agency's location
- Damage or destruction caused by natural or man-made acts or disasters
- Degradation of performance to AT&T systems due to the installation of third party software applications or Operating System patches, service packs, hot fixes, or Windows services and not specifically certified, approved, and registered by AT&T for use at the site(s) identified herein.
- Support described herein does not include cosmetic repairs, refurbishment, furnishing consumables, supplies or accessories, making accessory changes or adding additional devices or software applications.

For repair of unsupported failures, the Agency may request Field services to rectify unsupported failures, as defined above, on a Time & Materials basis. Labor rate charged will be the current AT&T labor rate (plus expenses) at the time service is requested.

AT&T is NOT responsible for the performance of third party applications/systems.

10.3 Remedial Maintenance

Please refer to Appendix H for additional information on maintenance procedures.

10.4 Technician Expertise

Please refer to Appendix H for additional information on technician expertise.

10.5 Trouble Reporting Contact Number

The Customer Assistance Bureau (CAB) is the trouble reporting center for our priority Public Safety Agencies. The center is responsible for receiving Agency reports and electronically relaying the reports to the responsible work groups for resolution, 24 hours a day, 365 days a year. The Priority Repair Service number is:

(877) 500-4911.

10.6 Maintenance Exclusions

Items excluded from maintenance include any Software which is at a revision level not supported by the Software licensor. AT&T makes no guarantee as to parts availability on Equipment that has been discontinued by its manufacturer. In the event a manufacturer discontinues producing any Equipment or in the event the Equipment has outlived the manufacturer's suggested product life cycle, AT&T will continue to provide Service under the Maintenance Plan for as long as parts are available on a commercially reasonable basis. In the event repair parts are not readily available, AT&T will advise customer and customer will have the option to replace the Equipment with a similar product AT&T offers at the prevailing rates. In the event the customer declines to authorize such replacement, AT&T will cease providing Service for such Equipment.

11.0 TRAINING

11.1 Supervisor/Dispatcher Training

Training for systems will be provided. The customer must provide an area for training. The training will be done during normal business hours (8 a.m. and 5 p.m.) Monday through Friday. If the Agency requests off-hours training, it can be negotiated but may result in additional expense.

The following items will be included in on-site training provided to the Agency, the actual number of classes will dependent up on the number of available training positions and Agency personnel shift schedules:

- 1) Students will be trained on call processing and features using an operational 911 Intelligent Workstation position.
- 2) Students will receive administrator training on the system.

Post-cutover training requirements must be negotiated with the AT&T Project Manager and may result in additional expense to the Agency.

11.2 Training Documentation

911 System

Training documentation may include hard-copies of the User Guide per site, and one soft-copy will be installed on each workstation. Documentation will be given to the Agency's designated training coordinator.

11.3 Service Manual Documentation

Technical Installation and Maintenance manuals will be provided with the delivery of the systems. These technical manuals should be kept in the equipment room near the equipment racks for the AT&T technicians to utilize as necessary.

San Rafael Police Department

CA 9-1-1 MPA #: 4156-6 VESTA

I have read the preceding document revision 1.0. I understand and approve of the scope of work described therein. In addition, I understand that subsequent modifications to the scope of work will be requested on the attached Change Request Form and approved by both **San Rafael Police Department** and AT&T.

San Rafael Police Department

Date



May 4, 2020

Kent Ames - Application Sales Executive
AT&T California

Date

Appendix A: Agency Compliance - Site Certification Document

San Rafael Police Department – Site Certification Document

This Section meets the State contract requirement for AT&T to provide a Site Readiness Checklist to the Agency.

A site survey has been made and site modifications will be needed to meet the following requirements for equipment installation. The following site modifications must be completed by the Agency prior to AT&T beginning the installation of the new or upgraded system. The completion of all building modifications is the responsibility of the Agency. In the event that AT&T attempts to begin installation and subsequently discovers that these modifications have not been met as specified, AT&T may postpone implementation. A quote will be provided to the Agency for any additional costs incurred by AT&T because of the postponement. Any additional costs that are incurred for site modifications because of the postponement will be the responsibility of the Agency. Work will be rescheduled upon completion of the required modifications.

- 1) Provide DSL or other high-speed link for remote maintenance and support.
- 2) Install/provide (2) dedicated 20amp circuits for the backroom equipment.
- 3) Install/provide (1) dedicated 15amp circuit for each IWS / Laptop position.

Hazardous Materials

Customer will maintain Customer’s location where AT&T is to perform work in a suitable and safe working environment, free of Hazardous Materials. AT&T does not handle, remove or dispose of, nor does AT&T accept any liability for, any Hazardous Materials at Customer’s location. If AT&T encounters any such Hazardous Materials, AT&T may terminate this Statement of Work or suspend performance until Customer removes and cleans up at its expense Hazardous Materials in accordance with this Statement of Work and applicable law. For purposes hereof, “Hazardous Materials” means any substance whose use, transport, storage, handling, disposal, or release is regulated to any law related to pollution, protection of air, water, or soil, or health and safety.

Authorized Agency Representative understands that the modifications listed above must be complete prior to AT&T commencing installation.

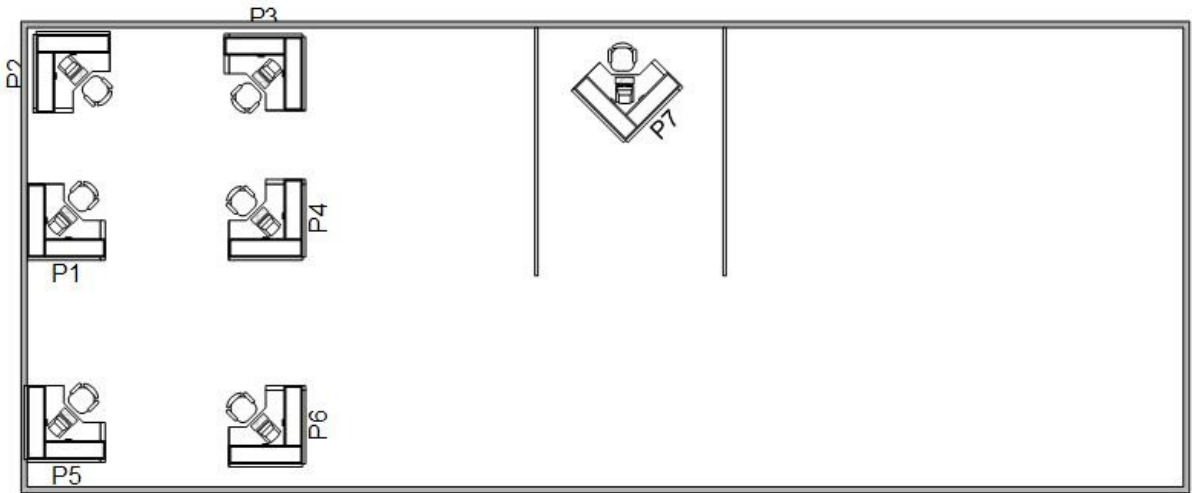
Authorized Agency Representative accepts modification list.

Date

Authorized Agency Representative certifies modifications complete.

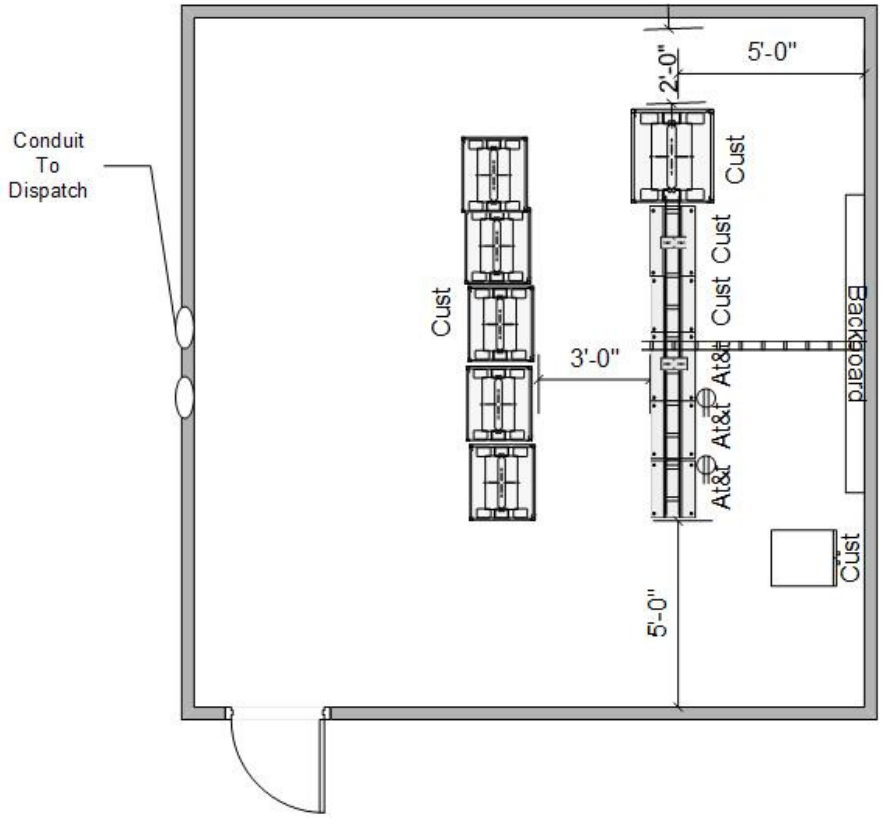
Date

**Appendix B: Floor Plan
San Rafael Police Department
FOOTPRINT OF DISPATCH ROOM**



San Rafael PD		
 at&t	4/27/20	Dwg: S. Lewis

FOOTPRINT OF EQUIPMENT ROOM San Rafael Police Department



San Rafael PD		
 at&t	4/27/20	Dwg: S. Lewis

Appendix C: Pricing & Terms

Please refer to separate document.

Appendix D: Change Order Request Form

AT&T Project Office

Change Request Form: San Rafael Police Department

Change Orders cannot be billed directly to the State without State approval.
The Agency will be billed and must submit a reimbursement request to the State.

Originator: Change Request Definition:

To be completed by Project Manager

Impact to System Schedule:
Impact to Overall Project Schedule:
Development Price:

Change Request #:	Date:
System Affected:	
Accepted	Rejected:

Final AT&T Signoff:	Final Agency Signoff:	Date:
--------------------------------	------------------------------	--------------

Appendix E: STAND ALONE CPE SYSTEM ACCEPTANCE AND AUTHORIZATION FORM

Please refer to separate document.

AT&T LAN/WAN PSAP Security Policy

AT&T will terminate the 9-1-1 LAN (AT&T provided) to a firewall (AT&T provided) for use by AT&T or sub-contractor for installation/remote support and maintenance via an AT&T/Agency provided connection (DSL, etc.). If the solution requires inter-LAN connectivity, AT&T will work with the Agency to formulate a mutually agreed network design.

In the event the Agency has previously connected or subsequently connects their 9-1-1 LAN to any other computer network or has caused or causes such a connection, contrary to this Security Policy herein (which Agency acknowledges it has received and read), and the 9-1-1 equipment and/or 9-1-1 LAN is infected or damaged as a result of such connection, then all 9-1-1 equipment and/or 9-1-1 LAN warranties, maintenance, and service provisions of this amendment or statement of work will be immediately null and void.

Under such circumstances, AT&T will provide repair services for the 9-1-1 equipment and/or 9-1-1 LAN at the Agency's request and time and materials charges will apply for all parts and labor required as a result of damage caused by the infection. After all related damage has been repaired, maintenance and service provisions of this agreement will resume.

The Agency agrees to indemnify and hold AT&T harmless for any damages to or claims by any third party against AT&T that arise in whole or in part from Agency's existing or subsequent connection of the 911 equipment and/or 9-1-1 LAN provided hereunder to any computer network outside of AT&T's control.

For AT&T/Agency Firewall interconnection instructions please reference Appendix G. "Agency Provided Internet Access".

Appendix G: Agency Provided Remote Access

E911 Agency Provided Remote Access for 911 Installations

Summary

The purpose of this document is to provide specifics for remote access that will ultimately be terminated into an AT&T supplied Cisco ASA firewall (ASA). The purpose of the ASA is to provide remote access via two-phase authentication and/or secure site-to-site VPN tunnel into the 911 equipment for remote maintenance and monitoring as applicable and as needed. By allowing only authenticated and encrypted traffic, the AT&T managed Cisco firewall will ensure the security and integrity of the 911 system.

Technical Requirements

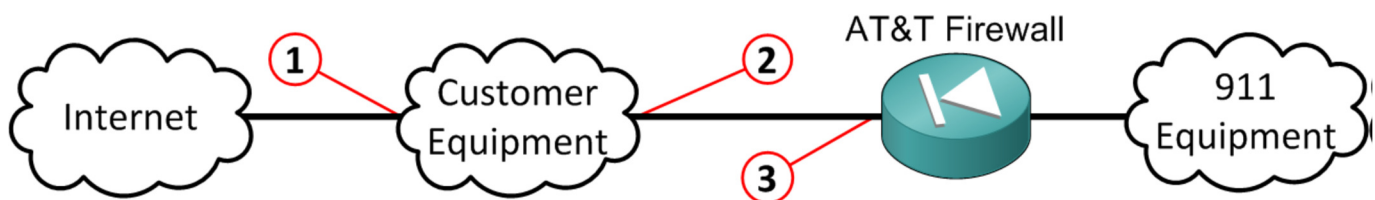
AT&T requests the remote access meet the following technical requirements.

- Access to the Internet with a minimum speed of 1.5M download and 384k upload
- One publicly/Internet accessible Static IP Address
- Allowance for the following protocols:
 - SSH – TCP port 22
 - HTTPS – TCP/UDP port 443
 - NTP – UDP port 123 (site dependent)
 - IPSEC protocol suite
 - IP Protocol 50 for IPSEC ESP
 - UDP Port 500 for IKE Phase 1
 - UDP Port 4500 for IKE Phase 1 with NAT-T
- Physical hand-off should be Copper Ethernet, Cat5E or better

Informational Requirements

The Customer shall provide the following IP addressing and where appropriate subnet mask information to AT&T Project Management via email to be distributed to relevant AT&T Engineering and Technical resources. See Diagram 1.

- 1) Public IP address to access the ASA from the Internet
- 2) Default Gateway for the ASA to access the Internet
- 3) Private IP address assigned to the Customer side of the ASA if Customer is performing NAT (Network Address Translation)



Questions please contact: Keith Martin, Technical Consultant II / km7564@att.com / 918-519-2634
Version 2013.05.01

Appendix H: Maintenance Procedures

“AT&T”

PROVIDING PRODUCT & SERVICE EXCELLENCE

TROUBLE REPORTING PROCEDURES

The Customer Assistance Bureau (CAB) is the trouble reporting center for our priority Public Safety Agencies. The center is responsible for receiving Agency reports and electronically relaying the reports to the responsible work groups for resolution, 24 hours a day, 365 days a year. The CSB can escalate trouble reports and put you in contact with management personnel responsible for resolving the trouble you have reported.

The Priority Repair Service number is:

(877) 500-4911

Due to the complexity of the services we provide and your own equipment ***it is essential that you isolate trouble before reporting to AT&T.*** A few extra minutes to properly identify, isolate and report a trouble can save hours in resolution time. Reporting the wrong trouble or circuit number may cause extended delays in our ability to deploy the appropriate work crew to repair the problem.

When you call in a report, please be ready to provide the following information:

1. Your name and call back telephone number.
2. Address and the location of trouble.
3. Telephone numbers or circuit number in trouble.
4. Nature of the trouble/condition.
5. Application the circuit is used for.
6. Access restrictions we may have to resolve trouble report.
7. Any terminal access problems or arrangements before dispatch.
8. The name of the contact person and their office number is a must!
9. Identification of Major or Minor Failure. (Defined below)
10. For urgent restorations you can ask for an hourly status from the Plant Control Office/PCO.

Major Failure - Definition Of Major Failure: Any hardware, software or circuitry failure that prevents the 9-1-1 PSAP call taker from making voice or TDD contact or viewing ANI information or ALI information from a person who has dialed 9-1-1. Upon verbal notification by the Agency, or electronic notification by the 9-1-1 system itself, of a major failure, AT&T will meet the required response time detailed below:

ONSITE RESPONSE: A factory-trained technician will respond on-site with spare parts and/or software within two (2) hours, or less, to diagnose and commence repair of a major failure. (The initial replacement of some components may not be identical to the defective part (monitor, keyboard, mouse, speakers, etc.). This is to provide an expeditious restoration. An identical

replacement part will be provided within 72 hours.) Within two (2) hours, or less, the responding technician will notify the PSAP of the nature of failure and an estimated time to effect repairs.

Minor Failure - Definition of Minor Failure: Any hardware, software or circuitry failure that prevents the normal operation of any feature of the 9-1-1 system. Upon verbal notification by the Agency, or electronic notification by the 9-1-1 system itself, of a minor failure AT&T will meet the required response time detailed below:

ONSITE RESPONSE: During the initial notification by the PSAP Agency of a minor failure, the *Contractor* will provide to the PSAP Agency an estimated time for on-site diagnostics/repairs to begin. A factory trained technician will respond on-site with spare parts/software within twenty four (24) hours, or less, to diagnose and repair a minor failure. (The initial replacement of some components may not be identical to the defective part (monitor, keyboard, mouse, speakers, etc.). This is to provide an expeditious restoration. An identical replacement part will be provided within 72 hours.) Within twenty four (24) hours, or less, the responding technician will notify the PSAP of the nature of failure and an estimated time to effect repairs

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL GRANTING THE CHIEF OF POLICE AUTHORITY TO USE FUNDING IN THE AMOUNT OF \$287,000 FROM THE CALIFORNIA OFFICE OF EMERGENCY SERVICES, 9-1-1 EMERGENCY COMMUNICATIONS BRANCH TO UPGRADE THE POLICE DEPARTMENTS EMERGENCY AND NON-EMERGENCY TELEPHONE EQUIPMENT IN FISCAL YEAR 2020/2021.

WHEREAS, the State of California Office of Emergency Services, 9-1-1 Emergency Communications Branch has deemed eligible \$287,000 to the City of San Rafael for Fiscal Year 2020/2021; and

WHEREAS, the Legislature mandated this money to be spent for replacement or certified upgrade of emergency telephone equipment and services; and

WHEREAS, the California Office of Emergency Services, 9-1-1 Emergency Communications Branch has identified AT&T as being a provider of emergency and non-emergency telephone system equipment and services under a Master Purchase Agreement; and

WHEREAS, AT&T installed the original emergency and non-emergency telephone system equipment and services for the City of San Rafael Police Department and has provided an estimate cost quote below the funding amount available;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby approves the use of funding in the amount of \$287,000 from the California Office of Emergency Services, 9-1-1 Emergency Communications Branch and authorizes the Chief of Police of the City of San Rafael to execute a contract with AT&T to upgrade Police Department customer premise equipment in Fiscal Year 2020/2021, in a form to be approved 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 the City of San Rafael, held on Monday, the 6th of July 2020, by the following vote, to wit:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

Lindsay Lara, City Clerk



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: 

TOPIC: CALTRANS MAINTENANCE AGREEMENT

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE PROJECT SPECIFIC MAINTENANCE AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR MAINTENANCE OF PORTIONS OF LUCAS VALLEY ROAD AND SMITH RANCH ROAD WITHIN STATE RIGHT-OF-WAY

RECOMMENDATION: Adopt a resolution approving and authorizing the City Manager to execute an amendment to the Project Specific Maintenance Agreement (Maintenance Agreement) with the State of California Department of Transportation (Caltrans) for maintenance of portions of Lucas Valley Road and Smith Ranch Road within State right-of-way.

BACKGROUND: State of California right-of-way provides public access to the freeway system through local streets. However, Caltrans typically does not maintain these local streets and the responsibility for their maintenance is borne by local municipalities. On November 18, 2019, the City Council adopted Resolution No. 14740 authorizing the City Manager to execute a Maintenance Agreement with Caltrans for maintenance of portions of Lucas Valley Road and Smith Ranch Road. Caltrans required the City to enter into the Maintenance Agreement prior to issuing encroachment permits to both the City and Kaiser Permanente. Additionally, Kaiser Permanente (Kaiser) has proposed to resurface Lucas Valley Road from Los Gamos Drive to Highway 101; the City will resurface Lucas Valley Road from Highway 101 to the intersection of Smith Ranch Road and Redwood Highway.

On February 20, 2020, the Maintenance Agreement was fully executed, incorporating Kaiser's off-site roadway improvements on Lucas Valley Road as part of their Medical Office Building project located at 1650 Los Gamos Drive. Kaiser will also install a new traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive, which is a nexus point for right-of-way between the City of San Rafael, County of Marin, and Caltrans.

ANALYSIS: Following discussions between the City, County, and Caltrans, the City agreed to accept maintenance responsibilities for the new traffic signal to be installed by Kaiser. On May 20, 2019 the City Council adopted Resolution No. 14672 authorizing the City Manager to

FOR CITY CLERK ONLY

File No.:

Council Meeting:

Disposition:

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

execute a maintenance agreement with the County of Marin for maintenance of the proposed traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive. In March 2020, Caltrans notified the City that the executed Maintenance Agreement inadvertently omitted a clause clearly identifying the City as the responsible party for maintaining the new traffic signal. The attached Amendment to the Maintenance Agreement proposes to incorporate this specific clause.

FISCAL IMPACT: There is no fiscal impact associated with this item.

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

1. Adopt a resolution approving and authorizing the City Manager to execute an amendment to the Project Specific Maintenance Agreement with the State of California for maintenance of roadway features on Lucas Valley/Smith Ranch Roads.
2. Do not adopt a resolution and provide further direction to staff.

ATTACHMENT:

1. Resolution
2. Amendment No. 1 to the Project Specific Maintenance Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE PROJECT SPECIFIC MAINTENANCE AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR MAINTENANCE OF PORTIONS OF LUCAS VALLEY ROAD AND SMITH RANCH ROAD WITHIN STATE RIGHT-OF-WAY

WHEREAS, Caltrans as the State Department of Transportation generally does not maintain local city streets within State right-of-way; and

WHEREAS, portions of local streets Lucas Valley Road and Smith Ranch Road within State right-of-way will be improved with new roadway features requiring maintenance; and

WHEREAS, Kaiser Permanente proposes to convert the existing general office building at 1650 Los Gamos Drive to a Medical Office Building requiring the installation of roadway features, including curbs, gutters, sidewalks, asphalt pavement, and striping, some of which will be located within State right-of-way; and

WHEREAS, the City of San Rafael proposes to resurface Lucas Valley and Smith Ranch Roads with new asphalt, curb ramps and other improvements; and

WHEREAS, Caltrans is requiring the City to maintain those roadway infrastructure elements as more fully described in the Project Specific Maintenance Agreement approved by the City Council on November 18, 2019; and

WHEREAS, the State proposes to amend the Project Specific Maintenance Agreement to clarify that the City is the responsible party for maintaining the proposed traffic signal at the intersection of Lucas Valley Road at Los Gamos Drive;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL RESOLVES as follows:

1. The Council hereby approves and authorizes the City Manager to execute a First Amendment to the Project Specific Maintenance Agreement with the State of California Department of Transportation for maintenance of portions of Lucas Valley Road and Smith Ranch Road within State right-of-way, in the form included in the staff report for this resolution, subject to final approval as to form by the City Attorney.

2. The Director of Public Works is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

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 Council of said City on the 6th day of July, 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**AMENDMENT NUMBER 1 TO
PROJECT SPECIFIC MAINTENANCE AGREEMENT
WITH THE CITY OF SAN RAFAEL**

This Amendment (“AMENDMENT No. 1”) is dated _____, 20__ and is made to the Project Specific Maintenance Agreement with City of San Rafael dated February 20, 2020 (“AGREEMENT”), and entered into by and between The State of California, acting by and through the Department of Transportation, hereinafter referred to as (“STATE”), and City of San Rafael, a municipal corporation, hereinafter referred to as (“CITY”), acting by and through its Mayor. CITY and STATE together are hereafter referred as (“PARTIES”).

RECITALS:

WHEREAS, the traffic signal will be installed on Lucas Valley Road at Los Gamos Drive;

WHEREAS, the purpose of this AMENDMENT is to assign and expand the maintenance responsibilities of Lucas Valley Road and Los Gamos Drive Improvements;

WHEREAS, the parties hereto now desire to amend AGREEMENT as provided herein.

IT IS THEREFORE MUTUALLY AGREED:

1. Existing Articles: 9 through 14 of AGREEMENT is hereby amended by renumbering the existing text as 10, 10.1, 10.2, 10.3, 11, 11.1, 11.2, 12, 12.1, 13, 14, 15, respectively.
2. New Article 9 is hereby added to and made a part of AGREEMENT to read as follows:

“9. ELECTRICALLY OPERATED TRAFFIC CONTROL DEVICES -
CITY will be solely responsible for installation, operation, maintenance, repairs, replacement and energy costs of safety lighting, cameras, pedestrian and vehicle traffic signals or other necessary electrically operated traffic control devices placed at the intersection of Lucas Valley Road and Los Gamos Drive within the STATE right of way.
3. All other terms and conditions of AGREEMENT shall remain in full force and effect.
4. AMENDMENT No. 1 is hereby deemed to be included and is made a part of AGREEMENT.

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals the day and year first above written.

THE CITY OF SAN RAFAEL

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
GARY O. PHILLIPS, Mayor

TOKS OMISHAKIN
Director of Transportation

Initiated and Approved:

By: _____
JIM SCHUTZ, City Manager

By: _____ Date
DAVID AMBUEHL
Deputy District Director
Maintenance

ATTEST:

By: _____
LINDSAY LARA, City Clerk

By: _____
ROBERT F. EPSTEIN, City Attorney

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL IN ANNUAL
COMMEMORATION AND PROCLAMATION OF JUNETEENTH**

WHEREAS, Juneteenth is the oldest nationally celebrated commemoration of the ending of slavery in the United States; and

WHEREAS, from its Galveston, Texas origin in 1865, the observance of June 19th as the African American Emancipation Day has spread across the United States and beyond, and today Juneteenth commemorates African American freedom and emphasizes education and achievement; and

WHEREAS, it is a day, a week, and in some areas a month marked with celebrations, speakers, picnics, and family gatherings. It is also a time for the reflection and rejoicing; a time for assessment, self-improvement and for planning the future; and

WHEREAS, we find ourselves in a critical moment of reckoning as it pertains to the lives, liberties, and dreams of African American families locally, nationally, and globally. We understand this moment to be one where we must invest in, support, and edify African American lives; and

WHEREAS, in cities across the country people of all races, nationalities, and religions are joining hands to truthfully acknowledge a period in our history that has shaped and continues to influence the current state of our nation and society; and

WHEREAS, the Emancipation Proclamation which ended slavery greatly influenced migration patterns across the United States and shaped the culture of the Bay Area and Marin County, adding great depth, vibrancy, and value to this diverse region and the State of California; and

WHEREAS, we acknowledge that this vibrancy, depth, and value has often been marginalized and underserved, and that we utilize this moment to commit to the implementation and valuation of racial equity in Marin County; and

WHEREAS, in the tradition of Juneteenth, we honor the experience of those who came before us and acknowledge the importance of bearing witness to the sacrifices of our ancestors and elders; and

WHEREAS, while Juneteenth was widely celebrated following the Civil War, it experienced decline and repression in the 20th century until the Civil Rights movement of the 1960s, and we support it in the spirit of civil rights for ourselves and for all; and

WHEREAS, the promise of Juneteenth remains elusive for African Americans as seen most recently in the deaths of George Floyd, Breonna Taylor, Ahmaud Arbery, Sandra Bland and countless others; and

WHEREAS, we honor the memory of enslaved persons, freemen, passengers and supporters of the Underground Railroad and all those who have tirelessly pursued freedom and self-determination; and

WHEREAS, we call to mind those who continue to suffer in various forms of slavery across the globe even today and reject the tyranny and inhumanity of such bondage; and

WHEREAS, we affirm that when people are sensitized to the conditions and experiences of others, only then can we make significant and lasting improvements in our society; and

WHEREAS, we call upon the people of the City of San Rafael to eliminate prejudice, and to celebrate the great diversity of the American people and the extraordinary contributions of African Americans; to look upon the current state of our nation as an opportunity for change that brings about racial equity through the work of radical imagination, intention, purpose, and continued work towards the eradication of prejudice, racism, and injustice.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL RESOLVES, that every June 19th is recognized annually in the City of San Rafael as a celebration of the emancipation of enslaved persons in the United States and the City reaffirms its commitment to safeguard the civil rights, safety, and dignity of African Americans.

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

Agenda Item No: 5.a

Council of said City held on Monday, the 6th day of July 2020 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: COMMUNITY DEVELOPMENT

Paul A. Jensen

Prepared by: Paul Jensen (RB)
Community Development Director

City Manager Approval: _____ *AS*

TOPIC: 1499 LUCAS VALLEY ROAD ENVIRONMENTAL AND DESIGN REVIEW PERMIT AND EXCEPTION

SUBJECT: RESOLUTION APPROVING ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED19-099) AND EXCEPTION (EX20-001) FOR THE CONSTRUCTION OF A 901 SQ. FT. BATHROOM/CLOSET ADDITION TO AN EXISTING 8,592 SQ. FT. SINGLE-FAMILY RESIDENCE LOCATED AT 1499 LUCAS VALLEY ROAD (APN: 165-010-89).

EXECUTIVE SUMMARY:

The proposed project is a request for an Environmental and Design Review Permit to add a 901 sq. ft. addition to an existing single-family residence located on an 8.9-acre hillside lot. The project also requires an Exception to the Planned Development Ordinance (PD1701-H) for the existing single-family residence to exceed 6,500 sq. ft. The proposal would increase the residence size by 901 sq. ft. to 9,493 sq. ft. The current Planned Development (PD1701-H) zoning for this property allows additions to the single-family home, greater than the 6,500 sq. ft limit, subject to an Exception granted by the City Council.

The project has been reviewed and recommended for approval by the Design Review Board and Planning Commission. The proposal complies with all applicable design and development standards. Staff of the Public Works Department, Building and Fire Prevention and Marin County Parks Department have reviewed the project and did not express any concern and recommended approval of the project without any special conditions or requirements. Staff is supportive of the proposed project and recommends approval given the significant size of the property, limited visibility of the addition from other private properties or public vantage points and the location of the proposed addition at the rear of the existing building.

RECOMMENDATION:

Staff recommends that the City Council adopt the attached Resolution (Attachment 1) conditionally approving the Environmental and Design Review Permit (ED19-099) and Exception (EX20-001).

FOR CITY CLERK ONLY

File No.: _____

Council Meeting:

Disposition:

BACKGROUND:

The existing development on the property was approved by the City Council in accord with a [Planned Development Ordinance \(PD1701-H\)](#) adopted for the development on August 5, 1996. Under the Hillside Resource Residential General Plan designation, the property could have been divided into four (4) separate single family lots. However, the applicant at that time proposed to maintain the site as a single-family estate. Therefore, in consideration of the size of the site and the fact that subdivision into 4 lots was not proposed, the PD was ultimately adopted to allow more development on one single family parcel than is typically allowed for hillside properties. This allowance was based on the fact that the property is large (8.9 acres), only has a 9.4% average slope, is located in a rural area where the proposed development would be either far removed from any public right of way or screened behind existing landscape and the project did not propose to subdivide the property. The PD1701-H Zoning established the following standards for development on this property:

Minimum Site Area	8.9-acre parcel
Setbacks	
Front Setback	100 ft.
Side Setback	20 ft.
Rear Setback	25 ft.
Lot Coverage	20%
Natural State	34.4%
Floor Area	
Single Family-Residence w/2-car garage	6,500 sq. ft
Detached 2-car garage with upper story 2 nd residential unit/exercise room	1,100 sq. ft.
Pool and Cabana with bathrooms, equipment room and patio	500 sq. ft.
Barn with care takers quarters	3,700 sq. ft.
Covered riding arena	7,000 sq. ft.
<u>Total</u>	<u>18,800 sq. ft.</u>

The adopted PD limited the single-family residence size to 6,500 sq. ft., however, allows its expansion with an Exception to be granted by the City Council consistent with the Hillside Design Guidelines and without amendment to the PD.

In 2012, the existing single-family residence went underwent a similar process and received approval of an Environmental and Design Review Permit and Exception to add a 268 sq. ft. crafts room, 1,214 sq. ft. theater room, 535 sq. ft. attached covered courtyard and a 622 sq. ft. detached garage. The proposal in 2012 required an Exception since it proposed the single-family home to exceed 6,500 sq. ft. (The proposal in 2012 proposed additions to the single-family home resulting in 8,592 sq. ft.) The 2012 project also included new construction accessory to the residence and two structures that were part of the original approval in 1996 but were never constructed: covering of an existing 7,000 sq. ft. arena and a 500 sq. ft. cabana with bathrooms and equipment room.

Design Review Board and Recommendation: Due to the COVID-19 Shelter-in-Place restrictions, a special subcommittee of the Design Review Board reviewed this project for a 901 sq. ft. addition on March 25, 2020 and unanimously recommended approval of the project, finding the design appropriate for the site and its surroundings, and finding that the Exception is warranted.

Planning Commission Review and Recommendation: This project was subsequently reviewed by the Planning Commission on May 12, 2020 via an online public hearing due to COVID-19 Shelter-in-Place restrictions. The [staff report](#) and [video](#) streaming from the May 12, 2020 Planning Commission hearing may be viewed here by clicking the “control” key while left clicking each link. There were no public comments on this item. Following a public hearing the Commission adopted Resolution No. 20-16 by a vote of 6-0, recommending approval of the project to the City Council as presented.

PROJECT DESCRIPTION:

Use: The applicant is proposing to add a single-story addition of 901 sq. ft. bathroom and closet space to the existing 8,592 sq. ft. single-family residence. The total floor area of the main home would be 9,493 sq. ft. Link to project plans are here: [Architectural Plan set](#) and [Grading/Drainage Plan set](#)

Site Plan: The property is accessed with a long driveway off Lucas Valley Road, through unincorporated Lucas Valley. The proposed project would not modify the existing driveway. The arena structure and barn have a front setback of 250 ft. All other accessory structures along with the existing residence are screened from public view from Lucas Valley Road.

Architecture: The proposed additions would have hip roofs and materials and colors would match the existing residence as follows:

- Concrete tile roofing
- Fascia and gutter painted to match existing
- Cement plaster siding to match existing
- Dual pane, Low E windows, prefinished aluminum clad window frames, frames to match existing

Landscaping: None proposed (although native drought tolerant plantings are indicated for retaining walls adjacent to the new addition). Three new terraced retaining walls, with a maximum height of 4-feet in the middle of the upper wall are proposed opposite the southeast corner of the new addition.

Lighting: No external lighting is proposed at this time.

Grading/Drainage: Approximately 275 cu. yds. of cut is required to prepare the building addition. Material removed for grading requirements will be placed on a low slope hill adjacent and east of the existing residence per recommendations in the geotechnical report. Increase in drainage due to new additions would be added to the existing drainage pattern.

ANALYSIS:

A complete analysis of the project’s consistency with the applicable plans, regulations and policies can be found in the [May 12, 2020 Staff Report to the Planning Commission](#).

San Rafael General Plan 2020 Consistency: The property is designated Hillside Residential under the General Plan 2020. A single-family residence is a permitted use under the Hillside Residential designation. The General Plan 2020 contains numerous design related policies. These policies are implemented through various provisions of San Rafael Municipal Code (SRMC): the Zoning Ordinance (SRMC Title 14), Ordinance No. 1701 (hereafter referred to as the Planned Development Ordinance or PD1701-H), [Hillside Design Guidelines](#) and [Hillside Development Standards](#) (SRMC §[14.12.030](#)), which are established to ensure proper hillside design of homes on lots with an average slope greater than 25%. Compliance with the Zoning standards and *Hillside Design* Guidelines would assure development that is consistent with the property’s hillside designation and related policies. The proposed project is consistent with the applicable San Rafael General Plan policies.

Zoning Ordinance Consistency:

Planned District (1701-H)

As stated in the Background section above, the PD1701-H was adopted in 1996 to allow more development on this single family lot than is typically allowed for hillside properties, due to the large size (8.9 acres) of the project site and the fact that it could have otherwise been divided into four (4) lots. A typical hillside property is allowed a maximum of 6,500 sq. ft. floor area, regardless of the size of the lot, which would result in total development of approximately 26,000 sq. ft.

The PD1701-H Zoning established the single-family residence size at 6,500 sq. ft., allowed two second dwelling units (but did not restrict the size or number of accessory structures) and set an overall development footprint at 18,000 sq. ft. Further, the PD1701-H zoning also established large setbacks and reduced lot coverage of 20%.

According to the PD1701-H subsection J. Additions/Modifications of Section II. Development Standards, an Exception would be required for the single-family home to exceed 6,500 sq. ft. (currently proposed to be 9,493 sq. ft.). Pursuant to SRMC Chapter [14.12.040](#) "*Exceptions to Property Development Standards*", approval of an Exception to the maximum 6,500 sq. ft. allowed for the single-family residence would require the following findings:

- A. *The project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintain a strong relationship to the natural setting; and*
- B. *Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.*

The above findings can be made by the City Council, upon the recommendation of the Design Review Board and the Planning Commission, when the applicant has demonstrated that the proposed design carries out the objectives of this chapter.

Staff believes the proposed project carries out the objectives of hillside development in that the proposed project would provide a lot coverage of 5.6% where 20% is allowed, maintain the existing natural state of 84.8% where 34.4% is required, protect significant trees and the project would not be visible from public right of way; the project would not need any grading or tree removal; the addition would mainly infill the area around the existing residence and would minimally change the developed footprint. Furthermore, the proposed addition and maximum floor area would be significantly less floor area than would be possible with a four-lot subdivision. Finally, the Design Review Board and Planning Commission have both reviewed and unanimously recommended approval of the project.

SRMC Chapter 14.12 - Hillside Development Overlay District / Chapter 14.25 Environmental and Design Review Permits

The PD1701-H zoning district for the property establishes all other development standards of SRMC Chapter 14.12, except gross building square footage, step-back height, and Ridgeline Development. The project is consistent with design criteria of Chapter 14.25 of the Zoning Ordinance in that the project design, including its building scale, materials and colors, is consistent with the existing residence.

San Rafael Design/ Hillside Guidelines: The project is generally consistent with the San Rafael Residential Design Guidelines criteria regarding building design, building scale, building height, front

landscaping, roof shapes, windows, driveways and parking areas, and lighting. The project is also consistent with Hillside Design Guidelines Checklist prepared for this project, attached to the [Planning Commission staff report](#). The project complies with maximum building height, required natural state, step-back height, preservation of significant trees, hillside grading and drainage, driveway and parking design, reduction of building bulk, hillside architectural character and site lighting. However, as stated earlier the project does not comply with the maximum allowed 6,500 sq. ft. for a single-family residence, for which an Exception request is being processed and discussed previously.

California Environmental Quality Act (CEQA): The proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15301(e).1) of the CEQA Guidelines which exempts additions to existing structures less than 10,000 square feet.

COMMUNITY OUTREACH:

Notice of hearing for the project was conducted in accordance with noticing requirements contained in Chapter 14.29 of the Zoning Ordinance. A Notice of Public Hearing was mailed to all property owners and occupants within a 300-foot radius of the subject site, and all other interested parties, 15 calendar days prior to the date of all meetings, including this hearing. Public notice was also posted on the subject site 15 calendar days prior to the date of all meetings, including this hearing.

No phone calls or written public correspondence were received regarding the proposed project.

FISCAL IMPACT:

The costs associated with processing the planning applications for this project are borne by the applicant and are subject to 100% cost recovery of staff time, and therefore approval of this item would have no direct fiscal impact on the City budget.

OPTIONS:

The City Council has the following options:

1. Approve the applications as presented (*staff recommendation*).
2. Approve the applications with certain modifications, changes or additional conditions of approval.
3. Continue the applications to allow the applicant to address any of the Council's comments or concerns
4. Deny the project and direct staff to return with a revised Resolutions.

RECOMMENDED ACTION:

Staff recommends that the City Council adopt Resolution Conditionally Approving the Environmental and Design Review Permit and Exception applications for the project (Attachment 1).

ATTACHMENTS:

1. Resolution Conditionally Approving the Design Review Permit and Exception applications
2. Public Hearing Notice

[May 12, 2020 Staff Report to the Planning Commission with Exhibits](#)
Project Plans: [Architectural Plan set](#) and [Grading/Drainage Plan set](#)

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AN ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED19-099) AND EXCEPTION (EX20-001) TO THE GROSS BUILDING SQUARE FOOTAGE STANDARDS FOR HILLSIDE PROPERTIES, TO ALLOW A 901 SQ. FT. ADDITION TO AN EXISTING 8,592 SQ. FT. SINGLE FAMILY RESIDENCE ON AN APPROXIMATELY 8.9-ACRE HILLSIDE-DESIGNATED PLANNED DEVELOPMENT LOT (PD1701-H) AT 1499 LUCAS VALLEY ROAD (APN: 165-010-89)

WHEREAS, on August 5, 1996, the City Council adopted Ordinance No. 1701 to reclassify the subject property from Planned Development – Hillside Overlay District (PD-H) to a revised PD (PD1701-H), adopted Resolution No. 9660 certifying a Mitigated Negative Declaration for the project and Resolution No. 9661 approving a Master Use Permit and an Environmental Design Review Permit. These approvals approved the development of a single-family residential estate proposed at 1499 Lucas Valley Road; and

WHEREAS, in 2011, the Community Development Department determined that the PD zoning (PD1701-H) for the property allows deviations to the gross building square footage limit for the single-family home and thus a PD Rezoning would not be required for new application. The adopted PD for this site (PD1701-H) states “The single-family residence shall be limited to a maximum 6,500 sq. ft. unless an Exception is granted by the City Council consistent with the Hillside Guidelines. New applications require an Environmental and Design Review Permit, including and an Exception to Hillside Standards, but a PD Rezoning would not be required for proposed additions; and

WHEREAS, on December 17, 2019, an application for an Environmental and Design Review Permit, including an Exception to the Hillside Standards (ED19-099), was filed with the Community Development Department, requesting approval for a 901 sq. ft. bathroom addition to the existing 8,592 sq. ft. residence; and

WHEREAS, on February 6, 2020, the project application was deemed complete for processing; and

WHEREAS, on March 25, 2020, a special subcommittee of the San Rafael Design Review Board (DRB), formed due to the COVID-19 pandemic, reviewed the proposed project. The DRB subcommittee unanimously recommended approval of the project design (by a vote of 2-0) as proposed; and

WHEREAS, upon review of the application, the project has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301.e.2 which exempts additions to existing structures provided the expansion will not result in an increase of more than 10,000 sq. ft. if the project is in an area where all public services and facilities are available and the area in which the project is located is not environmentally sensitive; and

WHEREAS, on May 12, 2020, the Planning Commission held a duly noticed public hearing on the project applications for Environmental and Design Review Permit (ED19-099) and Exception (EX20-001), accepting all oral and written public testimony and the written report of the Community Development Department Planning staff and closed said hearing on that date; and

WHEREAS, on May 12, 2020, the Planning Commission adopted Resolution No. 20-16 (6-0) recommending to the City Council approval of an Environmental and Design Review Permit (ED19-099) and Exception (EX20-001) for the 1499 Lucas Valley Road project; and

WHEREAS, on July 6, 2020, the City Council held a duly noticed public hearing to review the 1499 Lucas Valley Road project and considered all oral and written public testimony and the written public testimony of the Community Development Department Planning; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based, is the Community Development Department;

NOW, THEREFORE, BE IT RESOLVED, the City Council of San Rafael hereby approves the Environmental and Design Review Permit (ED19-099) and Exception (EX20-001) based on the following findings and conditions:

**Environmental and Design Review Permit (ED19-099)
Findings of Fact**

1. The application to allow an Environmental and Design Review Permit and Exception to the Hillside Overlay District's property development standards for a 901 sq. ft. addition to existing 8,592 sq. ft. (the maximum allowed 6,500 sq. ft. for an existing single-family residence) is in accord with the following General Plan Policies:
 - a. Land Use Policy **LU-10** (*Planned Development Zoning*) in that the subject property is already zoned Planned Development (PD1701-H);
 - b. Land Use Policy **LU-12** (*Building Heights*) in that the existing and proposed 16¾-ft. building height is well within the 30-ft. allowed maximum height;
 - c. Land Use Policy **LU-23** (*Land Use Map and Categories*) in that residential uses (among other uses) are allowed uses under the Hillside Residential designation of the property;
 - d. Community Design Policy **CD-15** (*Participation in Project Review*) in that notice for the project hearings were mailed to all property owners, residents, neighborhood groups and interested parties within 300 feet of the project site;
 - e. Safety Policy **S-26** (*Fire and Police Services*) in that the existing and proposed development complies with Fire Codes;
 - f. Safety Policy **S-31** (*New Development in Fire Hazard Areas*) in that the proposed additions would be required to comply with the applicable standards for fire protection.

2. The proposed project meets the objectives of San Rafael Municipal Code Title 14 (the Zoning Ordinance), and the purposes of Chapter 14.12 *Hillside Development Overlay District* and Chapter 14.25 *Design Review* thereof, given that the project has been reviewed by the Design Review Board special COVID-19 subcommittee and Planning Commission for compliance with the Hillside Property Development Standards and design criteria in Chapter 14.25 to ensure that the design is compatible with the neighborhood and hillside design criteria, as required by the General Plan. The proposed 901 sq. ft. addition to the maximum allowed 6,500 sq. ft. single-family residence is not consistent with the gross building square footage limitation of the Hillside Property Development Standards, however in accordance with the PD Zoning, a deviation to the gross square footage limit is allowed subject to the review and approval of an Exception by the City Council. The application includes a request for an Exception and findings to approve the Exception are provided below. The project is consistent with the remaining PD standards regarding setbacks (front 100 ft., sides 20 ft., rear 25 ft.),

20% lot coverage (5.38% proposed), 34.4% natural state (84.8% proposed) and maximum building height 30 ft. (16 ¾ ft. proposed).

3. The project design is consistent with applicable site, architecture and landscaping design criteria and guidelines for the district in which the site is located given that the proposed addition complies with Planned Development District (PD1701-H) requirements and has been reviewed by the special COVID-19 subcommittee of the City's Design Review Board and recommended for approval. Separate findings have been made below to grant Exception to the single-family residence size. The project is consistent with the remaining PD standards regarding setbacks (front 100 ft., sides 20 ft., rear 25 ft.), 20% lot coverage (5.38% proposed), 34.4% natural state (84.8% proposed) and maximum building height 30 ft. (16¾ ft. proposed).
4. The project design is not detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity, given that the project has been reviewed by the appropriate agencies. The approval of the requested Environmental and Design Review Permit will not in any way increase visibility of the house and consists of addition directly around the existing home and would not increase mass or bulk and has minimal visibility from off site vantage points and surrounding properties.

**Exception (E20-001)
Findings of Fact**

1. Approval of the requested exception to the property development standards of SRMC Chapter 14.12 has been recommended by a special COVID-19 subcommittee of the Design Review Board, and the Planning Commission, and the applicant has demonstrated that alternative design concepts carry out the objectives of that chapter and are consistent with the general plan based on the following criteria:
 - a. The project design is in keeping with the surrounding development because the adjoining properties are large undeveloped open space or sparsely developed agricultural properties. The proposed additions would not have any visual impacts on the adjoining properties, would not be visible from any public right of way and would result only in minimal addition to the footprint of the existing development. The project would minimally change the currently existing natural state of 84.8% compared with the required natural state of 34.4% due to the property being an 8.9-acre single family residential estate; and
 - b. The proposed exterior color and materials are not visible from any public right of way due to the proposed additions being very well screened by existing vegetation and located in an area that is a great distance from the public streets. The project does not require removal of any other existing native trees. The project's design meets the stated objectives of the Hillside Guidelines to preserve the inherent characteristics of the hillside site, displays sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintains a strong relationship to the natural setting by minimizing grading and retaining existing on-site trees. The project's design minimizes grading, retains a majority of the project site in its natural state, minimizes visual impacts, protects significant trees and natural resources, and the DRB has recommended that the project is a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to, nearby structures.

**Environmental and Design Review Permit (ED19-099)
Conditions of Approval**

General and ongoing

Community Development Department, Planning Division

1. The building techniques, materials, elevations and appearance of the project, as presented for approval on plans prepared by *Yochum Architects*, dated *Received 3/9/2020*, shall be the same as required for the issuance of a building permit. Minor modifications or revisions to the project shall be subject to review and approval of the Planning Division. Modifications deemed not minor by the Community Development Director shall require review and approval by the original decision-making body.
2. This Environmental and Design Review Permit (ED19-099) shall be valid for a period of **two (2) years** from the date of final approval, **or July 6, 2022**, and shall become null and void if a building permit is not issued or a time extension is not applied for prior to the expiration date
3. Contractor Contact Information Posting: Prior to the issuance of building permits, the project site shall be posted with the name and contact number of the lead contractor in a location visible from the public street.
4. Construction Hours: Construction hours shall be limited to 7 a.m. to 5 p.m., Monday through Friday and Saturday from 9:00 a.m. to 5:00 p.m. Construction shall not be permitted on Sundays or City-observed holidays. Construction activities shall include delivery of materials, arrival of construction workers, start up of construction equipment engines, playing of radios and other noises caused by equipment and/or construction workers arriving at or on the site.
5. On-Site Lighting: On-site lighting shall be shielded away from adjacent properties and directed on site. The design and type of lighting fixtures and lighting intensity of any proposed exterior lighting for the project shall be reviewed and approved by the Community Development Director prior to installation of the lighting for compliance with all applicable Conditions of Approval, ordinances, laws and regulations. Lighting fixtures shall be of a decorative design to be compatible with the residential development and shall incorporate energy saving features.
6. Archeological Features: In the event that archaeological features, such as concentrations of artifacts or culturally modified soil deposits including trash pits older than fifty years of age, are discovered at any time during grading, scraping, or excavation within the property, all work shall be halted in the vicinity of the find, the Planning Division shall be notified, and a qualified archaeologist shall be contacted immediately to make an evaluation. If warranted by the concentration of artifacts or soils deposits, an archaeologist shall monitor further work in the discovery area.

If human remains are encountered during grading and construction, all work shall stop in the immediate vicinity of the discovered remains and the County Coroner and a qualified archaeologist shall be notified immediately so that an evaluation can be performed. The Coroner shall contact the Native American Heritage Commission, if the remains are deemed to be Native American and prehistoric, so the “most likely descendant” can be designated.

Prior to issuance of a Building Permit

Community Development Department, Planning Division

9. Plans submitted for a Building Permit shall include a plan sheet, which incorporates these conditions of approval.
10. All mechanical equipment (i.e., air conditioning units, meters and transformers) and appurtenances not entirely enclosed within the structure (on side of building or roof) shall be screened from public view. The method used to accomplish the screening shall be indicated on the building plans and approved by the Planning Division.

Community Development Department, Building Division

11. The design and construction of all site alterations shall comply with the 2016 California Residential Code (CRC), 2016 California Building Code (CBC), 2016 California Plumbing Code (CPC), 2016 California Electrical Code (CEC), 2016 California Mechanical Code CCMC), 2016 California Fire Code (CFC), 2016 California Energy Code, 2016 California Green Building Standards Code and City of San Rafael Ordinances and Amendments.
12. A building permit is required for the proposed work. Applications shall be accompanied by four (4) complete sets of construction drawings to include:
 - a. Architectural plans
 - b. Structural plans
 - c. Electrical plans
 - d. Plumbing plans
 - e. Mechanical plans
 - f. Site/civil plans (clearly identifying grade plane and height of the building)
 - g. Structural Calculations
 - h. Truss Calculations
 - i. Soils reports
 - j. Green Building documentation
 - k. Title-24 energy documentation
13. School fees will be required for the project. Calculations are done by the San Rafael City Schools, and those fees are paid directly to them prior to issuance of the building permit.

Fire Department

14. The design and construction of all site alterations shall comply with the 2019 California Fire Code, current NFPA Standards, and all applicable City of San Rafael Ordinances and Amendments.
15. If the project remodel and addition exceeds 50% of the existing square footage of the residence, it will be defined as a "substantial remodel" as defined in SRMC Chapter 4.08.120 Section 202. Therefore, fire sprinklers may be required throughout the building. Determination for fire sprinklers will be conducted during the Building Permit review, so indicate which room are to be altered, and/or added, this will include areas within the home where sheet rock is removed to access for electrical or structural changes. A Separate deferred application by a fire protection engineer or C-16 contractor would be required. Refer to our web site for the definition of a substantial remodel.
16. If a fire sprinkler system is required, deferred Submittals for the following fire protection systems shall be submitted to the Fire Prevention Bureau for approval and permitting prior to installation of the systems:
 - a. Fire Sprinkler plans (Deferred Submittal to the Fire Prevention Bureau)

17. A Knox key switch is required for driveway or access road automatic gates.
<https://www.knoxbox.com/gate-keys-and-padlocks/>

Public Works Department

18. A grading permit shall be required from the Department of Public Works, located at 111 Morphew St.
19. An encroachment permit is required for any work within the City's public Right-of-Way, from the Department of Public Works located at 111 Morphew St. More information and a copy of the application is available at: <https://www.cityofsanrafael.org/grading-permits/>
20. A construction vehicle impact fee shall be required at the time of building permit issuance; which is calculated at 1% of the valuation, with the first \$10,000 of valuation exempt.

Marin Municipal Water District

21. The proposed 901-square-foot bathroom and closet addition will not impair the District's ability to continue service to the property. However, our records indicate that although water service is provided to the property it is outside of the District's current boundaries. The property owner shall take the appropriate steps with the Marin Local Agency Formation Commission to complete annexation into the Marin Municipal Water District.
22. Compliance with all indoor and outdoor requirements of District Code Title 13 -Water Conservation is a condition of water service. Indoor plumbing fixtures must meet specific efficiency requirements.
23. Should backflow protection be required, said protection shall be installed as a condition of water service. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at 415-945-1558.

Las Gallinas Valley Sanitary District

24. The proposed project is within the Sphere of Influence and District facilities boundary.
25. The proposed project has received an allocation of sewer capacity; however, the proposed building alteration/addition needs District staff review for possible additional load on sewer system. Please download the application form at:
http://www.lgvsd.org/docs/application_allocation.pdf
26. The proposed project must make satisfactory arrangements with this District for the construction of any off-site or on-site sewers which may be required.
27. If sewer lateral work is included in this project, please submit utility plan showing location of backwater prevention devices, sanitary sewer, cleanouts, manholes, and other relevant sanitary sewer details or information that may be applicable. Sewer design must comply with LGVSD standard specifications.
28. Complete and submit Application for Allocation of Capacity to LGVSD along with application fee of \$250. Application is available at <http://www.lgvsd.org/wp-content/uploads/APPL-ALLOCATION-fillable.pdf>.
29. Provide a plumbing fixture unit (PFU) table for the project showing both existing and proposed plumbing fixture unit counts per current edition of the California Plumbing Code. The table will be used for determination of the connection fee. Applicant may use the Plumbing Fixture

Count Worksheet available at <http://www.lgvsd.org/wp-content/uploads/PFU-Worksheet-R1.pdf>. PFU count shall be subjected to field verification before and after construction. The connection fee may be adjusted for actual number of additional plumbing fixture units.

30. Note: Applicant is required to obtain a sewer permit from LGVSD for any sewer lateral and/or main work. The permit application is available at <http://www.lgvsd.org/wp-content/uploads/NEW-LATERAL-PERMIT-FORM-2018-updatedFillable.pdf>. Submit the permit application to the District office and call 24 hours in advance of backfill for lateral inspections.
31. Based on District Ordinance adopted on June 20, 2019 preliminary cost estimates are:
 - a. For new buildings, structures, and developments:
 - i. \$6,224 per Equivalent Sewer Unit
 - ii. Actual fees may be adjusted according to specific conditions outlined in the Ordinance.
 - b. For existing buildings, structures, and developments:
 - i. \$311 per Plumbing Fixture Unit (PFU)
 - ii. Credit may be given to existing plumbing fixtures.
 - c. Applicant shall reimburse the District for all plan review, field verification before and after construction, and inspection fees accrued associated with this project. The estimate cost is \$7,500. Actual fees may be adjusted according to project specific conditions.
 - d. For more information about District Ordinance and permitting process, please visit <http://www.lgvsd.org/>.
 - e. District Standard Details/Specifications are available upon request.
 - f. Applicant shall submit plans electronically to LGVSD for review.

Prior to Occupancy

Community Development Department, Planning Division

32. Prior to occupancy, the applicants shall contact the Community Development Department, Planning Division, to request a final inspection. This inspection shall require a minimum of 48-hour advance notice.
33. All exterior lighting shall be shielded down. Following the issuance of a certificate of occupancy, all exterior lighting shall be subject to a 30-day lighting level review by the Police Department and Planning Division to ensure compatibility with the surrounding area.

Exception (EX20-001) Conditions of Approval

General and ongoing

Community Development Department, Planning Division

1. The building techniques, materials, elevations and appearance of the project, as presented for approval on plans prepared by *Yochum Architects*, dated *Received 3/9/2020*, shall be the same as required for the issuance of a building permit. Minor modifications or revisions to the project shall be subject to review and approval of the Planning Division. Modifications deemed not minor by the Community Development Director shall require review and approval by the original decision-making body.

7. This Exception (EX20-001) shall be valid for a period of **two (2) years** from the date of final approval, **or July 6, 2022**, and shall become null and void if a building permit is not issued or a time extension is not applied for prior to the expiration date

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 the City of San Rafael, held on Monday, the 6th of July 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

BY: _____
LINDSAY LARA, City Clerk



NOTICE OF ONLINE PUBLIC HEARING – CITY COUNCIL

You are invited to view and participate online the City Council hearing on the following proposed project:

PROJECT: 1499 Lucas Valley Rd. – Request for an Environmental and Design Review Permit to allow the construction of a new 901 square foot bathroom/closet addition to an existing 6,500 sq. ft single-family residence on an 8.9-acre site; APN: 165-010-89; Planned Development – Hillside Overlay (PD 1701-H) District; Mike and Sharon Stone, owners; Maureen Jochum of Jochum Architects, applicant; File No.: ED19-099.

State law (California Environmental Quality Act) requires that this project be reviewed to determine if a study of potential environmental effects is required. It has been determined that this project will not have a significant effect on the environment and no environmental review will be completed. This project qualifies for a Categorical Exemption from the provisions of the California Environmental Quality Act Guidelines under 14 CRR Section 15301 [Class 1(e), Existing Development].

MEETING DATE/TIME/LOCATION: Monday, July 6, 2020, 7:00 p.m. COVID-19 ADVISORY NOTICE: Consistent with Executive Orders No.-25-20 and No. N-29-20 from the Executive Department of the State of California and the Marin County March 16, 2020 Shelter in Place Order, the San Rafael City Council hearing of July 6, 2020 WILL NOT be physically open to the public and the meeting will be streamed live to YouTube at www.youtube.com/cityofsanrafael. Instructions on how to participate online, will be available on the YouTube channel. You will also be able to comment through a conference call during the meeting (number will be provided on agenda)

FOR MORE INFORMATION: Contact **Sean Kennings**, Senior Planner at **(415) 533-2111** or sean@lakassociates.com. City offices are currently closed to public walk-in during the Shelter in Place order, but you may contact the planner for more information. You may also view the staff report after 5:00 p.m. on the Friday before the meeting at <http://www.cityofsanrafael.org/meetings>.

WHAT WILL HAPPEN: You may comment on the project on line or via conference call. The City Council will consider all public testimony and decide whether to approve the project.

IF YOU WANT TO COMMENT: You may send a letter to Lindsay Lara, City Clerk, City of San Rafael, 1400 5th Ave, San Rafael, CA 94901 or via email Lindsay.Lara@cityofsanrafael.org. You may also comment online during the meeting using a chat feature on YouTube or through a conference call (number will be provided on agenda).

At the above time and place, all written correspondence received will be noted and all interested parties will be heard. If you challenge in court the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered at, or prior to, the above referenced public hearing (Government Code Section 65009 (b) (2)).

Judicial review of an administrative decision of the City Council must be filed with the Court not later than the 90th day following the date of the Council's decision. (Code of Civil Procedure Section 1094.6)



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Paul A. Jensen

Prepared by: Paul A. Jensen
Community Development Director
Barry Miller, Consulting Project Mgr.

City Manager Approval: _____

[Signature]

TOPIC: GENERAL PLAN 2040 TRANSPORTATION STANDARDS

SUBJECT: RECOMMENDED STANDARDS FOR VEHICLE MILES TRAVELED (VMT) AND TRANSPORTATION LEVEL OF SERVICE (LOS) FOR GENERAL PLAN 2040

RECOMMENDATION:

1. Accept proposed VMT screening criteria and thresholds for General Plan 2040 and future CEQA determinations, as required by SB 743.
2. Accept proposed approach to retaining LOS in General Plan 2040 and subsequent planning and development review procedures.

BACKGROUND:

Staff is nearing completion of General Plan 2040, the Downtown Precise Plan, and the associated Environmental Impact Report (EIR) covering both documents. General Plan 2040 introduces new standards for measuring transportation impacts in EIRs, as required by the California Environmental Quality Act (CEQA). The City Council discussed this issue at its [June 3, 2019](#) and [December 2, 2019](#) meetings and provided preliminary guidance to staff at each meeting. Staff has worked in collaboration with Fehr and Peers (the General Plan transportation consultant) to draft standards and policy language that reflects State law, greenhouse gas reduction goals, analysis of future transportation conditions, and input from the General Plan 2040 Steering Committee and several community groups.

Context

Like many local municipalities in California, San Rafael has used “Level of Service” (LOS) to monitor traffic impacts for the past 35 years. LOS applies a letter grade (from “A” to “F”) to define the acceptable level of delay at intersections or along road segments during the peak hours. When an intersection or road segment falls below the standard, physical improvements such as turning lanes or signal adjustments may be programmed to restore traffic conditions. LOS standards for intersections and road segments are included in General Plan 2020 (adopted in 2004) and have been used in the environmental review of proposed development projects since the 1980s. Furthermore, LOS has been the method of analysis prescribed by CEQA until changes were made at the state level in 2013.

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

In 2013, the Governor signed SB 743, which mandates major changes in how transportation impacts are analyzed under CEQA. SB 743 requires a shift in traffic analysis methodology from LOS and local street operations to “vehicle miles traveled” (VMT). The intent is to analyze and reduce the amount of driving and the length of vehicle trips associated with new development. With the use of VMT, the longer the vehicle travel from origin to destination, the greater the impact. The intent of SB 743 is to reduce the vehicle-related greenhouse gas emissions increases that contribute to global climate change. Increasing roadway capacity to accommodate more cars (the outcome of purely relying on LOS in transportation network design and management) conflicts with the goal of reducing greenhouse gas emissions.

Although SB 743 was signed in 2013, updates to CEQA Guidelines related to analyzing transportation impacts pursuant to SB 743 were finalized on December 28, 2018. The updated Guidelines require that the new CEQA provisions shall apply statewide beginning on July 1, 2020. Effective that date, all transportation impact analysis for CEQA related to land use plans and projects must rely on VMT. The new requirements do not preclude cities and counties from continuing to use LOS for planning and development review purposes.

Attachment 1 to this staff report explains the key differences between LOS and VMT.

Prior Council Discussions

The City Council initially considered SB 743 and its relationship to General Plan 2040 at its June 3, 2019 meeting. At that time, staff provided an [informational report](#) on Traffic Methodologies for General Plan 2040. The report identified current traffic methodologies, indicated the choices that needed to be made in establishing VMT thresholds and identified four options for LOS. These options ranged from eliminating LOS entirely to maintaining the “status quo” (but eliminating the link to CEQA/ environmental review). Two intermediate options included shifting to a “delay index” (assessing LOS by area or segment rather than by individual intersection), and monitoring trip generation within traffic zones.

On December 2, 2019, the Council continued its discussion of proposed VMT standards and the future use of LOS in General Plan 2040. The [staff report](#) for that item addressed five major policy issues:

- (1) **Screening Criteria.** These are the criteria used to determine when a project is expected to have a less-than-significant impact (and thus would not require a detailed study).
- (2) **Significance Thresholds.** For projects that are not screened and required a detailed VMT assessment, these are the numeric thresholds used to determine the potential for a “significant” impact on VMT under CEQA.
- (3) **Mitigation.** This includes the mitigation measures that would be required for projects that have potentially significant impacts on VMT. Typical measures include requirements for on-site multi-modal improvements, bicycle facilities, pedestrian facilities, transit facilities, carpool and vanpool programs, transit subsidies, and other “transportation demand management” (TDM) measures.
- (4) **Level of Service (LOS).** This covers the future of LOS standards, since these standards may no longer be used for CEQA.
- (5) **Fees.** Traffic mitigation fees are currently collected based on the number of trips a new project is expected generate. This will continue to be the case in the future.

At the December 2, 2019 City Council meeting, the Council heard testimony and received written correspondence from Responsible Growth in Marin (RGM) and other concerned residents on these policy issues. RGM expressed concerns about the proposed screening criteria (including the number of exemptions) and the significance thresholds (use of a locally derived threshold vs a regional threshold). RGM also strongly recommended that the Council continue to use LOS as a method to assess local roadway network conditions as part of the review of proposed development projects.

Following testimony and discussion, Council directed staff to “[retain LOS as a planning tool](#)” in General Plan 2040. The parameters for how this would be incorporated in the General Plan were left open. Staff indicated its intent to return the Council in Spring 2020 with a follow-up proposal, incorporating Council feedback and reflecting the findings of traffic modeling for General Plan 2040.

Subsequent Activities

The General Plan Steering Committee considered draft transportation (Mobility Element) policies at its meeting on January 8, 2020. While there was general agreement with the proposed approach to VMT, there were differences of opinion regarding the continued use of LOS.

Traffic modeling for General Plan 2040 took place during March and April 2020 using the new Transportation Authority of Marin Demand Model (TAMDM). In May 2020, Fehr and Peers provided model output data for 2040, including estimated VMT with and without the General Plan Update. The model output data also included projected arterial volumes for 2040, including estimates of LOS for 2040 with and without the General Plan Update. The data provided the foundation for a refined set of VMT significance thresholds, which were presented in a memorandum from Fehr and Peers. The recommendations of the memorandum are summarized in this staff report. The memorandum itself is included as Attachment 2 to this report.

Staff has had recent communication with Responsible Growth in Marin (RGM) to address the issues raised in their December and January memos. Several members of RGM provided correspondence to the General Plan Steering Committee shortly before their meeting on June 10, 2020 expressing continued concern about the approach to Level of Service. Staff has subsequently re-drafted 2040 Mobility Element Policy M-2.5 to respond to the issues that were raised (see Attachment 3 to this report).

Staff also met with RGM on June 23, 2020 (via Zoom) to review the VMT recommendations and revised LOS policy. With respect to VMT, RGM’s primary concerns were: (a) the methodology and modeling techniques used to estimate VMT; (b) the screening criteria (the number of projects that would be “screened out” of analysis requirements); (c) the thresholds for determining when a project has a significant impact. With respect to LOS, RGM’s primary concerns were: (a) allowances for LOS “E” and “F” at particular intersections and road segments; (b) consistency between General Plan 2040 model outcomes and recent EIR traffic analyses for North San Rafael; and (c) the City Council criteria for granting an exception for projects exceeding the adopted LOS standard.

An initial list of questions was provided by RGM at the meeting. A second set of much more detailed and technical questions was provided the following day. The consolidated list of questions, along with staff’s responses, has been included as Attachment 4 to this report. Staff has also placed a list of Frequently Asked Questions on the General Plan website, drawing on FAQs made available by the State Office of Planning and Research. Staff has also made further revisions to Policy M-2.5 to incorporate some of the issues raised by RGM.

ANALYSIS

The following section provides: (1) a summary of recommendations for VMT; and (2) a proposed approach to retaining LOS.

1. Recommendations for Vehicle Miles Traveled (VMT)

A. Proposed Screening Criteria

The first step in evaluating a proposed project’s impact on VMT is to determine if it qualifies as a “low VMT generator” and can be screened out of further analysis requirements. This screening step is similar to the process currently used by staff to determine if an LOS assessment is required for a project.

Low VMT generators are typically projects that are consistent with the General Plan, located in areas with low VMT generation rates, and have characteristics conducive to travel by transit, walking or bicycling. An example would be an affordable housing development near the SMART station in Downtown San Rafael. Such projects are presumed to have a less than significant VMT impact. A qualitative discussion would be provided to justify this conclusion, and no VMT-related CEQA mitigations would be required.

Table 1 below presents the recommended screening criteria. For each project type, the table indicates the criteria suggested by the State Office of Planning and Research (OPR), followed by a recommendation from Fehr and Peers for San Rafael based on existing and projected conditions, and best practices. A “check” indicates that the State criteria would be used. Staff is considering the addition of several project types to Table 1, including single family housing and light industrial uses. The numeric criteria for such uses (e.g., the number of housing units or the square footage of non-residential space) would be established based on OPR guidance that projects may be screened out if they generate fewer than 110 trips per day.

Table 1: Recommended VMT Screening Criteria

Project or Area Type	OPR Suggested Criteria	Recommended Criteria
Small developments	Projects that generate fewer than 110 trips per day. This may equate to non-residential projects of 10,000 sq. ft., or less and multi-family residential projects of 20 units or less.	√
Residential and office projects in low-VMT areas ¹	Map-Based Screening of Residential and office projects that are located in low-VMT areas that have similar features (i.e., density, mix of uses, transit accessibility) with nearby uses.	√
Projects in Proximity to Major Transit Stops ²	Projects that are located within ½ mile walking distance of a high-quality transit corridor or major transit stop. ² Additional criteria include high density (minimum floor area ratio of 0.75), reduced parking supply, consistency with <i>Plan Bay Area 2040</i> (http://2040.planbayarea.org/), and no effect on existing affordable housing.	√
Affordable housing	Projects containing a high percentage of affordable housing or the addition of affordable housing to infill locations.	100% affordable housing
Local-serving retail	Local-serving retail projects of 50,000 sq. ft. or less.	√
Transportation projects	Transit, bicycle, pedestrian, and roadway operational or maintenance (i.e., street improvements that do not increase vehicle capacity) projects that do not lead to a measurable and substantial increase in vehicle travel.	√
Downtown San Rafael	N/A	All residential and local-serving retail (less than 50,000 sf) projects.

Local-serving retail projects that are larger than 50,000 square feet, and all region-serving retail projects, would not meet the screening criteria and would be subject to a VMT analysis requirement. The screening of smaller local retail projects presumes that these uses improve retail destination proximity and shorten

¹ A low VMT area is one in which VMT is 15% or greater below the regional average (for residential and office uses)
² Pub. Resources Code, § 21064.3 (“Major transit stop” means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.”). Pub. Resources Code, § 21155 (“For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.”).

trip lengths, as they reduce the need to drive to other communities for these services. The determination of whether a project is “local” or “regional” would be based on market studies, economic impact analyses, local zoning definitions, and other data sources on consumer travel behavior and market share.

Projects that do not meet the screening criteria would be required to provide a quantitative VMT analysis. The purpose of the analysis is to determine if the project exceeds a defined threshold and could result in a significant VMT impact. If a potential significant impact is identified, mitigation measures would need to be identified.

B. Proposed Numeric VMT Thresholds

Thresholds are used to determine whether a project has a potentially significant impact. The following excerpt from the California Office of Planning and Research (OPR) *Technical Advisory on Evaluating Transportation Impacts (2018)* provides the overarching recommendation for significance thresholds:

*“Based on OPR’s extensive review of the applicable research, and in light of an assessment by the California Air Resources Board quantifying the need for VMT reduction in order to meet the State’s long-term climate goals, **OPR recommends that a per capita or per employee VMT that is fifteen percent below that of existing development may be a reasonable threshold.**”³*

Table 2 shows how this overarching goal would be applied to different land uses and project types. Fehr and Peers is recommending using the OPR standard in most cases, with modifications to reflect 2020 conditions and the 2040 General Plan VMT forecasts.

Table 2: Recommended VMT Thresholds of Significance

Project Type	Recommended VMT Threshold of Significance
Residential Project	A proposed project exceeding 15% below existing regional average VMT rate (per resident) would indicate a significant transportation impact.
Office Project	A proposed project exceeding a 15% below existing regional average VMT rate (per employee) would indicate a significant transportation impact.
Retail Project	A proposed project exceeding a 15% below existing Total VMT rate (per employee) would indicate a significant transportation impact.
Mixed Use Project	A proposed project exceeding 15% below existing regional average VMT rate (per service population) would indicate a significant transportation impact. Alternatively, each land use type in a proposed mixed-use project can be evaluated independently against the residential, office, and retail thresholds above. The analysis of each use should take credit for internal trip capture.
Other Project Types	The City will either develop an ad hoc (i.e., project-specific) VMT threshold for a unique land use type or apply the most applicable of the above thresholds depending on project characteristics. In general, a proposed project exceeding 15% below existing regional average VMT for similar land uses would indicate a significant transportation impact.
Redevelopment Project	Where a proposed redevelopment project replaces an existing VMT-generating land uses, if the redevelopment project leads to a net overall decrease in VMT, the project would cause a less than significant transportation impact. If the redevelopment project leads to a net overall increase in VMT, it may cause a significant transportation impact if proposed new residential, office or retail land uses would individually exceed their respective thresholds. If a mixed-used project, the analysis of each use will take credit for internal trip capture.
Transportation Project	A proposed project that results in a net increase in total VMT would indicate a significant transportation impact (e.g., street widening for new travel lanes that would increase road capacity).
Area Land Use Plan	A general plan, area plan, or community plan may have a significant impact on transportation if proposed new residential, office, or retail land uses would individually exceed their respective thresholds or cause an aggregate metric (e.g., Total Project-Generated VMT per service population) to exceed 15 percent below the plan area baseline.

For a residential project, the threshold is 15% below the regional average of VMT per resident. For an office project, the threshold is 15% below the regional average of VMT per employee. Thresholds

³ Page 10, *Technical Advisory on Evaluating Transportation Impacts in CEQA*, December 2018

based on a per capita rate are considered to be based on “partial” VMT because they only consider VMT for passenger cars and light-duty trucks. By contrast, the 15% reduction for retail use is based on a “total” VMT rate, which includes all trips associated with the use, including visitor trips, employee trips, truck deliveries, and bus trips as well as auto trips.

C. Relationship of Proposed Thresholds to Model Forecasts

The proposed thresholds have been established in part based on Year 2040 forecasts using the new Transportation Authority of Marin Demand Model (TAMDM). The Model predicts the VMT that would be generated in San Rafael by the Year 2040 based on the land uses projected in the General Plan and other factors such as regional growth and travel patterns. Overall, the General Plan land use growth is projected to have a positive impact on VMT per capita because of its emphasis on balancing job growth and housing growth and directing growth to areas where travel by transit, bicycle, and walking is more feasible.

The Model showed the following outcomes for San Rafael:

Residential (home-based VMT per resident):

- The current (2020) residential home-based citywide average is 12.2 VMT per resident. This is about 10 percent (10%) lower than the 2020 regional average for VMT per resident.
- By 2040, with the proposed General Plan land uses in combination with regional land use and network changes, the residential citywide VMT average rate would further decline by about 7 percent and be about 16 percent (16%) lower than the current regional VMT average rate.
- By 2040, with the proposed General Plan land uses in combination with regional land use and network changes, the average Residential Home-Based VMT rate for **Downtown** San Rafael would be about 28 percent (28%) lower than the current regional VMT average rate

Office (home-based work trips per employee) VMT ⁴

- The current (2020) office home-based work citywide average is 18.1 VMT per employee. This is about 7 percent (7%) higher than the regional average for VMT for employee
- By 2040, with the proposed General Plan land uses in combination with regional land use and network changes, the office citywide VMT average rate would decline by 7 percent (7%) and be similar to the current regional VMT average rate
- By 2040, with the proposed General Plan land uses in combination with regional land use and network changes, the average Office Home-Based Work VMT rate for **Downtown** San Rafael would be about 4 percent (4%) lower than the current regional VMT average rate

Table 3 indicates total VMT in the baseline year (2020) and projected VMT per service population for the General Plan horizon year of 2040. The figures shown here are for the entire San Rafael Planning Area, which includes the City and the unincorporated sphere of influence. The “service area population” is the sum of all persons living and working in this area (in other words, it includes all persons living in San Rafael, plus all persons working in San Rafael even if they live in another city). While “Total VMT” will increase slightly as the City adds population and jobs, VMT per service population will decrease slightly. Moreover, adoption of General Plan 2040 would decrease total VMT relative to the “no project” alternative due to its focus on growth in the Downtown area, where transit is more readily available and more trips can be made on foot.

⁴ Trips by persons working in San Rafael.

Table 3: Total VMT (City of San Rafael Planning Area, including sphere of influence)

Scenario	Total VMT	Service Area Population* (Population plus Employment)	VMT/ Service Population
Baseline (2019)	3,614,326	119,951	30.1
2040 No Project (TAM)	3,812,138	129,111	29.5
2040 GP Preferred Alt	3,737,890	132,976	28.1

() Service Area Population is the sum of all persons living in San Rafael plus all persons working in San Rafael. It is a common metric used in VMT forecasts.*

D. Mitigation for Significant VMT Impacts

As noted earlier in this report, mitigation for VMT impacts is achieved in part through transportation demand management (TDM) programs that reduce or shorten vehicle trips. These measures include:

- amenities that reduce vehicle trips (e.g., onsite or local childcare, fitness center, bike racks, etc.)
- parking lots that do not obstruct pedestrian access
- sidewalks and pathways to facilitate pedestrian and bicycle travel
- easy access to buses and transit facilities
- changes to the development program (e.g., adding housing into a proposed office project, to create opportunities for workers to live and work in the same place)
- spreading or shifting peak-hour trips to off-peak hours
- shifting trips to transit, walking, cycling, and other modes (transit passes, etc.)
- carpools and vanpools
- applying technology (such as electric charging stations) to reduce the environmental impacts of vehicle traffic.

TDM measures can be quantified so that a particular menu or combination of measures can be prescribed to reduce the projected VMT for a new project by a specific increment. Where implementation of these measures does not reduce VMT below the threshold, the CEQA document would determine the VMT impact to be significant and unavoidable and the Council would need to adopt an overriding consideration finding before approving the project.

There are challenges associated with TDM programs that will need to be addressed as this is implemented. Monitoring and reporting would likely require additional City staff and represents an expense for employers. The City already has a Trip Reduction Ordinance (Sec 5.81 of the Municipal Code) that requires a trip reduction program for all employers with over 100 employees at an individual work site. Such programs were common in the 1980s and 90s but proved to be expensive to coordinate and administer. The December 2019 staff report raised the possibility of TDM coordination at the regional or County (TAM) level as a potential solution.

2. Revised Level of Service (LOS) Policy

Staff has developed a revised LOS policy for Council consideration. Policy M-2.5 is included as Attachment 3 to this report and would appear under Goal M-2 in the Draft Mobility Element of General Plan 2040. The policy carries forward and updates existing Policy C-5 from General Plan 2020, which established LOS standards for intersections and arterial segments. An “exceptions” policy is also carried over. As required by SB 743, the revised policy is now detached from the CEQA process.

Draft Policy M-2.5 retains LOS “D” as the City standard, with the following exemptions:

- Intersections and arterials in the Downtown Precise Plan boundary are subject to a separate process, described in the Draft policy (and summarized below).

- On and off-ramps to the 101 and 580 freeways are exempt
- LOS “E” is deemed acceptable for specific intersections and segments listed in the policy
- LOS “F” is deemed acceptable for specific intersections and segments listed in the policy⁵

These exemptions are discussed below:

A. Downtown Precise Plan Area.

At the outset of the General Plan process, staff proposed that Downtown be exempt from LOS standards. The express purpose of LOS is to reduce vehicle delays and provide a tool for increasing roadway capacity as development takes place. This potentially conflicts with previously established goals for Downtown, including encouraging travel by other modes (biking, walking, transit), improving bicycle and pedestrian safety, reducing greenhouse gas emissions, preserving historic resources, and creating vibrant retail streets. Downtown also represents some of the City’s best opportunities for higher-density housing and office development, and for low-VMT projects, given the proximity to transit and the mixed-use environment.

Additionally, Downtown streets are heavily encumbered by regional congestion, particularly along Irwin, Hetherton, 2nd and 3rd Streets. All of these streets are currently operating at LOS “F.” Several other Downtown streets are also operating at LOS “F” during peak hours.

Staff’s recommended approach has evolved in response to feedback from prior City Council meetings and on-going community concerns expressed about Downtown congestion. Simply eliminating LOS without a suitable alternative to manage congestion is not an acceptable solution. Residents and businesses seek a commitment to monitor Downtown traffic, study and disclose the potential impacts of new development on the network, and identify operational and physical improvements to address those impacts. Given that the current operating conditions on many Downtown streets is already LOS “F”, Staff does not believe that a traditional LOS letter grade is the best tool to achieve these objectives.

The proposed Policy would require Local Traffic Assessments (LTAs) for future Downtown development. Each LTA would address impacts of a proposed project on surrounding road segments and nearby intersections and recommend improvements to offset impacts. The changes could include site plan and project design modifications, operational and signal changes, and where feasible, changes to the network itself (turn lanes, etc.). Metrics such as travel delay will continue to be used to manage and monitor roadway performance.

This approach would only be applied Downtown. The traditional “status quo” approach to LOS would continue to be applied elsewhere.

B. US 101 and I-580 Ramp Exemptions

The exemption for US 101 and I-580 ramps is carried forward from General Plan 2020. The rationale is that the City cannot control freeway traffic and that much of the traffic using the on and off ramps is regional in nature. The City will continue to work with Caltrans to improve the performance of these intersections, as it does today.

C. LOS “E” and “F” Provisions for Specific Road Segments and Intersections

The exemption for specific roads operating at LOS “E” and “F” corresponds to locations where traffic modeling indicates LOS “E” or “F” will occur in 2040 and where options to expand capacity are infeasible or would conflict with other city goals. Adoption of lower LOS standards for specific intersections or segments does not mean that nearby development proposals will be “relieved” of their

⁵ The City has received data on existing (2020) and projected (2040) LOS for *arterial segments* from Fehr and Peers. Data on existing and projected LOS for *intersections* is in progress. The list of intersections where LOS “E” and “F” are acceptable has yet to be finalized.

responsibility to make improvements. Rather, it acknowledges physical or operational constraints that make LOS “D” unrealistic. Future development proposals would still be subject to traffic studies and measures to mitigate their impacts on these segments. Some of these proposals would also be required to prepare VMT analyses and implement transportation demand management (TDM) programs.

Draft Policy M-2.5 includes a number of implementation programs. Program M-2.5A carries forward the requirement to do traffic impact studies for projects with the potential to increase congestion, create safety hazards or otherwise impact traffic conditions. Program M-2.5B carries forward an exception process for projects that would exceed the adopted LOS standards. The exception process requires approval by the City Council and a finding that the specific economic, social, technological, and other benefits of the project to the community would substantially outweigh the project’s impacts on circulation. The exception also would need to be consistent with the Guiding Principles of the General Plan 2040.

Conclusions

Staff is requesting that the Council accept the proposed VMT screening criteria and thresholds. Pursuant to the SB 743 deadline of July 1, 2020, these will go into effect immediately and become the City’s thresholds for identifying a significant VMT impact under CEQA. Staff will prepare a follow-up memorandum that sets forth the screening criteria and thresholds and includes a flow chart outlining the process. General Plan 2040 will also include a policy establishing VMT reduction targets consistent with this staff report.

Draft General Plan 2040 includes a program to revisit VMT screening criteria and thresholds at least once every four years, and to adjust metrics to reflect changing conditions. Given that these are new standards, it is important to build in this periodic review and update.

Staff is further recommending that the Council accept, in concept, proposed Policy M-2.5 on levels of service. Staff anticipates returning to the City Council in the near future with further information on planned transportation improvements and an update of the traffic mitigation fee, both of which will be adopted concurrently with General Plan 2040. An update on VMT and LOS may be provided at that time.

COMMUNITY OUTREACH:

A public notice of this meeting was mailed to stakeholders, agencies and special interest groups 15 days prior to this meeting (Attachment 2). Those noticed included, among others, all neighborhood associations in the city, the San Rafael Chamber of Commerce, and members of the General Plan 2040 Steering Committee. Notice of this report was also provided on the General Plan 2040 [meetings and events webpage](#).

On June 23, 2020, City staff met with Responsible Growth in Marin (RGM) to discuss the proposed approach to VMT and LOS. As previously noted, RGM provided staff with a list of questions which are included as Attachment 4 to this report, along with Staff’s responses. Staff has also prepared a list of Frequently Asked Questions (FAQ) on LOS and VMT which is available at [this link](#).

FISCAL IMPACT:

The VMT screening criteria and thresholds, and the LOS policy, would not have a direct fiscal impact on the City budget. The proposed approach continues the City’s practice of collecting traffic mitigation fees based on the number of trips a project would generate. As part of General Plan 2040, the City is developing an updated transportation project list that will provide the basis for an updated fee. Changes to the fee will be addressed at a future Council meeting.

RECOMMENDED ACTION:

1. Accept the proposed screening criteria for determining which future projects will be subject to an analysis of their impacts on VMT, and the proposed thresholds for finding that a project will have a significant impact on VMT under CEQA.
2. Accept the proposed Policy M-2.5 on Level of Service, including programs requiring future traffic studies and a process for exceptions.

ATTACHMENTS:

1. Comparison of LOS and VMT
2. Memorandum from Fehr and Peers on Transportation Metrics (June 16, 2020)
3. Proposed General Plan 2040 Policy M-2.5 on Levels of Service (June 30, 2020)
4. Questions from Responsible Growth in Marin, and Staff Responses
5. Post-Card Notice of Meeting

ATTACHMENT 1

Level of Service (LOS) vs Vehicle Miles Traveled (VMT): A Comparison

	LOS	VMT
Definition	A way of measuring transportation performance that focuses on delay and congestion on the roadway network (intersections and road segments)	A way to measure the distance (number of miles) that vehicles travel across the entire regional transportation system in a day
Measurement	Expressed using a letter scale from A to F	Usually expressed with a per capita number
Scale	Focuses on local roadway network conditions	Focuses on regional conditions and distance of travel from origin to destination
Time Unit	AM or PM Peak Hour	Daily
Intent	Intended to reduce travel delay for motor vehicles along a roadway network	Intended to reduce greenhouse gas emissions by reducing driving and trip lengths
History	Has been in use in San Rafael since 1980s	Has been used for greenhouse gas analysis as part of EIRs for the last decade
CEQA/ Environmental Review	Until July 1, 2020, was commonly used in CEQA to determine if a project had a potential significant impact on the environment. Now expressly prohibited for CEQA.	As of July 1, 2020, required for CEQA
Use in Development Review	City can require a traffic study to determine LOS impacts of a project and require improvements to maintain LOS as a condition of approval.	City can require a VMT analysis for projects that are not “screened out” (e.g., projects that are “high VMT generators” or projects that require rezoning or a General Plan Amendment)
Thresholds	Usually a single threshold (LOS “D”) with exceptions provided where a lower threshold is needed.	Varies by different land uses and development types
Determination of a significant impact	Projects exceeding the delay threshold (LOS “D”) are determined to have a potential significant impact and must mitigate. The significance of the impact can no longer be tied or linked to CEQA/environmental review	Projects that are “high VMT generators” perform an analysis. If they will impede the city from reaching certain VMT reduction targets, they have a potential significant impact and must mitigate their impacts.
Typical Mitigation Measures	Increase road or intersection capacity, add or extend travel and/or turning lanes, add or modify traffic signal, change signal timing, add signage, make operational improvements, etc.	Reduce number and length of vehicle trips through “transportation demand management” (TDM) measures such as telecommuting, transit improvements, transit passes, bike and pedestrian improvements, combining housing and employment, incorporating day care facilities, etc.
Exceptions	City Council may approve project even if LOS will not meet standard, provided certain findings are met (regarding project benefits).	City Council may approve project even if VMT will exceed thresholds, provided certain findings are met (regarding project benefits)
Benefits	Easy to understand and locally focused. May result in tangible measures to reduce delay.	Streamlines desirable infill projects deemed to be “low VMT generators” (housing near transit, affordable housing, transit projects, active transportation projects, local-serving retail), thereby making it easier to build in places where per capita GHG emissions will be lower.
Liabilities	Induces demand—increases traffic capacity and supports additional driving. Also, may push development to the edges of a city or region, where more capacity is available.	Difficult to understand; benefits are not immediately apparent; can increase vehicle congestion and delay.

Memorandum

Date: June 16, 2020
To: City of San Rafael General Plan Team
From: Bob Grandy, Fehr & Peers
Subject: **Recommendations for SB743 Thresholds for San Rafael**

SF19-1020

This memorandum describes recommendations for initial VMT significance thresholds to be applied by the City of San Rafael as of July 1, 2020, as required for implementation of Senate Bill (SB) 743. These recommendations are informed by input provided at City Council study sessions in 2019 on June 3 and December 2 and are generally consistent with State guidance.

SB 743 eliminates the use of automobile delay from the CEQA environmental review process and the determination of CEQA transportation impacts. The new metric required by the CEQA Guidelines is vehicle-miles traveled (VMT). The shift from automobile delay to VMT changes the focus of transportation impact analysis in CEQA from measuring impacts to drivers, to measuring the impact of driving. CEQA transportation studies should continue to evaluate the effects of a project on safety as well as the facilities and services related to transit, pedestrians, scooters, and bicycles.

SB 743 takes full effect on July 1, 2020; after that time, all transportation impact analysis for CEQA related to land use plans and land use projects must rely on VMT. CEQA Statute Section 21099(b)(2) states that upon certification of the 2018 CEQA Guidelines, Level of Service (LOS) shall not be considered a significant impact on the environment.

The following section provides a summary of recommendations for VMT significance thresholds. It is followed by a section that provides additional background on those VMT significance thresholds as well as a draft summary of how LOS may continue to be used during entitlement review by the City of San Rafael after July 1, 2020.



Summary of VMT Significance Threshold Recommendations

California law¹ states that the criteria for determining the significance of transportation impacts must promote: (1) reduction of greenhouse gas emissions; (2) development of multimodal transportation networks; and (3) a diversity of land uses.

As described above, the following recommendations for initial VMT significance thresholds to be applied by the City of San Rafael as of July 1, 2020 are based on input provided at two City Council study sessions and guidance provided by the Governor's Office of Planning and Research (OPR). The following excerpt from the OPR *Technical Advisory* provides the overarching recommendation for VMT significance thresholds (Quote from page 10 of the *Technical Advisory on Evaluating Transportation Impacts in CEQA*, December 2018).

*Based on OPR's extensive review of the applicable research, and in light of an assessment by the California Air Resources Board quantifying the need for VMT reduction in order to meet the State's long-term climate goals, **OPR recommends that a per capita or per employee VMT that is fifteen percent below that of existing development may be a reasonable threshold.***

The first step in applying the new VMT process will be to determine if a project meets one of several screening criteria. The purpose of the screening process is to quickly assess projects to support the presumption that they would either reduce VMT or would generate VMT below the city's threshold, which would qualify the project as a low VMT generator. This type of screening is most appropriate for projects that are consistent with the General Plan, are located in areas with existing low VMT generation rates, and have characteristics conducive to travel by transit, walking, or bicycling. For these projects, a project would be presumed to have a less than significant VMT impact. A qualitative discussion would be provided to justify this conclusion, and no mitigations would be required. Projects that are high VMT generators are not eligible for screening. The VMT screening process is similar to the process currently applied by San Rafael staff to determine whether a LOS assessment is required for a project. The current LOS screening process is based on a peak hour vehicle trip criterion.

¹ Section 21099 of California Public Resources Code codifies the required changes to the guidelines implementing CEQA as mandated in Senate Bill 743. Section 21099 includes a requirement that the criteria for determining the significance of transportation impacts must "promote the reduction of greenhouse emissions, the development of multimodal transportation networks, and a diversity of land uses".



For projects that do not meet one of the screening criteria, a quantitative VMT analysis would be required to assess whether the project exceeds a defined VMT threshold and thus would result in a significant VMT impact. If a significant VMT impact is identified based on that analysis, mitigation measures would be identified. VMT thresholds are needed for land use projects and land use plans while the city has discretion whether to use VMT (and therefore set thresholds) for transportation projects that require a CEQA analysis. **Tables 1 and 2** below present recommended screening criteria and VMT thresholds.

Table 1: Recommended Screening Criteria

Project or Area Type	OPR's Suggested Criteria	Recommended Criteria
Small Developments	Projects that generate fewer than 110 trips per day. This may equate to non-residential projects of 10,000 sq. ft., or less and multi-family residential projects of 20 units or less.	√
Residential and Office Projects in Low-VMT Areas	Map-Based Screening of Residential and office projects that are located in low-VMT areas ² that have similar features (i.e., density, mix of uses, transit accessibility) with nearby uses.	√
Projects in Proximity to Major Transit Stops	Projects that are located within ½ mile walking distance of a high-quality transit corridor or major transit stop ³ . Additional criteria include high density (minimum floor area ratio of 0.75), reduced parking supply, consistency with <i>Plan Bay Area 2040</i> (http://2040.planbayarea.org/), and no effect on existing affordable residential housing.	√
Affordable Housing	Projects containing a high percentage of affordable housing or the addition of affordable housing to infill locations.	100 percent affordable housing projects
Local-Serving Retail	Local-serving retail projects of 50,000 sq. ft. or less.	√
Transportation Projects	Transit, bicycle, pedestrian, and roadway operational or maintenance (i.e., street improvements that do not increase vehicle capacity) projects that do not lead to a measurable and substantial increase in vehicle travel.	√
Downtown San Rafael	N/A	All residential and local-serving retail (less than 50,000 sf) projects.

² Residential projects that locate in areas 15% below existing regional average, and office projects that locate in areas 15% below regional average could presume to be low-VMT areas.

³ Pub. Resources Code, § 21064.3 (“‘Major transit stop’ means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.”). Pub. Resources Code, § 21155 (“For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.”).



The local-serving retail screening would apply only to stores of 50,000 square feet or less. Local-serving retail are uses that, when added into a community, improve retail destination proximity and thus shorten trips and reduce VMT. Regional-serving retail are uses that result in longer vehicle trip lengths. In making a determination as to whether a project is local-serving, the City of San Rafael will refer to local zoning definitions as well as any available market studies or economic impact analyses that provide data on consumer travel behavior.

Table 2: Recommended VMT Thresholds of Significance

Project Type	Recommended VMT Threshold of Significance
Residential Projects	<ul style="list-style-type: none"> A proposed project exceeding 15% below existing regional average VMT rate (per resident) would indicate a significant transportation impact.
Office Projects	<ul style="list-style-type: none"> A proposed project exceeding a 15% below existing regional average VMT rate (per employee) would indicate a significant transportation impact.
Retail Projects	<ul style="list-style-type: none"> A proposed project exceeding a 15% below existing Total VMT rate (per employee) would indicate a significant transportation impact.
Mixed-Use Projects	<ul style="list-style-type: none"> A proposed project exceeding 15% below existing regional average VMT rate (per service population) would indicate a significant transportation impact. Alternatively, each land use type in a proposed mixed-use project can be evaluated independently against the residential, office, and retail thresholds above. The analysis of each use should take credit for internal trip capture.
Other Project Types	<ul style="list-style-type: none"> The City will either develop an ad hoc (i.e., project-specific) VMT threshold for a unique land use type or apply the most applicable of the above thresholds depending on project characteristics. In general, a proposed project exceeding 15% below existing regional average VMT for similar land uses would indicate a significant transportation impact.
Redevelopment Project	<ul style="list-style-type: none"> Where a proposed redevelopment project replaces an existing VMT-generating land uses, if the redevelopment project leads to a net overall decrease in VMT, the project would cause a less than significant transportation impact. If the redevelopment project leads to a net overall increase in VMT, it may cause a significant transportation impact if proposed new residential, office or retail land uses would individually exceed their respective thresholds. If a mixed-used project, the analysis of each use will take credit for internal trip capture.
Transportation Projects	<ul style="list-style-type: none"> A proposed project that results in a net increase in total VMT would indicate a significant transportation impact.
Area Land Use Plans	<ul style="list-style-type: none"> A general plan, area plan, or community plan may have a significant impact on transportation if proposed new residential, office, or retail land uses would individually exceed their respective thresholds or cause an aggregate metric (e.g., Total Project-Generated VMT per service population) to exceed 15 percent below the plan area baseline.



Background on VMT Significance Thresholds

When applying the above VMT thresholds that involve using a VMT rate, a project's VMT rate is compared to a baseline VMT rate that is the regional average. The baseline VMT rate represents existing conditions and changes over time. The 15 percent reductions for residential or office uses are based on partial VMT measured as a light-duty vehicle (i.e., passenger cars and light-duty trucks) project generated VMT rate. The 15 percent reduction for retail use is based on a Total VMT rate.

Forecasts developed using the new Marin County Travel Model recently developed by the Transportation Authority of Marin (TAM) yield the following VMT data for residential and office uses in San Rafael.

Residential VMT (Home-based VMT per resident)

- Current (2020) Residential Home-Based Citywide Average: 12.2 VMT per resident
- The 2020 residential citywide VMT average rate is about 10 percent lower than the regional VMT average rate
- By 2040, with the proposed General Plan land uses in combination with regional land use and network changes, the residential citywide VMT average rate would decline by about 7 percent from today's citywide VMT average rate and be about 16 percent lower than the current regional VMT average rate
- By 2040, with the proposed General Plan land uses in combination with regional land use and network changes, the average Residential Home-Based VMT rate for Downtown San Rafael would be about 28 percent lower than the current regional VMT average rate

Office VMT (Home-based Work VMT per employee)

- Current (2020) Office Home-Based Work Citywide Average: 18.1 VMT per employee
- The 2020 office citywide VMT average rate is about 7 percent higher than the regional VMT average rate
- By 2040, with the proposed General Plan land uses in combination with regional land use and network changes, the office citywide VMT average rate



would decline by 7 percent from today's citywide VMT average rate and be similar to the current regional VMT average rate

- By 2040, with the proposed General Plan land uses in combination with regional land use and network changes, the average Office Home-Based Work VMT rate for Downtown San Rafael would be about 4 percent lower than the current regional VMT average rate

The above VMT forecasts, that show the average Residential Home-Based VMT rate for Downtown San Rafael would be about 28 percent lower than the current regional VMT average rate with the proposed General Plan uses by 2040, is the basis for the screening recommendation that residential uses in the downtown area could be presumed to have a less than significant VMT impact and be screened from performing a quantitative VMT impact analysis.

Future LOS Applications

Based on input provided at City Council study sessions in 2019 on June 3 and December 2, the City of San Rafael will conduct a LOS analysis for future projects located outside Downtown San Rafael if triggered by the current LOS screening criteria. The LOS assessment will be based on the General Plan threshold that is applicable at the time the analysis is conducted. The LOS assessment will include an evaluation of intersections based on the project trip generation and distribution characteristics. In general, intersections will be evaluated where 50 or more peak hour trips are added by a proposed project.

Future Transportation Analysis

Under the updated CEQA Guidelines, CEQA transportation analyses will focus on VMT, multi-modal access, transit, bicycle and pedestrian, and safety concerns rather than vehicular delay.

LOS analysis would not be included in the transportation analysis for CEQA but would be performed as part of entitlement review for projects located outside Downtown San Rafael that trigger the current LOS screening criteria. The results of the LOS assessment would inform the entitlement process and related conditions of approval.

Smaller projects that do not trigger an LOS assessment may be required to prepare a focused Local Transportation Assessment (LTA) that addresses the effect of the project on intersections and active transportation facilities immediately adjacent to the project as well as the proposed project access points and any proposed changes to parking or curb use.

ATTACHMENT 3: Draft Level of Service (LOS) Policy

Policy M-2.5: Traffic Level of Service

Maintain traffic Level of Service (LOS) standards that ensure an efficient roadway network and provide a consistent basis for evaluating the transportation effects of proposed development projects on local roadways. These standards shall generally be based on the performance of signalized intersections during the AM and PM peak hours. Arterial LOS standards may be used in lieu of (or in addition to) intersection LOS standards in cases where intersection spacing and road design characteristics make arterial LOS a more reliable and effective tool for predicting future impacts.

- a) Intersection Standards. LOS “D” shall be the citywide standard for intersections, except as noted below:
 - 1) Intersections within the Downtown Precise Plan boundary are subject to the provisions of Section (c) below.
 - 2) Signalized intersections at Highway 101 and I-580 on-ramps and off-ramps are exempt because these locations are affected by regional traffic and are not significantly impacted by local measures.
 - 3) LOS “E” shall be acceptable at the following intersections:
 - Andersen and West Francisco
 - Andersen and Bellam
 - Freitas at Civic Center/ Redwood Highway (unsignalized)
 - Merrydale at Civic Center Drive
 - Merrydale at Las Gallinas Avenue
 - TBD¹
 - 4) LOS “F” shall be acceptable at the following intersections:
 - TBD¹
- b) Arterial Standards. LOS “D” shall be the citywide standard for arterials, except as noted below:
 - 1) Arterials within the Downtown Precise Plan boundary are subject to the provisions of Section (c) below.
 - 2) LOS “E” shall be acceptable on the following arterial segments:
 - Freitas Parkway from Las Gallinas to Del Presidio
 - Lucas Valley from Las Gallinas to 101 S/B ramps
 - Los Ranchitos from North San Pedro to Lincoln
 - Francisco Blvd East from Bellam to Main (Richmond Bridge)
 - 3) LOS “F” shall be acceptable on the following segments:
 - Francisco Blvd East from Grand Avenue to Bellam
 - Lincoln from 101 SB/ Hammondale to Mission
 - Del Presidio from Las Gallinas to Freitas
 - Bellam Blvd from I-580 to Francisco Blvd East²
- c) Downtown Standards. Intersections and arterials within the boundaries of the Downtown San Rafael Precise Plan are not subject to LOS standards, recognizing their unique context, operation, and physical constraints, as well as their multi-modal character. Proactive measures shall be taken to address and manage Downtown congestion, evaluate and reduce the impacts of new development on the transportation network, and ensure the long-term functionality of streets and intersections. Traffic shall be monitored and evaluated to identify the need for improvements to ensure that Downtown streets adequately serve both local and regional traffic.

¹ Additional intersections may be added to this list pending completion of 2040 intersection analysis.

² Additional segments of Bellam may be added to the exceptions.

- d) Additional Provisions for Roads Operating at LOS “E” or “F.” Where the adopted standard is LOS “E” or “F,” measures should be taken to avoid further degradation of traffic conditions. Projects impacting roads operating at LOS “F” may still be subject to requirements to offset those impacts as a condition of approval.

Program M-2.5A: Traffic Circulation Studies. *Traffic impact studies will be required for projects with the potential to increase congestion, create safety issues, or otherwise impact local circulation conditions. Unless covered by the exemptions in Policy M-2.5, such studies should include projections of future LOS, an assessment of the contribution of the proposed project to increases in congestion, an assessment of projected increases in congestion on greenhouse gas emissions, and an assessment of traffic impact fees related to the project. Measures to maintain adopted service levels may be required as a condition of approval.*

Projects that are exempt from LOS and/or VMT standards may still be required to perform traffic and circulation studies to evaluate impacts on traffic conditions or traffic control devices in the immediate area of the proposed project. For projects in Downtown San Rafael, local traffic assessments (LTAs) should evaluate the potential for additional delay or safety hazards at nearby intersections. LTAs should identify necessary road or operational improvements, ingress and egress requirements, and potential site plan changes that reduce delays, conflicts between travel modes, and potential safety hazards.

Guidelines for traffic impact studies and Local Traffic Assessments should be developed within one year after General Plan adoption. The guidelines should include metrics for evaluating impacts to the road network where LOS does not apply or where the acceptable LOS is below the “D” standard.

Program M-2.5B: Level of Service (LOS) Exceptions

Exceptions to LOS planning thresholds may be granted where both of the following circumstances apply:

- a) *The improvements necessary to attain the standards would conflict with other land use, environmental, community character, emission reduction, safety, housing, or economic development priorities.*
- b) *Based on substantial evidence, the City Council finds that:*
 - (i) *The specific economic, social, technological, and/or other benefits of the project to the community, substantially outweigh the project’s impacts on circulation;*
 - (ii) *All feasible mitigation measures have been required of the project including measures to reduce vehicle delay and measures to reduce Vehicle Miles Traveled (VMT); and*
 - (iii) *The project is consistent with and advances the Guiding Principles of General Plan 2040, including foundational principles such as maintaining great neighborhoods and a sense of community, and aspirational principles such as improving housing affordability, preparing for climate change, and sustaining a healthy tax base.*

Program M-2.5C: Traffic Monitoring. *Monitor and evaluate traffic conditions throughout San Rafael on an ongoing basis. Based on such evaluations, the City Traffic Engineer may develop recommendations to improve operations, address safety concerns, or modify thresholds. New traffic monitoring technology should be implemented as it becomes available.*

ATTACHMENT 4:

Questions and Answers Regarding Transportation Methodologies

The questions shown here were submitted by Responsible Growth in Marin (RGM) on June 23 and June 24. Staff has merged both sets of questions by topic and prepared responses below. Staff responses are in red italics font.

- 1) General question on the VMT and LOS process: how can the public access and verify TAM model (for VMT) and Synchro program (used by City for LOS)?

For General Plan 2040, San Rafael used the recently updated travel model developed by the Transportation Authority of Marin (TAM) for both the LOS and VMT analysis. The TAM model pivots off the regional MTC model and estimates both vehicle trip generation and trip length. The model base year for the updated TAM model was validated to existing conditions and presented to the TAM Board for review and approval. Synchro was not used for General Plan 2040 LOS analysis.

For future VMT analysis in CEQA documents, City Staff will require that a detailed discussion of model assumptions and model outputs is provided with the VMT determination. Interested third parties may request backup information on the model network and land use inputs, and any other changes to the model, to independently review and verify. This would be similar to the current procedure for trip generation and distribution calculations in traffic studies.

- 2) Clarity on VMT process:

- a) When will the Draft Transportation Guidelines (Methodology for VMT) be available for review?

Supplemental Question from RGM:

Will the City develop a handbook describing the methodology for integrating the VMT screening criteria and VMT thresholds? We recommend preparation of at least a flow chart, but preferably a handbook, that can be made available on the City's website. For example, the City of Elk Grove and City of San Jose have developed handbooks for transportation analysis guidelines. The City of San Jose also provides a VMT evaluation tool on its website accompanied by a user guide as well as a feedback form; these were prepared by Fehr & Peers. Will similar tools and a website be prepared for the City of San Rafael?

The City will finalize the screening criteria and thresholds following its meeting with the City Council on July 6. We do not anticipate preparing a formal set of guidelines or handbook for VMT at this time. This could be considered this in the future depending on need. The two examples cited (Elk Grove and San Jose) are much larger cities than San Rafael (populations 174,000 and 1.03 million) and are experiencing much more rapid and diverse growth than San Rafael. We would anticipate preparing something much

simpler, such as a memorandum or outline documenting the criteria, thresholds, and process.

The City prepared a general flow chart outlining the process as part of the [December 2, 2019 Staff report](#) to the City Council (see Attachment 2, page 16, of the PDF file). We will update the flow chart once the criteria have been set. Generally, there four steps involved: (1) Is the project required to do a VMT analysis (e.g., does it meet the screening criteria?); (2) Does the project have a potentially significant impact? (e.g., does the VMT analysis indicate it will exceed the thresholds?) ; (3) If yes, what are the requirements for mitigation (Transportation Demand Management measures); (4) Does it still exceed the thresholds after mitigation measures are applied? (e.g., is the impact significant and unavoidable after TDM and other mitigation measures are factored in).

The City may add to the screening criteria over time as projects are proposed, referencing accepted standards as appropriate. We do not anticipate a list of screening categories as detailed as San Jose’s (our study volume is much lower), although we could develop an outline explaining how criteria may be added or determined for project types that don’t appear on the initial list. The key metric for screening land uses that are not explicitly referenced is the 110 daily trips—uses that exceed that number based on ITE trip generation rates and that are not covered by other screening categories would be subject to the requirement to do a VMT analysis.

3) Screening criteria for VMT:

a) How will cumulative effects of projects screened out be accounted for?

Supplemental Question from RGM

A1) Cumulative impacts: How will the cumulative impacts for all the projects screened out of the requirement for a VMT analysis be accounted for? (Multiples of approved trips under the 110-trip per day limit will accumulate over time and lead to traffic congestion and substantial increases in VMT unless public transit is considerably improved.) We understand from the June 23rd meeting that the cumulative impacts of projects screened out will be accounted for in the General Plan 2040 EIR. How will the City keep track of the cumulative impacts and what will happen if the cumulative impacts exceed the cumulative amounts projected in the General Plan 2040 EIR?

The intent of the General Plan EIR is to evaluate the cumulative effects of all projects, including those that are screened out as well as those that will require VMT analysis. The EIR is based on projected 2040 conditions, which include the addition of roughly 4,400 residential units (half of which are Downtown) and 4,100 jobs between 2020 and 2040. The traffic modeling for General Plan 2040 Plan included assumptions about where these residential units and jobs would be located. In effect, this creates a VMT “bank” in each part of the City that corresponds to the large and small projects that will add these new homes and jobs. Future projects will be reviewed to determine if they are

consistent with the General Plan based on land use, type, size, and location. If a project is deemed consistent with the General Plan, it is “built in” to the 2040 forecasts and have been accounted for, enabling the General Plan analysis to serve as the cumulative scenario.

This is the same approach that is taken now with LOS. When General Plan 2020 was adopted (2004), it included an analysis of expected conditions in the horizon year (2020) based on assumptions about where jobs and homes would be added. This growth was forecast to occur through large projects and incremental small projects, which collectively form a cumulative scenario. Growth is tracked after the General Plan is adopted and is annotated in an annual report on the Plan.

- b) How did the city determine that 20 dwelling units generate 110 trips/day?

Supplemental Question from RGM

Review of the ITE Manual (10th edition), shows that there are three ITE categories for multi-family residential units: low-rise (1-2 floors, ITE 220), mid-rise (3-10 floors, ITE 221), and high-rise (>10 floors, ITE 222). As buildings get taller, the number of trips per unit get smaller. 110 trips/day are generated by only 15 low-rise multi-family units (trip generation rate 7.32 trips/dwelling unit/day). We suggest that the City conservatively use a screening criterion of 15 dwelling units (as proposed in the 12/2/2019 Staff Report for the City Council, p. 7), instead of 20 dwelling units, which generate 146 trips/day.

As noted in the response above, the screening threshold identified by OPR for “small projects” is 110 trips per day—the question is which project types would generate an equivalent number of trips. The General Plan forecasts indicate that 80% of the units developed between 2020 and 2040 will be multi-family. Based on the supplemental questions above, these units would generally be in the low end of the “mid-rise” range and generate approximately 6 trips per day. We will consider specifying a separate standard for single family units and modifying the multi-family threshold.

Supplemental Question from RGM

Establishing a lower screening criterion is also important in the age of ever-increasing online shopping, which generates additional delivery trips in residential areas that are not accounted for.

ITE rates are updated regularly to account for changing conditions and trends. As they are true tested samples, this trend will be tested by ITE in time. It would be premature for the City to speculate on how this impact may be quantified, and potentially challengeable to do this now. We will monitor ITE rates over time and adjust the screening criteria accordingly.

- c) How can the screening criteria designate that the Civic Center SMART station is not a “major transit stop” until it has adequate service frequency and connectivity (15 minute headways during peak hours and more bus stops)?

Supplemental Question from RGM

Projects in Proximity to Major Transit Stops: We understand that the legal definition of “major transit stop” for purposes of CEQA review identifies “rail transit stations” as one of the categories. However, as discussed during the June 23, 2020 Zoom meeting, in reality, the Civic Center Station is not a “major transit stop” because of infrequent rail service and lack of connectivity to other public transportation (only two bus lines, Marin Transit 39 and 45). As a result, North San Rafael/Terra Linda is car-dependent. For example, the realtor site Redfin identifies the Civic Center Station as “car-dependent” with “some transit” with a Walk Score of only 42 out of 100 and a Transit Score of only 45 out of 100. Therefore, despite having a rail station, adding intense development to North San Rafael will increase rather than decrease vehicle trips and VMT because of the lack of frequency of bus and train stops to make public transit a viable option. We ask the City to explore if it has the flexibility to circumvent the one-size-fits-all CEQA mandate by addressing this issue with additional approval conditions elsewhere.

We appreciate and understand this concern and will continue to explore our options; however, this standard is established by State law. Section 15064.3(b)(1) of the California Code of Regulations states “Generally, projects within ½ mile of an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact.”. Moreover, Public Resources Code 21064.3 defines a “major transit stop” as a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service of 15 minutes or less during the morning and afternoon peak commute periods.”

Unlike bus corridors, which have a service frequency requirement defined by the State, rail transit stations do not. In fact, the transit screening provision is the only VMT screening measure that was actually written into the 2018 revisions to the CEQA Guidelines to comply with SB 743. The other screening measures are in the OPR Technical Advisory, not in the CEQA Guidelines. Additionally, the SMART stations are expressly recognized by MTC and Marin Transit, while GGBH&TD defines the Civic Center Station as a major transfer point.

Supplemental Questions from RGM on Screening Criteria

- d) Small Developments: During the Zoom meeting on June 23, 2020, Bob Grandy of Fehr & Peers explained that trip generation rates from the ITE Manual are the basis for equating multi-family residential projects of 20 dwelling units or less to generating 110 trips per day or fewer. We have several concerns:
 - i.) The ITE Manual trip generation rates rely on a limited number of data collected nationwide and typically show a wide range within each ITE category; the average trip generation rate for each ITE category is derived from a fitted curve and often has a high standard deviation and low confidence (R² below 0.7). Can

the City identify trip generation rates specific to San Rafael or for areas comparable to San Rafael for multi-family residential trip generation instead of the ITE trip generation rates?

See earlier response to question 3(b). The ITE rates are tested, sampled, and proven to be reliable and suitable for their intended purpose, which in this case is to determine when a VMT analysis is required. Many other California cities are in the same situation and are starting with a “basic” approach that can be adapted and tailored as it is put into practice. We would revisit the criteria in the future to determine if adjustments are needed.

- ii.) Please add screening criteria for single-family residential developments, warehouses, light industrial, and office. These are not covered by the other screening criteria. (See 12/2/2019 Staff Report for the City Council, p. 7.)

We concur with this recommendation and will look at adding categories for several additional uses (light industrial, single family, public facilities, etc.). If a use is not explicitly listed in Table 1, the ITE rates would be used to determine the equivalent number of square feet, units, etc. that would generate 110 trips per day.

- e) Residential and Office Projects in Low-VMT Areas: this bullet references map-based screening. Is the City in the process of preparing maps indicating low-VMT areas? For example, the City of San Jose provides maps for low VMT per capita screening and low-VMT per job screening, as well as several other maps such as VMT per capita, VMT per jobs, affordable housing screening criteria

We agree with this suggestion. TAM has prepared a map with comparable information, and it generally corresponds to the ½ mile radius around the SMART stations. Bus corridors in San Rafael (outside the station area radius) do not currently qualify as low VMT areas.

- f) Transportation Projects: What does “measurable and substantial increase in vehicle traffic” mean, *i.e.*, what are the “measurable parameters” and what is the threshold for “substantial increase?” Please define.

This would include any road improvement project that increases the number of vehicle travel lanes, adds turning lanes, or provides signalization in a manner that increases the capacity of the road network.

- g) All Project Types: Please consider replacing the non-committal phrases “may have a significant impact on transportation” or “would indicate a significant impact on transportation” with “indicates a significant impact on transportation.”

It would be presumptive to imply a determination of a significant impact when the intent is only to determine if a VMT assessment is required. The term “may” is broader, since we would not yet know if the impact is significant.

- h) On Page 4 of the Fehr and Peers memo, Footnote 3: The text of Public Resource Code § 21064.3 has been updated in January 2020.

Noted

4) Threshold criteria for VMT

- a) What “regional average” is being used: Marin County or Bay Area?

References to the regional average are to the nine-county Bay Area.

- b) Why are the VMT data in the forecast in Fehr & Peers 6/16/2020 memo, pp. 5-6, so different from:

- i) the VMT data in Fehr & Peers’ 12/11/2019 memo (which were based on the MTC model and

The VMT data in the Fehr & Peers’ 12/11/2019 memo was data extracted from an older version of the MTC travel model (Travel Model 1) that has since been substantially updated. The older MTC model data was the best available data at the time (December 2019), as the TAM model was still under development and updates to the regional model were not yet completed and ready for application.

The new TAM model pivots off the regional MTC model, an activity-based model with a network encompassing the nine-county Bay Area. The new travel model includes significant network and land use refinement in Marin County as well as modifications to improve performance based on analysis of existing travel patterns and trip lengths using new Big Data. The new TAM model has a 2015 base year and a 2040 horizon year. Note that the prior TAM model does not include the SMART rail line, which opened in 2017.

The data in the Fehr & Peers’ 6/16/2020 memo was extracted from a modified version of the new TAM travel model. For the General Plan analysis, Fehr & Peers created a 2019 base year, which is updated from the TAM 2015 base year, and a 2040 horizon year that is based on the planned General Plan 2040 land use growth. The forecasts are roughly equal to the prior forecasts for employment, but slightly higher for housing. The General Plan 2019 base year was validated to Spring 2019 count data and includes the SMART rail line without the Larkspur Extension that opened later in 2019.

- ii) the VMT numbers obtained when using the online TAM demand model?¹

¹ Available at: <https://www.arcgis.com/home/search.html?q=tamdm#content>.

The purpose of the online TAM demand model is to provide data that can be used for screening of “Residential and Office Projects in Low-VMT Areas”. This is a map-based screening of residential and office projects that are located in low-VMT areas² with similar features (i.e., density, mix of uses, transit accessibility). The VMT data provided in the link is provided at the Traffic Analysis Zone (TAZ) scale based on data from the older TAM model and a 2015 base year.

By contrast, the VMT data in the Fehr & Peers’ 6/6/2020 memo is provided at the Citywide level and Downtown scale, each of which is an aggregation of TAZs, for both 2019 and 2040 conditions. As noted above, for the General Plan analysis, Fehr & Peers created a 2019 base year, which is updated from the TAM 2015 base year, and a 2040 horizon year that is based on the planned General Plan 2040 land use growth.

As a result, the model outputs for the General Plan 2019 base year and 2040 horizon years are slightly different than the TAM 2015 base year and 2040 horizon year. The newer outputs are based on a different mix of land uses and include the SMART rail line. The VMT results are relatively close, though. For example, the TAM web site references a Total Auto VMT Per Service Population value of 27.1 for the Bay Area for 2015, whereas the General Plan 2019 base year model generates a VMT per Service Population value of 27.2 for the Bay Area. For residential VMT, the TAM web site references an Auto VMT Per Resident for Home-Based Trips value of 13.3 for the Bay Area and the General Plan 2019 base year model generates an Auto VMT Per Resident for Home-Based Trips value of 13.3 for the Bay Area.

Supplemental Question from RGM

What is the distinction between regional average and total VMT used in different sections of the memo? Please provide definitions and consider harmonizing the language. For example, Redevelopment Project references “net overall increase in VMT” and Transportation Projects references “net increase in total VMT.” Are these two measures the same? If the answer is “yes,” please use one or the other; if the answer is “no,” please provide a definition for both and rationale for why they are applied to each category.

The two measures in the example above are not the same. We will look at the language used to ensure that the distinctions between them are clear and internally consistent.

² Residential and office projects that are located in areas with VMT that is 15% below existing regional average.

- c) What are the assumptions underlying the percentages projected for future VMT reductions? Where do these percentages come from?

The VMT values in the Fehr & Peers' 6/16/2020 memo are based on VMT aggregated at a Citywide scale and a Downtown scale for the 2019 base year and 2040 horizon year. For 2040, the model includes planned 2040 General Plan land use growth. The VMT data is normalized by dividing it by the service population (i.e., population plus employment), allowing for a comparison to regional VMT per service population rates.

Supplemental Question from RGM on Thresholds

Other Project Types: Instead of developing *ad hoc* thresholds for projects that are not otherwise defined (or apply the most applicable threshold for other projects), why not instead require preparation of a VMT analysis as default?

This comment is on the thresholds rather than the screening criteria, so the requirement to prepare a VMT analysis would have already been made. The threshold to determine if there is a significant VMT impact is will be determined on a case by case basis.

5) Supplemental Questions from RGM on VMT:

- a) Intro, p. 5: Please replace “new Marin County Travel Model” with “TAM Demand Model (TAMDM)”.

Noted

- b) The TAM Demand Model is available online at <https://www.arcgis.com/home/search.html?q=tamdm#content>. Is this the same version used by Fehr & Peers for determining city-wide and regional VMT rates?

No. See response to Question 4(b)(i)

- c) The TAM Demand Model available online is based on 2015 data, the memorandum refers to “current (2020)” data. Is there a 2020 data set that was used to prepare the city-wide and regional VMT rates on page 5 of the memo?

Yes. Per earlier responses, the TAM model has been updated and was further validated for San Rafael by Fehr and Peers with 2019 traffic counts.

- d) The online version of TAMDM does not allow for downloading results of a query (rather one has to painstakingly copy the data). How can this model be used by a member of the public to verify projections of city-wide or regional VMT?

The data for a particular project may be requested in the same way that data can be requested for a local traffic analysis. The VMT analysis that would be required of an applicant would typically include sufficient information to make this determination.

e) How were the specific VMT rates derived? (12.2 city-wide home-based VMT per resident and 18.1 city-wide home-based work VMT per employee.)

i.) Please confirm that the “VMT rate” for “VMT per resident” and “VMT per employee” are “daily VMT rates” and harmonize the language accordingly.

All of the VMT forecasts that are provided are daily values for a typical weekday. VMT can briefly be described as the product of a project’s daily vehicle trip generation and the average length of those trips. For instance, if a project generates 100 daily vehicle trips, each with an average length of five miles, that project generates 500 daily VMT.

ii.) Please define “home-based VMT per resident” and “home-based work VMT per employee.”

The CEQA Guidelines state that each lead agency can identify the metrics and methods used to evaluate environmental effects, so a jurisdiction can choose from a variety of VMT metrics. CEQA practice focuses on environmental effects that occur on a typical weekday, so all references to VMT are intended to mean VMT that occurs on a typical weekday. Weekday VMT can be broken down into components related to trips for specific purposes (for example, commute trips or shopping trips). Total VMT will tend to scale with the level of activity in a location; that is, the more people who live or work in a particular zone, the higher the total VMT associated with that zone.

VMT can be expressed in a variety of forms, depending on specific objectives of the analysis. Examples of these forms include as follows:

- ***Total Project Generated VMT:*** VMT including all vehicle trips, vehicle types, and trip purposes. This can be expressed as total project generated VMT or total project generated VMT per service population (residents plus employees). This metric would be used for retail uses.
- ***Partial Home-Based VMT:*** VMT generated by light-duty vehicles for all trips that begin or end at a residential land use. This is used in describing the VMT effects of residential land uses and is often expressed as home-based VMT per resident (or per capita). This metric would be used for residential uses.
- ***Partial Home-Based Work VMT:*** VMT generated by light-duty vehicles only for commute trips (that is, trips that have one end at a workplace and one end at a residence). This is used in describing the VMT effects of workplaces and is often expressed as home-based work VMT per employee. This metric would be use for office or non-retail employment uses.

- iii.) Why the switch from the MTC travel demand model (basis of Fehr & Peers' December 2019 memo for VMT rates) to TAMDM?

The VMT rates presented to the City Council in December 2019 were derived from a version of MTC Travel Model One that was developed for the 2013 Regional Transportation Plan. As part of the early work done for TAM in conjunction with the development of TAMDM, VMT rates were extracted from this version of the model to provide member agencies with data for use in their initial SB 743 implementation efforts. This data was used in 2019 to provide an illustration of how citywide VMT rates for San Rafael compared to regional VMT rates, with the knowledge that updated information would be provided in 2020 based on applying the TAMDM with General Plan 2040 land use forecasts.

Models are regularly updated and advancements in modeling and methodology occur over time. In 2016, TAM initiated work on the development of the Transportation Authority of Marin Demand Model (TAMDM). One of the primary purposes for the updated travel demand model is to provide a tool for member agencies to evaluate VMT for CEQA purposes pursuant to Senate Bill 743 and for major planning efforts such as the San Rafael General Plan Update. The update is one of the TAM's major responsibilities as the County's Congestion Management Agency.

As noted in the response to Question 1, the updated TAMDM model includes significant network and land use refinement in Marin County as well as modifications to improve reliability. The updated model also considers the SMART rail line, and uses a 2040 horizon year (the General Plan horizon year was selected in part to be consistent with the new model).

- iv.) The models developed by MTC and TAM appear to generate substantially different VMT numbers, both on a regional and city-wide level (based on Fehr & Peers December 2019 and June 2020 memos): for San Rafael residential home-based VMT per person: **MTC Travel Model One = 16.2 VMT/day** in 2015 and **TAMDM = 12.2 VMT/day** in 2020; for San Rafael office home-based work VMT per worker: **MTC Travel Model One = 30.1 VMT/day** in 2015 and **TAMDM = 18.1 VMT/day** in 2020). What explains these differences and how have the revised VMT rates affected the development of VMT thresholds?

Staff will research the difference. As noted earlier, the rates presented in December 2019 were from a model done for the 2013 Regional Transportation Plan. The data displayed in the December memo was extracted to provide TAM member agencies with data to use in their initial SB 743 implementation efforts. While the TAM data was helpful for illustrative purposes, it is based on outdated land use data.

The revised VMT rates did not substantively affect the proposed VMT screening criteria or thresholds. For the VMT screening criteria, the only impact was to recommend that VMT screening in Downtown San Rafael apply to residential and

local-serving retail uses less than 50,000 s.f. Office uses in Downtown San Rafael would not be part of the general downtown screening, but would be screened from detailed VMT evaluation if they meet the criteria for “Projects in Proximity to Major Transit Stops” (i.e., located within ½ mile walking distance of a major transit stop or high-quality transit corridor and meet additional criteria). The VMT rates did not have an impact on the recommended numeric VMT Thresholds of Significance.

- v.) Based on VMT rates derived with the MTC Travel Model One, the Agenda Report for the 12/2/2019 City Council meeting stated that “The challenge for San Rafael is that its VMT is currently substantially above the regional average. Persons working in San Rafael commute relatively long distances by car, while many of those living in San Rafael commute to San Francisco or other regional employment centers.” *Are these statements no longer true based on the TAM Demand Model? If the answer is “yes,” please discuss the difference between these models and rate your confidence in the results.*

The quote above refers to VMT rates for office (i.e., non-retail) employment uses, which is expressed as home-based work VMT per employee. For San Rafael, the VMT rate for non-retail employment uses is higher than the regional average using both the TAMDM and MTC Travel Model One. As such, the statement remains true that office (i.e., non-retail employment) uses, that do not meet the screening criteria for “Projects in Proximity to Major Transit Stops”, would likely cause significant VMT impacts that may be challenging to mitigate to a less than significant level. Thus, the statement is still true. The TAMDM model has been validated to local conditions in San Rafael and presents current VMT conditions more accurately than the prior (2013) model.

The 2019 base year model developed for the San Rafael General Plan is the only model that has been calibrated and validated to local daily roadway volumes in San Rafael. The 2019 base year for the San Rafael General Plan was validated based on model confidence thresholds defined in the California Transportation Commission 2017 RTP guidelines.

- vi.) The citywide VMT rates provided by Fehr & Peers on p. 5 of the memo also differ from the numbers obtained when running a query on the online TAM Demand Model for San Rafael, which generates population-weighted rates of **11.5 VMT per resident/day** and **18.7 VMT per employee/day**. *What explains the difference?*

The differences may be explained by a combination of the following.

- *The online data is for the TAMDM 2015 base year and the data, whereas the 2020 Fehr & Peers memo is for a 2019 base year developed for the San Rafael General Plan. The latter includes updated land uses for 2019 and reflects the SMART rail line (which is not included in the TAMDM 2015 base year).*

- *The VMT data in the 2020 Fehr & Peers memo includes data from Traffic Analysis Zones (TAZs) located both within the City limits as well as in the City's sphere of influence (SOI).*
- *Potential differences in VMT aggregation methodology.*

Previous responses regarding the higher level of accuracy of the TAMDM model, and its calibration and validation for San Rafael, also apply in this case.

- f) On pages 5-6, for bullets 3, 4, 6, 7, and 8, please provide numeric regional VMT rates in addition to the percentage difference compared to city-wide rates for both 2020 and 2040 projections.

Staff is following up with TAM on this question.

6) Supplemental Question on VMT Mitigation for Significant Transportation Impacts

Please provide a list of feasible mitigation measures for findings of significant VMT impacts as a starting point that can be continually updated in the future. Several recommendations exist that list and quantify mitigation measures, including lists developed by CAPCOA, BAAQMD, and Fehr & Peers.

We concur with the recommendation and believe this can be treated as an implementing action once an overall approach for SB 743 implementation has been agreed to. Please note that Program M-3.3A of Draft General Plan 2040 calls for the City to develop TDM Program Guidelines, or to work in partnership with other local governments to develop Guidelines, that can be used to mitigate potential VMT increases in new development and encourage reductions in existing development. We have listed TDM measures in earlier staff reports (see bottom of page 9/ top of page 10 of the [December 2, 2019 Staff report](#)).

7) LOS discussion (clarity on LOS process and the City's intent)

We appreciate the substantive re-drafting of this Policy. We believe it overall addresses many community concerns and aligns with the City Council's comments on December 2, 2019. We have a few additional questions, primarily to clarify the City's intent regarding managing traffic conditions in the City.

- a) Defining screening criteria that trigger traffic circulation (LOS) studies-
1. What are the criteria for deciding if projects have "the potential to increase congestion, create safety hazards, or other impact circulation conditions?"

Supplemental Question from RGM:

Please provide criteria that will be used in deciding whether a project has "potential to increase congestion, create safety hazards, or otherwise impact local circulation conditions" and therefore much do traffic impact studies. We

understand from the June 23rd meeting that these decision of whether a project is required to do traffic impact studies is highly context dependent and that no strict threshold for number of generated trips applies. We also heard that there is a substantial range of “rule of thumb” thresholds, such as 50 new trips or 100 new trips. Please expand the explanation about what guidelines or criteria are used in various contexts, so all parties have clarity.

Each project is reviewed on a case by case basis. The determination as to whether to prepare a traffic study is based on several factors, including: (a) the project setting and context; (b) the conditions and LOS of the road network serving the site; (c) project size; (d) the City entitlements required for the project; and (e) other development activity that is proposed or occurring in the general vicinity. In addition, if the project is controversial or if the topic of traffic generation is of concern, a study will be required. This is the approach currently used by the City and would not be changed by General Plan 2040.

Supplemental Comment from RGM

Please replace “Unless covered by the exemptions in Policy M-2.5, such studies should include...” with “Unless covered by the exemptions in Policy M-2.5, such studies shall include...”

In this instance, “should” is the more appropriate term as not every attribute of the study is equal, and more focused (or broader) studies may be appropriate and acceptable in some situations. Discretion is appropriate in determining the specific contents of each report.

2. Who will make the decision of whether traffic impact studies will be required?

This determination is typically made by the City Traffic Engineer, sometimes in collaboration with the Community Development Department, the City Council, and other reviewing bodies. No change to the existing decision-making process is proposed.

- b) What are the standards for intersections/road segments classified as LOS E or LOS F?

1. Intersections and road segments should not be exempt from traffic standards just because they don't meet LOS D. Policies should specify that intersections/road segments at LOS E should remain at LOS E.

Supplemental Comment from RGM

The City needs to maintain its commitment to overseeing and managing reasonable traffic flow through those intersections and segments which have fallen below the City Standard LOS D. Please provide a policy that intersections and road segments currently at LOS E not be allowed to fall below LOS E in future conditions.

We concur with this statement. The intent of listing LOS E as an acceptable service level is not to exempt these projects from traffic standards, but rather to acknowledge that LOS D is infeasible at the specified location. The listed intersections/ segments are either currently operating at LOS E, have an LOS E standard in the existing Plan, or are projected to be at LOS E by 2040 based on traffic forecasts. Projects in the vicinity of these intersections or segments would still be required to conduct studies, pay fees, and address their impacts, potentially including changes to the impacted road segments and intersections. The intent of listing a road segment at “E” is to establish that it is expected to remain at E and may not deteriorate to “F.”

The Circulation Element of General Plan 2020 included a bar chart indicating the seconds of delay corresponding to each lettered service level (for intersections), and the average speed corresponding to each lettered service level (for arterials). We will retain this bar chart and carry it forward into General Plan 2040. No change to the existing protocol for implementing LOS requirements is proposed, with the potential exception of Downtown San Rafael.

2. LOS F conditions are not all equal. A delay of 20 minutes is much greater than a delay of 2 minutes, although both would be LOS F. Once an intersection or road segment is classified as LOS F, what will the City find acceptable for length of delays and reduced speed? Are there “shades of F” that the City should incorporate into LOS standards?

Supplemental Comment from RGM

LOS F conditions are not all equal. The definition of LOS F at intersections begins with an intersection delay of 80 seconds (waiting through more than one traffic signal cycle) to an infinite time of delay. LOS F on arterial segments is defined as speeds of less than 7 mph to 0 mph (*i.e.*, stopped traffic) for an undefined period of time. Once an intersection or road segment reaches LOS F, what will the City find acceptable for length of delays and reduced speed? The City has a responsibility to set standards in the “shades of F” to continue to oversee and manage traffic conditions at these highly congested intersections and road segments. Please provide a policy that delineates what degree of delay will be acceptable at intersections and road segments currently at LOS F and requires that these intersections and segments not be allowed to fall below this degree LOS F in future conditions.

We agree with this concern and are exploring potential ways of addressing it. In General Plan 2020, this was addressed as a CEQA issue. The General Plan 2020 EIR included thresholds of significance for intersections and arterial road segments operating at LOS “F.” These are referenced in EIRs prepared over the last two decades, including:

- *If an arterial with baseline travel volumes is already at an unacceptable level of service and there is a decrease in the average travel speed of 5 miles per hour or more, this impact is significant.*

- *If a signalized intersection with baseline traffic volumes is already operating at level of service “F” and there is an increase in delay of five seconds or more, this impact is significant.*

With SB 743, the City may no longer use these criteria as CEQA thresholds and may not include this language in the General Plan 2040 EIR. However, it could establish that projects that exceed similar thresholds require a City Council exception. Another approach that has been discussed is an Arterial Delay Index. This would be most applicable in Downtown San Rafael, where there signalized intersections are close together. The delay index simply establishes that the peak hour speed should not exceed x% of the free-flowing speed between a given origin and destination.

We would not expect this matter to resolved in the General Plan itself, but rather through follow-up guidelines or operational/ administrative memoranda to be developed as the City begins SB 743 implementation. The General Plan will acknowledge that metrics and methods should be developed to address this issue.

- c) Six intersections/road segments in North San Rafael have been newly classified as LOS E, in particular Del Presidio in North San Rafael.

Supplemental Comment from RGM

Three road segments in North San Rafael are classified as LOS E and exempted from the Citywide LOS D standards (These intersections include Freitas Parkway at Civic Center Drive/Redwood Highway (unsignalized), Merrydale at Civic Center Drive, and Merrydale at Las Gallinas Avenue).

1. On what traffic counts are these LOS calculations based? The traffic studies for the Northgate Walk Project projected better LOS for 3 of these intersections. (Supplemental: The classification of three of these intersections varies substantially from the LOS determinations of these intersections in the 2018 traffic study for the Northgate Walk project. Please provide an explanation.)

The LOS E standard for the Freitas/Civic Ctr/Redwood, Merrydale/Civic Center, and Merrydale/ Las Gallinas intersections is being carried over from General Plan 2020 (See Page 167 of the General Plan 2020 Circulation Element).

The three arterial road segments in North San Rafael that are proposed for LOS “E” are Freitas (Las Gallinas to Del Presidio), Lucas Valley (Las Gallinas to 101), and Los Ranchitos (N. San Pedro to Lincoln). This is based on TAM model forecasts using 2019 baseline traffic data and projected growth for 2020-2040. The forecasts for 2040 are based on 2020-2040 growth assumptions from the San Rafael General Plan for properties within the San Rafael Planning Area, and growth assumptions from TAM and MTC for properties outside the San Rafael Planning Area. The analysis also included a “no project” alternative, in which the growth assumptions for San Rafael were not changed from the TAM model. These three road segments were also projected to operate at LOS “E” in that

scenario. Freitas Parkway from Las Gallinas to Del Presidio was already operating at LOS E in both the AM and PM peak hours in 2019. Likewise, Los Ranchitos (between North San Pedro and Lincoln) was already operating at LOS “E” during the PM peak hour in 2019.

The allowance for LOS “F” on Del Presidio is a carry-over from General Plan 2020 (see Exhibit 20, on page 168 of the General Plan 2040 Circulation Element). This particular segment was operating at E/F in 2003 when the General Plan 2020 EIR was prepared. Improving Del Presidio to “D” is not feasible given the design and location of this street (a single 400’ block, with signals at either end, essentially an extension of the US 101 S/B off-ramp). This standard would be retained in General Plan 2040.

We will investigate the differences between the model forecasts and the Northgate Walk forecasts. The General Plan analysis represents a cumulative scenario for 2040 using the TAMDM model, which may be more conservative (e.g., higher volume) due to its accounting for regional growth and regional traffic increases.

Supplemental Questions from RGM

- i.) We understand from the June 23rd meeting that existing traffic LOS determinations are based on traffic counts done by Fehr & Peers in Spring 2019, and that the future traffic increase is not yet available from the TAM Demand Model. Please confirm and provide the data. Please reassess the classifications of these intersections and road segments and their exemptions from the City standard of LOS D.
- ii.) For these intersections, please provide the underlying data of traffic delay and LOS calculation for AM and PM peak hours (existing, existing + project, baseline, baseline + project, cumulative, cumulative + project) for comparison with the Northgate Walk traffic studies.
- iii.) If conditions at these intersections have changed, how does the City account for these changes? Unlike highway interchanges and intersections within the Downtown Precise Plan exempted from LOS D, there is no explanation for why these intersections and road segments have degraded and why they should be exempted from City traffic standards. Please provide this explanation and rationale.

Traffic model (TAMDM) data for 2019 and 2040 will be included in the Draft 2040 General Plan EIR. We currently have volume data and forecasts for arterial segments, including corresponding arterial Levels of Service for 2019 and 2040. We do not yet have data for intersections. As noted in response (7)(c)(1) above, the LOS “E” designation for the three segments listed reflects either existing (2019) conditions or projected conditions in 2040, taking into consideration regional growth and growth in San Rafael consistent with General Plan 2040. The Northgate Walk analysis was a project-level analysis (rather than a plan-level analysis) and used a different traffic model and method of calculating impacts.

- d) Unlike highway interchanges and Downtown intersections, no rationale is given for why these intersections/segments should be exempted from LOS studies. How does the City account for these degraded traffic conditions? What commitment will be made to avoid further degradation?

The intersections at which LOS "E" is deemed acceptable would not be exempted from LOS studies. Projects in the vicinity of these intersections will still be required to evaluate existing and projected conditions at these intersections. Such evaluations could lead to requirements for specific improvements or modifications. These improvements/modifications would be made in order to maintain Level of Service "E", given that LOS "D" is infeasible. Even where LOS "F" is the standard, improvements may still be required to maintain functionality and reduce further delays (see response to (7)(b)(2)).

- e) On what data will the "TBD" LOS exemptions be based? When will these determinations be made?

To clarify, the "TBD's" would not be exemptions, but rather lower acceptable service levels (e.g., longer delays) for specific intersections based on existing (2020) and projected (2040) conditions. We are still awaiting intersection LOS forecasts for 2040. These are being determined using the TAM model with the same data inputs that were used to develop the 2040 forecasts for arterial segments. We anticipate receiving this data later in July. We will provide the "TBD" list as soon as it is updated.

Additional Supplemental Questions from RGM

8) Program M-2.5B LOS Exceptions

This section adds specific guidelines for the City Council for granting LOS Exceptions. We recommend the section be improved as follows:

- a) Section b) should be clarified to state that all of the three bulleted conditions must be fulfilled in order for the City Council to grant an exception.

The intent is that all three of the bulleted conditions be met. We will clarify this.

- b) The third bullet should mandate consistency not only with the Guiding Principles of GP2040 but also with the Foundation of San Rafael as a thriving City, including Open Space Preservation, Sense of Community, Great Neighborhoods, and Historic Legacy.

We concur with this recommendation and will make this change.

- c) Please replace “should” with “shall.”

The word “should” does not appear in Program M-2.5.

9) Other LOS Questions

- a) What considerations have been given to heavy traffic flows at other times of the day, such as 3 p.m. when construction worker commute and school traffic is heaviest?

The General Plan traffic analysis is a 20-year programmatic citywide analysis conducted in a regional context. As such, it focuses on “worst case” conditions, which occur during the AM and PM peak hours. Analysis of mid-afternoon conditions would be most appropriate for specific projects located in areas where there are either different peak hours, or issues associated with a specific nearby traffic generator (such as a high school, university, etc.). Other peak periods might also be considered in towns with unusual peak travel characteristics (e.g., weekend peaks at beaches or tourist attractions, etc.).

- b) Why does the proposed LOS level not distinguish between a.m. and p.m. peak hours?

Both are considered collectively as our community experiences traffic in both peak periods and the planned transportation improvements address both peaks.

- 9) Wrap Up: How will this memo be presented to the City Council on July 6th? What decisions will the City Council have to make?

The staff report for the July 6 meeting will be available for public review and posted to the website on July 1. The Council will be asked to accept staff’s recommendations for VMT screening criteria and thresholds for use in CEQA. They will also review and comment on proposed Policy M-2.5 (and related programs) regarding the continued use of LOS for merit review of proposed development projects. This would be a preliminary review of Policy M-2.5, as this discussion would continue later in the year after General Plan 2040 is released as a public review draft and considered at hearings before the Planning Commission and City Council. We also anticipate returning to the City Council later in 2020 with a list of proposed transportation improvement projects and a proposed update to the traffic mitigation fee.



SAN RAFAEL
THE CITY WITH A MISSION

NOTICE OF ONLINE PUBLIC HEARING – CITY COUNCIL

You are invited to view and participate online for the City Council meeting on the following proposed project:

PROJECT: REPORT ON TRAFFIC METHODOLOGIES FOR GENERAL PLAN 2040 – On June 19, 2019 and December 2, 2019, the San Rafael City Council was provided informational reports covering State-mandated changes (effective mid-2020) on how traffic and circulation is to be analyzed in future environmental documents (California Environmental Quality Act) and the General Plan 2040 Environmental Impact Report (EIR). The State Law requires that local jurisdictions phase out the use of the current “Level of Service” (LOS) method of review for environmental documents, replacing it with a “Vehicle Miles Traveled” (VMT) methodology. The December 2, 2019 informational report to the City Council explains the differences between the two traffic methodologies and can be viewed at <https://t.ly/uINP>. As follow-up to the December 2, 2019 informational report, the City Council will review and be requested to provide feedback on: a) VMT screening and significance criteria for future development project review; and b) maintaining LOS as a tool for reviewing new development and monitoring local intersection and arterial operations. File Nos.: GPA16-001 and P16-013.

As required by State law (California Environmental Quality Act), the General Plan 2040 is subject to environmental review. An Environmental Impact Report (EIR) is being prepared to assess the impacts of the General Plan 2040, which will include traffic methodologies. The Draft EIR will be completed and released for public review this summer.

MEETING DATE/TIME/LOCATION: Monday, July 6, 2020, 7:00 p.m. COVID-19 ADVISORY NOTICE Consistent with Executive Orders No.-25-20 and No. N-29-20 from the Executive Department of the State of California and the Marin County March 16, 2020 Shelter in Place Order, the San Rafael City Council meeting of July 6, 2020, will not be physically open to the public and the meeting will be streamed live to YouTube at <https://www.youtube.com/cityofsanrafael>. Instructions on how to participate online, will be available on the YouTube channel.

FOR MORE INFORMATION: Contact Barry Miller, General Plan Project Manager at (415) 485-3423 or barry.miller@cityofsanrafael.org. **City offices are currently closed to public walk in, but you can contact the planner for more information.** You can also view the staff report after 5:00 p.m. on the Friday before the meeting at <http://www.cityofsanrafael.org/meetings>.

WHAT WILL HAPPEN: The City Council will consider public comment/testimony and provide feedback and direction on VMT and LOS policy direction.

HOW TO PROVIDE PUBLIC COMMENTS: You can send written correspondence by email to the address above prior to the meeting, you can comment online in real-time on YouTube. If you do not have access to internet, contact the City Clerk to discuss alternative options for remote participation at 415-485-3066.

Any records relating to an agenda item, received by a majority or more of the Council less than 72 hours before the meeting, shall be available for inspection online. Sign Language interpreters may be requested by calling (415) 485-3066 (voice), emailing Lindsay.lara@cityofsanrafael.org or using the California Telecommunications Relay Service by dialing “711”, at least 72 hours in advance of the meeting. Copies of documents are available in accessible formats upon request.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Digital Service and Open Government

Prepared by: Rebecca Woodbury
Director – Digital Service and Open
Government

City Manager Approval: 

TOPIC: GRAND JURY REPORT ON CYBERATTACKS

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN RAFAEL'S RESPONSE TO THE 2019-2020 MARIN COUNTY CIVIL GRAND JURY REPORT ENTITLED, "CYBERATTACKS: A GROWING THREAT TO MARIN GOVERNMENT"

RECOMMENDATION: Adopt a resolution approving the City of San Rafael's response to the Marin County Civil Grand Jury's report entitled, "Cyberattacks: A Growing Threat to Marin Government."

BACKGROUND:

On May 11, 2020, the [2019-20 Marin County Civil Grand Jury](#) issued a report entitled *Cyberattacks: A Growing Threat to Marin Government* relating to cybersecurity practices in Cities and Towns in Marin County. The report focuses on the lack of coordination amongst Marin Cities and Towns around network security, cybersecurity practices, and security training.

The City of San Rafael is required to respond to all Grand Jury reports. Penal Code section 933 states, in part, the following:

No later than 90 days after the Grand Jury submits a final report...the governing body of the public agency shall comment to the presiding Judge of the Superior Court on the findings and recommendations contained in the report.

To comply with this statute, the City's response to the Grand Jury report must be approved by resolution of the City Council and submitted to the Presiding Judge of the Marin County Superior Court and the Foreperson of the Grand Jury by August 10, 2020. Staff recommends that the City Council adopt the attached resolution approving the City of San Rafael's response to the Grand Jury's report (Attachment 1).

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

ANALYSIS:

In their report, the Grand Jury evaluated the state cybersecurity preparedness amongst Marin County cities and towns and County government. Below are the Grand Jury's findings:

- F1. The Marin County government has a well-developed approach to cybersecurity in general, and a robust architecture and strategy for avoiding breaches.
- F2. The Marin County government has substantial cybersecurity expertise and, as the host and manager of the MIDAS system, is well positioned to assist the cities and towns in developing a common set of best practices regarding cybersecurity.
- F3. Transparency is lacking regarding cybersecurity because past breaches have not been publicly disclosed, and city and town councils have not facilitated public discussion of cybersecurity issues.
- F4. Most elected officials in Marin's cities and towns are not sufficiently engaged in ensuring robust cybersecurity policies and procedures are in place.
- F5. County and municipal officials and managers have been generally unaware of breaches that have occurred outside their own agencies in Marin and therefore have not felt the need to collaborate on measures to improve cybersecurity.
- F6. Municipalities have been lax in following FBI guidance that cybersecurity breaches be reported to federal law enforcement.
- F7. Marin's cities and towns have not made a concerted effort to standardize around a common set of best practices with respect to cybersecurity.
- F8. The Marin County Council of Mayors & Councilmembers has not made cybersecurity a priority, which has minimized the awareness and engagement of elected officials in cybersecurity matters.
- F9. The Marin Managers Association has not done enough to facilitate the sharing of cybersecurity information and resources among its members.
- F10. Various low-cost best practices exist that could, if implemented, significantly improve the cybersecurity posture of Marin's cities and towns.

Based upon their findings, below are the Grand Jury's recommendations:

- R1. Within 120 days of the date of this report, the Marin County Information Services and Technology Department should create an ongoing program to share user education information, other cybersecurity practices, and updates with cities and towns.
- R2. Within 120 days of the date of this report, the Marin County Information Services and Technology Department should complete a plan for enhancing MIDAS to improve cybersecurity for its users.
- R3. Within 120 days of the date of this report, the Marin County Information Services and Technology Department should offer to collaborate with the cities and towns, through the Marin Managers Association or another channel, to develop best practices for cybersecurity in Marin's cities and towns.
- R4. Starting in fiscal year 2020–2021, the county board of supervisors and the city and town councils should request their managers report, at least annually, regarding their cybersecurity profile and any measures being taken to improve it.

- R5. Starting in fiscal year 2020–2021, the county, cities, and towns should convene periodic discussions, at least annually, in a public forum such as a board or council meeting, regarding the importance of good cybersecurity practices for our government, residents, and other organizations.
- R6. The county and each city and town should adopt a policy to report to federal law enforcement any cybersecurity intrusion that results in financial fraud or unauthorized disclosure of information and make that intrusion public.
- R7. Within 180 days of the date of this report, cities and towns should implement the first four practices described in the Best Practices section of this report, regarding mandatory user training, email flagging and filtering, password management, and backup.
- R8. In fiscal year 2020–2021, cities and towns should complete an analysis of the feasibility of implementing the remainder of the practices described in the Best Practices section of this report.
- R9. In fiscal year 2020–2021, cities and towns should, through the Marin Managers Association, complete an analysis of the feasibility of contracting with a cybersecurity expert to be available to cities and towns on a shared basis, in order to raise the overall level of cybersecurity in Marin’s cities and towns.

The City of San Rafael is required to respond to respond to Findings F3, F4, F5, F6, F7, F8, and F9 and Recommendations R4, R5, R6, R7, R8, and R9. As outlined in the City’s detailed response (Attachment 2).

FISCAL IMPACT: There is no fiscal impact associated with this action.

OPTIONS:

The City Council has the following options to consider relating to this item:

1. Adopt the resolution as presented.
2. Adopt the resolution as amended.
3. Direct staff to return with additional information

RECOMMENDED ACTION:

Adopt a resolution approving the City of San Rafael’s response to the Marin County Civil Grand Jury’s report entitled, “Cyberattacks: A Growing Threat to Marin Government.”

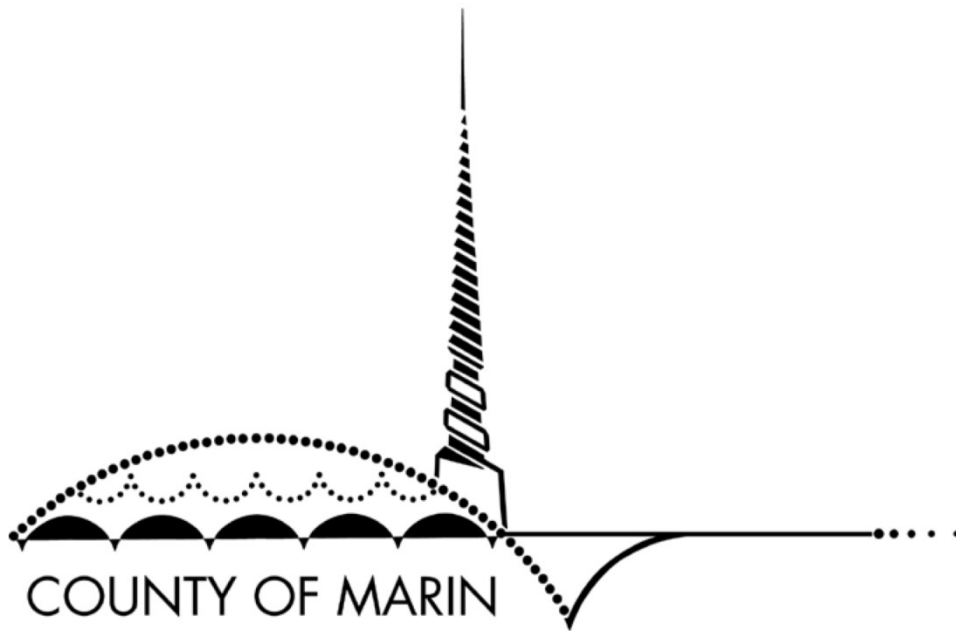
ATTACHMENTS:

1. Grand Jury Report
2. Response to Grand Jury Report
3. Resolution

2019–2020 MARIN COUNTY CIVIL GRAND JURY

Cyberattacks: A Growing Threat to Marin Government

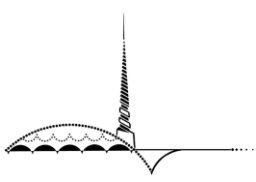
May 11, 2020



A Note about the Coronavirus Pandemic

The 2019–2020 Marin County Civil Grand Jury is issuing its reports during the unprecedented conditions of the COVID-19 pandemic. We are well aware that Marin County is in crisis and that critical public health concerns, operational difficulties, and financial challenges throughout the county have a greater claim to government attention right now than the important issues raised by this Grand Jury.

We are confident that, in due course, Marin will come through this crisis as strong as ever.



Cyberattacks: A Growing Threat to Marin Government

Summary

Local governments are targets of opportunity for cybercriminals. Hackers seek unauthorized access to computer networks so they can install ransomware, steal personal information, benefit from fraudulent payments, and disrupt government operations. As our government agencies become more reliant on online systems and remote work capabilities, cybersecurity awareness and best practices are increasingly critical.

Unbeknownst to the public, the Marin County government and most of Marin's municipalities have suffered financial frauds or debilitating network breaches in recent years. The county lost almost \$250,000 in a wire fraud scheme in 2018. More than half of Marin's 11 cities and towns—Corte Madera, Fairfax, Larkspur, Novato, Sausalito, and Tiburon—have fallen victim to successful breaches, and these are just the ones disclosed to the Marin County Civil Grand Jury.

Our government leaders have not disclosed most of these incidents to other Marin agencies or the public, leaving us underinformed and underprepared.

The Grand Jury's recommendations include the following:

- The county should take a lead role in sharing cybersecurity information and best practices with Marin's cities and towns.
- Cities and towns should implement basic prudent cybersecurity practices, including user training, email filtering, password management, and backups.
- The county and each city and town council should hold public discussions, at least annually, on their cybersecurity measures, which would also raise awareness among residents and local organizations on ways to improve cybersecurity.
- If the county or a municipality experiences a breach, it should promptly notify federal law enforcement and disclose the breach publicly.
- Municipalities should pursue shared cybersecurity services, where feasible, to lower costs and raise their level of security.

The Grand Jury focused its investigation on the security of the computer systems used by Marin's county and municipal governments. This investigation did not attempt to assess the cybersecurity posture of other Marin agencies, but the Grand Jury recommends that all of them undertake a comprehensive review of their cybersecurity practices, if they have not done so already.

Background

In May 2019, hackers seized control of the City of Baltimore's computer networks and demanded an \$80,000 ransom to restore staff access. The city refused to pay it, and operations were paralyzed for several weeks as technicians attempted to restore the network. Taking into

account lost revenue and the cost to rebuild the system, the attack cost Baltimore’s taxpayers an estimated \$18 million.¹

The successful attack on Baltimore’s computer system was just one of at least 70 ransomware attacks on U.S. state, county, and local governments during the first 8 months of 2019. Because of underreporting, the total number of such attacks may have been much higher. The size of the target does not matter—many of the ransomware attacks analyzed in 2019 took place in towns with fewer than 15,000 residents.² Hackers know that smaller municipalities can be easy targets because of inadequate network protections and spotty adherence to best cybersecurity practices, and these criminals are expected to increase their assaults on them.³

But government computer systems can be vulnerable to more than just ransomware attacks. As shown in the box below, cyberattacks can take many forms. The threats and tactics used by hackers evolve constantly. During 2019, the FBI received more than 460,000 complaints of internet crime from individuals and organizations throughout the United States, with reported losses totaling more than \$3.5 billion. Nearly half of the losses resulted from hackers duping email recipients into clicking on or responding to fraudulent emails.⁴ In the Bay Area, a computer virus infected Union City’s systems for several days in September 2019, crippling the

Common Types of Cyberattacks

- **Direct attack:** A direct attack is where a hacker seeks to use a stolen password or exploit a weakness to gain direct access to a private network to steal data or crash the system.
- **Ransomware:** In a ransomware attack, a hacker installs software that encrypts the data or crashes the system, preventing the owner from accessing applications or data. The hacker demands a ransom in exchange for unlocking the system and restoring the data.
- **Phishing:** Phishing involves a hacker sending an email or text message designed to trick the recipient into divulging personal or sensitive information, such as a password or Social Security number. Research has shown that more than 90 percent of cyberattacks start with phishing emails. Some phishing emails use a forged sender’s address (pretending, for example, to be from a senior leader in a government agency), requesting the user to click on a link that might install malicious code, to transfer money or make a payment to a fake third-party account controlled by the hacker, or to reveal sensitive information.

¹ Ian Duncan, “Baltimore Estimates Cost of Ransomware Attack at \$18.2 million as Government Begins to Restore Email Accounts,” *Baltimore Sun*, May 29, 2019, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-ransomware-email-20190529-story.html>.

² Barracuda Blog, “Threat Spotlight: Government Ransomware Attacks,” August 28, 2019, <https://blog.barracuda.com/2019/08/28/threat-spotlight-government-ransomware-attacks/>.

³ Allan Liska, Recorded Future, *Early Findings: Review of State and Local Government Ransomware Attacks*, May 2019, <https://go.recordedfuture.com/hubfs/reports/cta-2019-0510.pdf>.

⁴ Federal Bureau of Investigation, *2019 Internet Crime Report*, February 2020, pp. 5, 9, https://pdf.ic3.gov/2019_IC3Report.pdf.

city's email system, payment and financial systems, business licensing system, and planning and building permit and licensing systems.⁵

A 2016 survey of chief information officers of U.S. municipal and county governments by the International City/County Management Association showed the following:⁶

- 44 percent reported being subjected to an attack at least once a day, where an attack is “an attempt by any party to gain unauthorized access.”
- 25 percent reported at least one incident monthly, which led to a compromise to the “confidentiality, integrity, or availability of an information asset.”
- 24 percent reported at least one breach annually, which resulted in confirmed, unauthorized disclosure of information to a third party.

Staying secure requires vigilance and adaptability. Given the increasing threat of cybersecurity attacks, it is incumbent upon governmental organizations of all sizes to assess and, where needed, strengthen their networks against cyberattacks in order to protect the data of citizens and employees, to ensure the uninterrupted functioning of local governmental agencies, and to safeguard important infrastructure.

Approach

In its investigation of cybersecurity in Marin, the Grand Jury:

- Interviewed representatives from the county government, as well as representatives from each of Marin's 11 towns and cities
- Interviewed members of the Marin Managers Association
- Interviewed a member of the Marin County Council of Mayors & Councilmembers
- Reviewed articles, surveys, and research papers concerning information security practices and the use of shared services arrangements in local governmental agencies

The Grand Jury chose to focus on cybersecurity practices at the county and municipal level. This investigation did not attempt to assess the cybersecurity posture of the various school districts, law enforcement agencies, water agencies, sanitation districts, and other special districts.

The Grand Jury also investigated the county's election system. Election security in the county appears to be strong and well-organized. The county's Elections Department runs all federal, state, county, city, school, and district elections held in the county. Election procedures are mandated at the state and federal level. Marin's voter-management computer system is provided

⁵ Union City, “Update: Computer Virus Continues to Impact Online Services,” news release, September 23, 2019, <https://www.unioncity.org/CivicAlerts.aspx?AID=69>; Anna Bauman, “Computer Virus Wreaks Havoc on Union City's Municipal Servers,” *San Francisco Chronicle*, September 23, 2019, <https://www.sfchronicle.com/bayarea/article/Computer-virus-wreaks-havoc-on-Union-City-s-14461096.php>.

⁶International City/County Management Association, *Cybersecurity 2016 Survey*, 2016, p. 6, https://icma.org/sites/default/files/309075_2016%20cybersecurity%20survey_summary%20report_final.pdf.

by a state-certified outside vendor. Paper ballots are used rather than voting machines, and the computers used for vote counting are never connected to the internet.

Discussion

Government in Marin County needs strong, effective cybersecurity measures to protect its information, operations, and assets.

Little-Known Breaches Have Harmed Marin's County and Municipal Governments

Imagine that Jamie, an employee in the finance department of a county government, receives four emails from Drew, a coworker in another department, requesting wire transfers into several bank accounts. Jamie does not notice that the emails are fake and transfers more than \$300,000 as requested. Or imagine that Casey, an employee responsible for payroll in a city government, receives an email from the city manager requesting copies of the W-2 tax forms of all city employees and councilmembers. Casey also does not detect that the email is fake and unwittingly sends the tax forms to a hacker, who then files at least three fraudulent tax returns. Except for the names of the government employees, these disturbing scenarios actually occurred. They occurred in 2018. And they occurred in Marin.

In the course of this investigation, the Grand Jury learned that the Marin County government's computer network was breached at least five times in the past few years, and more than half of Marin's cities and towns also were successfully attacked.

A Wake-Up Call for the County

The county government's main computer network is managed by its Information Services and Technology Department (IST) and serves all county departments.

County officials reported to the Grand Jury that they have not experienced a successful, disabling ransomware attack during the last three years. However, from July 2017 through August 2018, the county suffered at least five cyberattacks that compromised system security. Mostly a result of phishing attacks, these breaches resulted in the successful theft of employees' login credentials, potentially enabling the perpetrator to log in to the county's network to steal data or install malware. In four of these breaches, according to information provided to the Grand Jury, there was no evidence of actual data theft.

But the fifth breach was different. After receiving a phishing email in April 2018, a county employee clicked on a link that allowed the hacker to access and control the employee's email account. The hacker was then able to review emails that detailed the procedures for requesting wire transfers of funds, change the email account settings so the employee would not detect what the hacker was doing, and send an email in the employee's name to the county's finance department requesting a \$78,000 wire transfer. A finance employee processed the request and initiated the wire transfer.

Over a one-week period in late April, the hacker repeated the same fraudulent scheme three more times. In all, the finance department wired \$309,000 to the hacker's bank accounts. After detecting the fraud, the county was able to recover approximately \$63,000, leaving a total loss of \$246,000. This breach and financial loss were reported to local law enforcement and the FBI, but not disclosed to the public.

In the wake of these incidents, the county government instituted numerous changes to reduce its vulnerability to attacks on its networks. Some of these were technical changes, such as making it impossible to automatically forward emails to outside the county's network, and blocking connections from outside the United States.

With the help of both external and internal auditors, the department of finance reexamined its internal controls, audited all wire transfers for the preceding 12 months, and identified and immediately implemented process improvements to mitigate the risk of fraud and misappropriation of assets. The department's management also counseled and issued formal warnings to the employees who were deceived by the fraudulent requests.

Other changes involved new personnel and programs in the Information Services and Technology Department. In May 2018, the county hired a new Chief Information Officer, who quickly expanded the size of the information security team and created the position of chief information security officer. Among other measures, that team developed a program, called People at the Heart of Information Security, to create a security-minded culture throughout county government. The program includes mandatory user training regarding cyberattacks, the addition of a "Phish Alert" button to allow employees to report suspicious emails, mock phishing exercises, brown-bag security awareness sessions, and other activities. In 2019, the California State Association of Counties awarded Marin County a Challenge Award for this effort.⁷

The Grand Jury concluded that the county now has a well-developed approach to cybersecurity in general and a robust architecture and strategy for avoiding hacks, including ransomware attacks. The county's data backup and hardware redundancy strategy appears strong, which should enable IST to recover quickly from a disabling attack should one occur. IST also takes advantage of outside resources, such as those provided by the Multi-State Information Sharing and Analysis Center (MS-ISAC) within the Department of Homeland Security's Center for Internet Security. MS-ISAC specifically focuses on state and local governments, and it provides free services and tools to help them improve their cybersecurity.⁸

Still, there is more that the county government can do to ensure the security of its systems, and county officials informed the Grand Jury that efforts are ongoing to make the county's systems even more secure.

⁷ California State Association of Counties, "2019 Challenge Awards Recipients," 2019, <https://www.counties.org/post/2019-challenge-award-recipients>.

⁸ Center for Internet Security, MS-ISAC, accessed April 15, 2020, <https://www.cisecurity.org/ms-isac/>.

The Vulnerability of Marin’s Cities and Towns

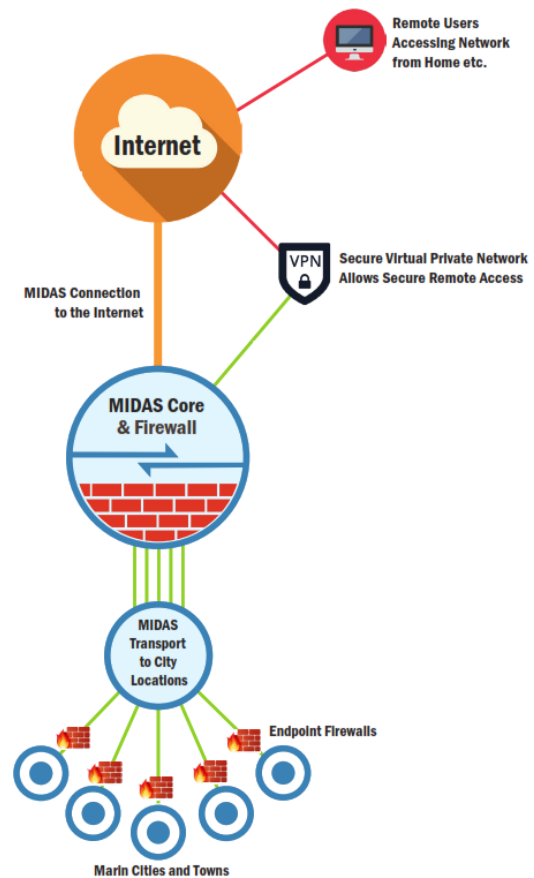
Each of Marin’s 11 incorporated cities and towns has its own network, and most of these municipalities rely on contractors for information technology (IT) support. Although they have separate IT systems, the county government and all the municipalities, except Corte Madera, share a wide area network known as the Marin Information and Data Access System (MIDAS). This shared network, which is depicted in Figure 1, is managed by the county government together with an outside vendor. MIDAS provides its users with a secure connection to the internet and also enables them to share certain applications hosted at the county level. A firewall at each endpoint on this system minimizes the risk of a direct attack by an outsider, but MIDAS does not currently protect against all types of attacks. Attacks that use fake emails as their entry point are not stopped, nor does MIDAS currently provide malware filtering or antivirus protection.

The Grand Jury found that information security practices in Marin’s cities and towns are deficient by several measures, especially if one measures security by the number of breaches that have occurred. Six cities and towns disclosed to the Grand Jury that they were successfully attacked over the last four years. Three of the breaches were ransomware attacks. The breaches disabled computers and network systems, resulted in financial fraud, and led to the theft of confidential information:

Town of Fairfax: In July 2016, Fairfax was victimized by a ransomware attack. An employee received an email with a malware program attached; and when the employee clicked on the attachment, the town’s servers were infected and became unusable. No ransom was paid, but the town was forced to use a previous backup in order to rebuild its systems. The town lost data for the day of the attack, since it had not yet been backed up. Fairfax suffered a similar breach in October 2014.

City of Novato: In 2017, Novato fell victim to a phishing attack. A city employee received an email purporting to be from a senior city official, requesting a wire transfer of funds. The employee initiated the wire transfer to the account specified by the hacker. The Grand Jury received two conflicting reports regarding

Figure 1. MIDAS Shared Network



Note: This diagram has been simplified and does not show connections to the county library, sheriff's office, and other agency networks.
Source: Adopted with changes from Marin County Information Services and Technology Department, *What Is MIDAS?*, July 2018.

this breach. In one telling, the wire transfer was approximately \$15,000 and much of the money was later recovered. In the second version, approximately \$40,000 was wired and none of it was recovered by the city. The breach was reported to local law enforcement and the FBI. Due to extensive turnover among the Novato city staff, the Grand Jury was unable to determine the exact amount of the financial loss. After the attack, Novato strengthened its email security and implemented mandatory employee training to reduce its vulnerability to email-based attacks.

City of Sausalito: In January 2018, Sausalito was the victim of a phishing attack in which a fake email, purporting to be from the city manager, was sent to a city employee. This employee complied with the fake email's request for copies of the W-2 tax forms of all of the city's employees and councilmembers. As a result, all these individuals were exposed to the risk of identity theft. The Sausalito breach was reported to the FBI. For two years after the attack, the city provided free credit monitoring services to all employees, at a cost of approximately \$27,000. Nevertheless, three employees had fraudulent state tax returns filed in their names, although the attempts were unsuccessful because taxing authorities had been alerted.

Town of Tiburon: In 2019, Tiburon suffered a ransomware attack, also initiated by a fake email attachment opened by an employee. No ransom was paid, but the town's systems were largely disabled for more than three days. Most of its data was recovered using a backup, but the town discovered that one of its applications was not being backed up properly, so the town needed to rebuild much of that data by hand from paper records.

Town of Corte Madera: In 2019, Corte Madera suffered a direct attack. During a brief moment when a vendor intentionally disabled the town's firewall for system updates, hackers were able to access its network and disable it using ransomware. No ransom was paid, but the system had to be restored from a backup.

City of Larkspur: In August 2019, Larkspur's network was compromised in a direct attack. Four of its computers were reportedly accessed from one of the public computers in the Larkspur library. It is unknown what data may have been accessed.

Observations

The Grand Jury was able to make several observations about these successful cyberattacks on Marin's county and municipal governments:

- Email-based attacks succeed due to poor user behavior and can be greatly reduced by training to instill good user behavior.
- The MIDAS platform does not prevent email-based breaches or filter for viruses.
- To the Grand Jury's knowledge, the county breaches and the \$246,000 loss were never disclosed publicly, and the only municipal breach that became known to the general public was Sausalito's. By not being sufficiently informed about the cybersecurity risks that exist in our cities and towns, the public may have a false

sense of security regarding effective government operations. Public transparency is essential so that Marin residents are aware of cybersecurity risks.

- While the Sausalito and Novato breaches and one of the county breaches were reported to the FBI, the Grand Jury was unable to determine whether the other incidents were reported to federal law enforcement. The FBI recommends that government agency breaches be reported as a standard practice.⁹ In addition, when unauthorized disclosure of personal information occurs, California law requires the agency to notify all affected individuals, as Sausalito did in this case.¹⁰
- Sausalito, according to interviews, responded appropriately to its breach. It not only notified the FBI, but provided identity theft protection resources to its employees, held a city council discussion on cybersecurity, and implemented a number of measures to strengthen its security, including mandatory employee training, technology for flagging external emails, and ongoing monitoring of its system by a cybersecurity consultant.
- Partly as a result of the breaches to its systems, the county has acquired expert knowledge about techniques and strategies to prevent breaches and is in a strong position to share that expertise with cities, towns, and other agencies in Marin that may lack access to such practical knowledge.

City and Town Officials Are Not Sufficiently Engaged in Combating Cyberattacks

In municipalities across the United States, cybersecurity awareness and support for a stronger approach from elected representatives and top officials appear to be lacking. In 2016, the International City/County Management Association surveyed the chief information officers (CIOs) of U.S. county and city governments regarding cybersecurity issues. The survey asked the CIOs about the engagement of their top appointed or elected officials in cybersecurity risks and found, among other things, the following:¹¹

- Only 26 percent of the CIOs believed that elected council members were either moderately or exceptionally aware of cybersecurity issues.
- Only 30 percent of the CIOs reported that elected council members provided either strong or full support for cybersecurity.
- According to the CIOs, a very low percentage of elected and appointed officials felt they personally had a strong responsibility for cybersecurity.

The survey results indicate that, while there is some awareness about cybersecurity risks, there is a lack of engagement by local elected officials in ensuring strong security. Marin is no exception

⁹ FBI, *Law Enforcement Cyber Incident Reporting*, accessed April 15, 2020, <https://www.fbi.gov/file-repository/law-enforcement-cyber-incident-reporting.pdf/view>.

¹⁰ California Civil Code § 1798.29, accessed April 15, 2020, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=1798.29.

¹¹ International City/County Management Association, *Cybersecurity 2016 Survey*, pp. 3, 12.

to the survey findings. As the above discussion of past attacks in Marin noted, city and town councils have not taken up the cause to raise public awareness or to combat cyber risks. In most cases, information security is an operational issue delegated to the town or city manager. In those municipalities suffering a breach, the Grand Jury found only one instance—Sausalito—where a city council directed its manager post-breach to provide the council with an assessment of its cybersecurity practices or measures that could be taken to improve security.

While city and town managers in Marin are generally aware of the increasing number of cyberattacks, there appears to be a lack of action on the issue. In the course of its investigation, the Grand Jury heard repeated comments similar to the following:

- *Since we have a full backup, we are not too concerned about losing data* (this, despite the fact that restoration of an untested backup might fail and an attack could cause loss of the current day's data and an interruption in government operations lasting several days or more). There appears to be an overconfidence in the ability of a backup to enable a municipality to recover rapidly from an attack.
- *Our data is mostly a matter of public record anyway, so we are not too concerned about public disclosure* (in fact, much of their data is confidential, including human resources data and information about pending litigation, not to mention information about private citizens that could be used in identity theft). There appears to be insufficient concern about the government's need to protect important, confidential information.

The Public Is Underinformed about Cybersecurity Threats to Our Government

None of the breaches described above (other than the Sausalito attack) resulted in any public discussion by the governing boards of cyber threats or a demand from the board that the manager report to it regarding steps being taken to reduce those risks. The absence of a public discussion of these vulnerabilities is a missed opportunity to educate employees, residents, and local organizations about the cybersecurity risks faced by all.

The Grand Jury heard two separate views on the wisdom of discussing these matters publicly. The first is that public disclosure would alert potential hackers that a jurisdiction is vulnerable to an attack. The second view is that, by disclosing and openly discussing the problem, coupled with taking strong action to improve network security, the jurisdiction makes clear its commitment to a high level of vigilance and security and reduces its attractiveness to potential hackers.

While it would never be prudent to disclose in detail any technical vulnerabilities that led to a breach, the fact is that most attacks are launched when an employee clicks on a malicious email, and disclosing such an incident would not increase a municipality's vulnerability but could serve to educate employees and residents of the importance of good user behavior. Unless disclosure would clearly create new security risks, the Grand Jury strongly favors public disclosure of these incidents.

Our Cities and Towns Should Adopt Best Practices to Improve Security

A strategy followed by many smaller private and public organizations is to adopt “best practices” identified by IT professionals as a way of ensuring that they keep up with constantly changing risks.¹² The Grand Jury investigated industry-standard best practices, as well as practices implemented successfully by various Marin agencies, and this report recommends that a number of them be implemented by all cities and towns in Marin.

The National Institute of Standards and Technology has created its Cybersecurity Framework to assist governmental agencies and others with their security planning and practices. It identifies five key steps to planning and implementation: identify, protect, detect, respond, and recover.¹³ All public officials and managers should become familiar with its guidance and principles.

Smaller cities and towns may believe that they cannot afford stronger security. However, the Grand Jury concluded that there are a number of inexpensive measures that every municipality should implement, if they have not done so already, that would materially strengthen their security.

Employee training

User behavior is at the center of cyber vulnerability and poses one of the greatest security challenges because it is difficult to change. Phishing attacks are initiated by email. They exploit employee behavior to gain network access. The more aware users are of hacking tactics, the better able they will be to avoid attacks—whether they are working in the office or at a remote location. The Grand Jury recommends regular, *mandatory* employee training to educate, motivate and, yes, scare, employees into following security practices. (One manager informed the jury that employees should feel “terrified” about what could happen in an attack.)

One technique is to send fake emails to employees on a random basis to identify which employees have poor security discipline so that those employees can receive more training and more controlled network access. The jury recommends a service like this for all municipalities.

Email Flagging and Filtering

Malicious emails are often disguised to appear as if they came from within the organization, tricking the user into believing the email is from a colleague. To help counter this deception, the email system should place a visible “flag” on any email sent by someone from outside the organization. The County of Marin and several Marin cities and towns have already implemented such a system, but not all. Those that have done so report that the flag system has greatly improved user behavior. For a higher level of protection, the organization could implement a

¹² Ekran System, “12 Best Cybersecurity Practices in 2020,” <https://www.ekransystem.com/en/blog/best-cyber-security-practices>; MetroStar Systems, “13 Cybersecurity Best Practices You Should Apply in 2020,” <https://www.metrostarsystems.com/cyber-security/13-cybersecurity-best-practices-apply-2020/>; ObserveIT, “10 Essential Cybersecurity Best Practices for 2019,” <https://www.observeit.com/blog/10-essential-cybersecurity-best-practices-for-2019/>.

¹³ National Institute of Standards and Technology, *Framework for Improving Critical Infrastructure Cybersecurity*, Version 1.1, April 16, 2018, <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>.

system, as Sausalito has done, that will not deliver an email until the recipient verifies that the actual email address of the sender is the same as the purported address.

All email systems should also have filters, sometimes called spam filters, that identify suspicious emails. Rather than letting these emails be delivered, the system “quarantines” them (or it may delete some emails entirely, depending on the security settings). The intended recipient receives a daily email listing all the quarantined emails and can then opt to have the emails he or she deems safe to be delivered. The rest are deleted. The Grand Jury recommends that all Marin cities and towns not only have such filters on their email systems, but also use the highest security settings available, consistent with operational needs.

Password Management

Strong, enforced password policies are essential to network security. If users create easy-to-guess or weak passwords, hackers can easily gain access. Password policies should require users to use complex passwords (using uppercase and lowercase letters, numbers, and special characters), to avoid sharing passwords or using the same password on multiple systems, and to change passwords periodically, at least every six months. With most systems, these policies can be enforced automatically by the system.

User accounts also need to be managed tightly. When an employee leaves the organization, the account should be disabled immediately. In addition, many employees are given access to ancillary accounts, such as the municipality’s website, its social media accounts, its wifi network, and other cloud-based systems. The organization should create documented security procedures to inventory all of these other user accounts and ensure conformity with password policies.

Organizations should be encouraged to use “password managers” where feasible. A password manager is a software program that performs like a vault to store all of your passwords and automatically log you in to a website where you have an account. By making password managers available to staff, the agency enables users to create very complex passwords that do not need to be memorized and to use different complex passwords on every system that they access.

System administrators should also consider deploying “two-factor authentication” in certain cases. In addition to requiring the user to enter a password, this security feature requires the user to provide a second security credential before getting access. Most people have experienced this when they receive a text message containing a special code that must be entered before they can log on to a website. Two-factor authentication certainly should be used to access laptops and other mobile devices. It should also be required when accessing the system from outside the network.

Data and System Backups

Backups make a copy of the data on a computer or server to an alternative location to enable recovery from a data loss or a system lockup. Data should be backed up at least daily, although some systems allow data to be backed up throughout the day, which is better. Server backups should be made regularly to enable servers to be restored entirely from scratch to recover from ransomware attacks and similar outages.

While it is easy to set up a system for regular backups, the system should be tested regularly to confirm that the data can actually be restored. Backups are notorious for failing. Backups should be monitored for failure, and testing should be done at least monthly. The Grand Jury's interviews revealed that city and town officials generally do not know whether their backup systems are ever tested.

Other Best Practices

There are a variety of other best practices that all cities and towns should evaluate for implementation, including these:

- **Management of mobile devices.** Phones, tablets, laptops, and other mobile devices pose special risks because they are more susceptible to being lost or stolen. An agency should either prohibit the use of mobile devices to access government data or ensure that it has a platform to manage mobile devices. This system should include (1) enabling password management controls, (2) requiring two-factor authentication, (3) requiring use of a virtual private network, (4) encrypting all information stored on the mobile device, and (5) enabling "remote wipe" so that when a device is lost, its data can be deleted remotely.
- **Automated malware detection and removal.** Antivirus software on the servers and personal computers can detect and remove malware before it does any damage.
- **Monitoring systems.** Despite best efforts, most systems will end up being penetrated. It is important to have a monitoring system enabling the manager to see what is happening on the system and be alerted immediately when hackers have gained access.
- **Use of expert resources.** Cyber threats are constantly evolving, and it is difficult for the average IT professional to stay current. It is critical to have access to an expert outside resource, especially when performing vulnerability assessments. Free resources such as the MS-ISAC alerts and newsletters can keep city and town managers (or their outside consultants) aware of new threats and risk-reduction techniques.
- **Firewalls.** A firewall is a hardware device or software element that can block and filter outside access to a network. Firewalls should be up to date and deployed with security settings that are as strong as feasible, blocking, for example, all access from outside the United States.
- **Hardware and patching.** Many attacks happen because older computer operating systems are no longer supported and cannot be patched with up-to-date software. It is common to replace computers every three to four years to minimize this problem. Grand Jury interviews revealed that many cities and towns lack any policy on how frequently they replace their equipment.
- **Documentation.** All security measures and policies should be adequately documented and disseminated to ensure that (1) the policies and procedures are understood and capable of being followed, (2) users understand the expectations

placed on them, and (3) when employee turnover occurs, critical information about information security is not lost.

- **Vulnerability assessments.** For organizations that can afford this extra step, a vulnerability assessment involves inventorying all systems, hardware, and software and assessing the points of vulnerability. A vulnerability report typically includes a list of recommended modifications. These assessments are usually performed every few years. Assessments can also include a “probe” element, where a deliberate attempt to gain unauthorized access to a system is made in order to educate users about vulnerabilities.

Municipalities Should Work Together for Increased Security

Forums for Information Sharing and Collaboration

The Grand Jury’s investigation revealed that staff and elected officials in many Marin cities and towns are unaware that other jurisdictions in the county have been successfully attacked. Without this important information about breaches occurring among their peer group, city and town managers, as well as elected officials, are not alerted to the urgent need to reexamine their own security practices and to collaborate with their peers to improve the security of the entire group.

More transparency and better collaborative approaches could help Marin’s smaller cities and towns become more sophisticated in their cybersecurity practices at a reasonable cost. Two existing groups that are well positioned to foster collaboration in this area are the Marin County Council of Mayors & Councilmembers (MCCMC) and the Marin Managers Association (MMA).

One stated purpose of MCCMC is to promote cooperation and collaboration among Marin’s cities and towns “in the solution of mutual problems.”¹⁴ MCCMC has ad-hoc subcommittees devoted to such topics as disaster preparedness, homelessness, pension reform, and climate change, but they have no group devoted to cybersecurity. The Grand Jury’s investigation revealed that MCCMC has not had a focus on helping cities, towns, or other agencies improve their cybersecurity practices. By making cybersecurity a priority and creating a public forum for discussion of the issue, MCCMC could promote greater cybersecurity awareness not only among mayors and councilmembers, but also among the public, local businesses, and nonprofit organizations.

MMA is composed of all of the town and city managers in the county, as well as the county administrator and the executive director of the Marin Municipal Water District. It serves as a forum for the managers not only to share their experiences and best practices for managing Marin’s cities and towns, but also to exchange ideas about how they might share services to lower costs and improve efficiency. The Grand Jury’s investigation revealed that MMA could do a better job of ensuring that experiences like the breaches described in this report are shared

¹⁴ “About,” Marin County Council of Mayors & Councilmembers, accessed April 15, 2020, <http://www.mccmc.org/about/>.

among its members, and that a higher priority is placed on cybersecurity in Marin's cities and towns.

Working in conjunction with the county's chief information security officer, MMA could assist the cities and towns in distilling the above suggestions regarding best practices to a specific list for implementation. In addition, the county's chief information security officer could start a special email list for city and town officials to keep them informed of cybersecurity alerts sent out by federal authorities, as well as provide regular email reminders to city and town staff to be prudent with external emails, attachments, and passwords. All of these efforts could be implemented at minimal cost.

Shared Services

Larger organizations can afford stronger security. For example, the county government has nearly 2,100 employees, more than 70 employees in its IT department, and a substantial IT budget. Marin's two largest cities, San Rafael and Novato, also have substantial IT budgets and devote significant resources to cybersecurity. On the other hand, several of Marin's smaller cities and towns do not have a full-time staff member devoted to IT management, using outside vendors instead.

Marin's cities and towns could turn to the Marin General Services Authority (MGSA) for assistance. MGSA is a joint powers authority formed for the purpose of administering shared programs among the county, cities, and towns.¹⁵ With a shared program, each participant generally contributes a fixed amount per year for MGSA to manage the program. In turn, MGSA generally contracts with an independent consultant to deliver services to the participating jurisdictions.

For example, MGSA could establish a contract with an outside cybersecurity expert, who could then consult with individual cities and towns regarding their vulnerability and actions they could take to improve their security. Members could pay a base fee in exchange for a nominal service level, and then pay extra should they need more extensive consulting services. A shared cybersecurity program could be more effective than each city and town hiring its own consultant, because the MGSA consultant would acquire specific knowledge about the capabilities of the MIDAS wide area network and would not need to relearn those details on each assignment.

Beyond cybersecurity, MGSA might also explore the creation of shared IT procurement standards for cities and towns. For example, every city and town needs a financial management system for its budgeting, fund accounting, and human resources needs. If all the cities and towns were to standardize on the same third-party software, they would be in a much better position to negotiate for lower prices and to create cross-jurisdiction user groups to enhance all users' knowledge of how to use the system effectively. But if each city and town continues to act independently with regard to software selection and purchasing, efficiencies like this will not be possible.

¹⁵ "History and Overview," Marin General Services Authority, accessed April 15, 2020, <http://maringsa.org>.

By moving toward a stronger culture of collaboration regarding IT needs, not just for cybersecurity, cities and towns would be able to enhance their performance while reducing their costs.

MIDAS Enhancements Could Improve Security

The county's MIDAS wide area network has provided a strong and secure backbone for Marin's municipalities for the past 25 years. With its firewalls and redundant, secure connection to the internet, it provides a good first line of defense against cyber criminals. However, as previously discussed, attacks that use fake emails as their entry point are not stopped by MIDAS, and MIDAS does not currently provide malware filtering or antivirus protection. In addition, the Grand Jury heard concerns that MIDAS is too costly and the internet speeds are too slow, which could result in some cities and towns deciding in the future to opt out of the system. This might weaken the security they currently enjoy.

Given the county's strong Information Services and Technology Department and its many years of experience with the MIDAS system, the county is well positioned to provide additional support and resources to Marin's cities and towns regarding cybersecurity.

In 2020, the county is performing a review of the MIDAS system for possible modifications, enhancements, and cost reduction. Modernizing and enhancing MIDAS could provide even more security, which would create a strong motivation for cities and towns to continue using the system or even rely on MIDAS more. Enhancements could include the following:

- Web filtering, where particular websites, especially those known to host malware, could be blocked automatically, or "blacklisted"
- Geo-blocking to block websites from certain countries or regions
- Email filtering to prevent known malware from getting through
- Real-time monitoring dashboards for better management capabilities
- Disaster recovery features

While these enhancements would undoubtedly come at some cost, it may be possible to make them elective for those cities and towns that believe the costs are justified.

Findings

- F1. The Marin County government has a well-developed approach to cybersecurity in general, and a robust architecture and strategy for avoiding breaches.
- F2. The Marin County government has substantial cybersecurity expertise and, as the host and manager of the MIDAS system, is well positioned to assist the cities and towns in developing a common set of best practices regarding cybersecurity.
- F3. Transparency is lacking regarding cybersecurity because past breaches have not been publicly disclosed, and city and town councils have not facilitated public discussion of cybersecurity issues.

- F4. Most elected officials in Marin’s cities and towns are not sufficiently engaged in ensuring robust cybersecurity policies and procedures are in place.
- F5. County and municipal officials and managers have been generally unaware of breaches that have occurred outside their own agencies in Marin and therefore have not felt the need to collaborate on measures to improve cybersecurity.
- F6. Municipalities have been lax in following FBI guidance that cybersecurity breaches be reported to federal law enforcement.
- F7. Marin’s cities and towns have not made a concerted effort to standardize around a common set of best practices with respect to cybersecurity.
- F8. The Marin County Council of Mayors & Councilmembers has not made cybersecurity a priority, which has minimized the awareness and engagement of elected officials in cybersecurity matters.
- F9. The Marin Managers Association has not done enough to facilitate the sharing of cybersecurity information and resources among its members.
- F10. Various low-cost best practices exist that could, if implemented, significantly improve the cybersecurity posture of Marin’s cities and towns.

Recommendations

- R1. Within 120 days of the date of this report, the Marin County Information Services and Technology Department should create an ongoing program to share user education information, other cybersecurity practices, and updates with cities and towns.
- R2. Within 120 days of the date of this report, the Marin County Information Services and Technology Department should complete a plan for enhancing MIDAS to improve cybersecurity for its users.
- R3. Within 120 days of the date of this report, the Marin County Information Services and Technology Department should offer to collaborate with the cities and towns, through the Marin Managers Association or another channel, to develop best practices for cybersecurity in Marin’s cities and towns.
- R4. Starting in fiscal year 2020–2021, the county board of supervisors and the city and town councils should request their managers report, at least annually, regarding their cybersecurity profile and any measures being taken to improve it.
- R5. Starting in fiscal year 2020–2021, the county, cities, and towns should convene periodic discussions, at least annually, in a public forum such as a board or council meeting, regarding the importance of good cybersecurity practices for our government, residents, and other organizations.
- R6. The county and each city and town should adopt a policy to report to federal law enforcement any cybersecurity intrusion that results in financial fraud or unauthorized disclosure of information and make that intrusion public.

- R7. Within 180 days of the date of this report, cities and towns should implement the first four practices described in the Best Practices section of this report, regarding mandatory user training, email flagging and filtering, password management, and backup.
- R8. In fiscal year 2020–2021, cities and towns should complete an analysis of the feasibility of implementing the remainder of the practices described in the Best Practices section of this report.
- R9. In fiscal year 2020–2021, cities and towns should, through the Marin Managers Association, complete an analysis of the feasibility of contracting with a cybersecurity expert to be available to cities and towns on a shared basis, in order to raise the overall level of cybersecurity in Marin’s cities and towns.

Request for Responses

According to the California Penal Code, agencies required to respond to Grand Jury reports generally have no more than 90 days to issue a response. It is not within the Grand Jury’s power to waive or extend these deadlines, and to the Grand Jury’s knowledge, the Judicial Council of California has not done so. But we recognize that the deadlines may be burdensome given current conditions caused by the COVID-19 pandemic.

Whether the deadlines are extended or not, it is our expectation that Marin's public agencies will eventually be able to return to normal operations and will respond to this report. In the meantime, however, public health and safety issues are of paramount importance and other matters might need to wait.

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following governing bodies:

- County of Marin (F1-F2, R1-R3)
- City of Belvedere (F3-F10, R4-R9)
- City of Larkspur (F3-F10, R4-R9)
- City of Mill Valley (F3-F10, R4-R9)
- City of Novato (F3-F10, R4-R9)
- City of San Rafael (F3-F10, R4-R9)
- City of Sausalito (F3-F10, R4-R9)
- Town of Corte Madera (F3-F10, R4-R9)
- Town of Fairfax (F3-F10, R4-R9)
- Town of Ross (F3-F10, R4-R9)
- Town of San Anselmo (F3-F10, R4-R9)
- Town of Tiburon (F3-F10, R4-R9)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code Section 933 (c) and subject to the notice, agenda, and open meeting requirements of the Brown Act.

Note: At the time this report was prepared information was available at the websites listed.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury *not* contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

RESPONSE TO GRAND JURY REPORT FORM

Report Title: Cyberattacks: A Growing Threat to Marin Government
Report Date: May 11, 2020

Response By: San Rafael City Council
Title: Mayor and City Council

FINDINGS:

- We agree with the findings numbered **F3, F7, F10**
- We disagree wholly or partially with the findings numbered **F4, F5, F6, F8, and F9**
(See Attachment A)

RECOMMENDATIONS:

- Recommendations numbered **R4, R7, R8** have been implemented.
- Recommendations numbered **R5, R6, R9** have not yet been implemented, but will be implemented in the future.
- Recommendations numbered **N/A** require further analysis. (See Attachment A)
- Recommendations numbered **N/A** will not be implemented because they are not warranted or are not reasonable.

DATED: _____

Signed: _____

GARY O. PHILLIPS, Mayor

ATTEST: _____

Lindsay Lara, City Clerk

Number of pages attached: 4

**ATTACHMENT A: RESPONSE OF THE CITY OF SAN RAFAEL TO GRAND JURY
REPORT "CYBERATTACKS: A GROWING THREAT TO MARIN GOVERNMENT"**

FINDINGS AND RESPONSES

The responses below have been made from the perspective of the City of San Rafael's experience with cybersecurity. We do not have full insight on the cybersecurity practices of other Cities and Towns in Marin County.

F3. Transparency is lacking regarding cybersecurity because past breaches have not been publicly disclosed, and city and town councils have not facilitated public discussion of cybersecurity issues.

Response: Agree

The City of San Rafael has not experienced a security breach that would require public disclosure. We will develop a mechanism and policy that clarifies public reporting of breaches, should one occur.

F4. Most elected officials in Marin's cities and towns are not sufficiently engaged in ensuring robust cybersecurity policies and procedures are in place.

Response: Disagree

The San Rafael City Council has regularly made the maintenance and upgrade of cybersecurity practices a part of the City's annual goals and objectives. Over the past several years, the Mayor and City Manager have received periodic updates on the status of the City's cybersecurity goals and programs. These updates include past, ongoing, in-progress, and upcoming efforts regarding security for network infrastructure, desktop, mobile devices, users, internal processes, and disaster recovery. They also include information about known attempted ransomware attacks.

F5. County and municipal officials and managers have been generally unaware of breaches that have occurred outside their own agencies in Marin and therefore have not felt the need to collaborate on measures to improve cybersecurity.

Response: Disagree partially

The City of San Rafael has not consistently been made aware of breaches outside of our agency,

however issues of cybersecurity have been discussed by the Marin Managers Association.

F6. Municipalities have been lax in following FBI guidance that cybersecurity breaches be reported to federal law enforcement.

Response: Disagree

The City of San Rafael maintains Department of Justice compliant network connectivity to serve our Police Department and has a process for reporting breaches to federal authorities.

F7. Marin's cities and towns have not made a concerted effort to standardize around a common set of best practices with respect to cybersecurity.

Response: Agree

We agree that more can be done to share cybersecurity best practices. While the strategy and approach to cybersecurity in Marin cities and towns have not been standardized amongst all jurisdictions, most of the cities and towns utilizing the MIDAS network share the network security protocols in place for MIDAS and a number of cities and towns have relied on a common service provider to implement local network security solutions through Marin IT. The City of San Rafael will work with the recently formed Marin Information Security Collaboration (MISC) between Marin County regional agencies to develop and share best practices for cybersecurity.

F8. The Marin County Council of Mayors & Councilmembers has not made cybersecurity a priority, which has minimized the awareness and engagement of elected officials in cybersecurity matters.

Response: Disagree partially

While the Marin County Council of Mayors & Councilmembers (MCCMC) have not made cybersecurity a major focus over other pressing regional issues, the San Rafael City Council has made cybersecurity a priority through the City's annual goals. We are not aware of all topics (including cybersecurity) that may have been considered by MCCMC subcommittees. For the past several years, the City Manager and Mayor have been briefed on the status of our security program, long-term projects, and actions-to-date related to the security of the City's network.

F9. The Marin Managers Association has not done enough to facilitate the sharing of

cybersecurity information and resources among its members.

Response: Disagree

In December 2019, the City of San Rafael made an hour-and-a-half presentation to the Marin Managers Association's Strategic Retreat about a recent overhaul of our IT service delivery model (including cybersecurity). Our presentation included a consultant we hired to conduct an assessment of our service model and the president of the company who manages our cybersecurity.

RECOMMENDATIONS AND RESPONSES

R4. Starting in fiscal year 2020–2021, the county board of supervisors and the city and town councils should request their managers report, at least annually, regarding their cybersecurity profile and any measures being taken to improve it.

Response: This recommendation has been implemented.

Historically, the City of San Rafael's Information Technology Division, now the Digital Service and Open Government Department, has provided periodic reports to the City Manager and the Mayor on current cybersecurity risk and threat assessments and actions underway by City staff to combat these threats. City staff will continue to provide these reports at the request of the Mayor and City Manager on a periodic basis.

R5. Starting in fiscal year 2020–2021, the county, cities, and towns should convene periodic discussions, at least annually, in a public forum such as a board or council meeting, regarding the importance of good cybersecurity practices for our government, residents, and other organizations.

Response: This recommendation has not yet been implemented, but will be implemented in the future.

City of San Rafael employees, elected officials, and anyone with access to the City network are required to participate in regular cybersecurity training and receive email updates to current and trending security threats. The City periodically sends out public communications about known scams and prevention measures. The City will continue to explore additional means for educating the public about cybersecurity and work with the County of Marin to promote countywide public awareness campaigns.

R6. The county and each city and town should adopt a policy to report to federal law enforcement any cybersecurity intrusion that results in financial fraud or unauthorized

disclosure of information and make that intrusion public.

Response: This recommendation has not yet been implemented, but will be implemented in the future.

The City of San Rafael has not had any recent cybersecurity breaches, financial fraud, or unauthorized disclosure of information that have required the reporting to federal law enforcement. If the City of San Rafael were to become victim to any of the above attacks staff would work closely with all law enforcement personnel, including federal law enforcement, as required to properly respond to the threat. While we have a process for reporting breaches, we will develop a policy consistent with the above recommendation.

The County of Marin has access to existing security policy templates that have been developed in collaboration with the California Counties Information Services Director's Association (CCISDA) Information Security Council (ISC). These templates will be shared with the members of the recently formed Marin Information Security Collaboration (MISC) and will be considered for updates to the City of San Rafael's own security policies.

R7. Within 180 days of the date of this report, cities and towns should implement the first four practices described in the Best Practices section of this report, regarding mandatory user training, email flagging and filtering, password management, and backup.

Response: This recommendation has been implemented.

The City of San Rafael currently follows the first four practices described in this report. Network security is currently managed by the City's managed service provider, Xantrion Inc., who monitors and responds to threats, provides network backups, and manages cybersecurity training. Staff is required to participate in annual security training including email updates on current threats, phishing simulations, regular password changes. We also have measures in place for email flagging, spam filtering, and regular backups of City files and servers. Mobile device management has been implemented in our Police Department and we are currently working to expand mobile device security and management throughout the organization. We have started requiring multi-factor authentication for City staff who have access to City networks and documents, and plan to have this rolled out to all users by the end of the summer.

R8. In fiscal year 2020–2021, cities and towns should complete an analysis of the feasibility of implementing the remainder of the practices described in the Best Practices section of this report.

Response: This recommendation has been implemented.

The City of San Rafael is committed to protecting information and data from external threats. We have conducted a security analysis of the City of San Rafael network and systems and our Managed Service Provider Xantrion is working to implement recommendations on an ongoing basis. Some measures require more funding than is currently available however we are committed to implementing as many of the best practices as is financially feasible.

R9. In fiscal year 2020–2021, cities and towns should, through the Marin Managers Association, complete an analysis of the feasibility of contracting with a cybersecurity expert to be available to cities and towns on a shared basis, in order to raise the overall level of cybersecurity in Marin’s cities and towns.

Response: This recommendation has not yet been implemented, but will be implemented in the future.

The City of San Rafael currently contracts with cybersecurity experts who assist in the management of training, backup, and response. The City Manager will work with the Marin Managers Association to discuss shared resources and recommendations based on the success of our program and the consideration of shared cybersecurity services.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF SAN RAFAEL'S RESPONSE TO THE 2019-2020 MARIN COUNTY CIVIL GRAND JURY REPORT ENTITLED, "CYBERATTACKS: A GROWING THREAT TO MARIN GOVERNMENT"

WHEREAS, pursuant to Penal Code section 933, a public agency which receives a Grand Jury Report addressing aspects of the public agency's operations must, within ninety (90) days, provide a written response to the Presiding Judge of the Superior Court, with a copy to the Foreperson of the Grand Jury, responding to the Report's findings and recommendations; and

WHEREAS, Penal Code section 933 specifically requires that the "governing body" of the public agency provide said response and, in order to lawfully comply, the governing body must consider and adopt the response at a noticed public meeting pursuant to the Brown Act; and

WHEREAS, the City Council of the City of San Rafael has received and reviewed the Marin County Grand Jury Report, dated May 11, 2020, entitled "Cyberattacks: A Growing Threat to Marin Government", and has added the discussion of this report to the July 6, 2020 City Council meeting agenda to consider the City's response.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael hereby:

1. Approves and authorizes the Mayor to execute the City's response to the Marin County Grand Jury's May 11, 2020 report, entitled "Cyberattacks: A Growing Threat to Marin Government", a copy of which is attached hereto and incorporated herein by reference.
2. Directs the City Clerk to forward the City's response forthwith to the Presiding Judge of the Marin County Superior Court and to the Foreperson of the Marin County Grand Jury.

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 San Rafael City Council held on the 6th day of July 2020, by the following vote to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk