



AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, AUGUST 17, 2020

REGULAR MEETING AT 7:00 P.M.

Telephone: (669) 900-9128,

ID: 835-5946-7965#

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, August 3, 2020 (CC)

Recommended Action – Approve minutes as submitted

b. Consent to Concurrent Representation

Resolution Approving and Authorizing the Mayor to Execute a Consent to Concurrent Representation of the City of San Rafael and the Marin Wildfire Protection Authority by the Epstein + Holtzapfle Law Firm (CA)

Recommended Action – Adopt Resolution

c. San Rafael High School Pedestrian Crosswalk

Resolutions Related to the Third Street Pedestrian Crosswalk Improvements Project, City Project No. 11354 (PW):

i. Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Third Street Pedestrian Crosswalk Improvements Project with Sposeto Engineering, Inc., in the Amount of \$389,939 and Authorizing Contingency Funds in the Amount of \$60,061 for a Total Appropriated Amount of \$450,000

Recommended Action – Adopt Resolution

ii. Resolution Approving and Authorizing the City Manager to Execute a Memorandum of Understanding with San Rafael City Schools Regarding Cooperation on Construction of the Third Street Pedestrian Crosswalk Improvements

Recommended Action – Adopt Resolution

OTHER AGENDA ITEMS

5. Other Agenda Items:

a. Police Use of Force Policy

Proposed Revisions to the City of San Rafael Police Department's Use of Force Policy (PD)

Recommended Action – Accept report

b. Agreement Granting to Centertown II, LLC an Option to Lease 855 C Street

Resolution Approving and Authorizing the City Manager to Execute An Agreement Granting to Centertown II, LLC an Option to Lease the Real Property Located at 855 C Street in the City of San Rafael (CD)

Recommended Action – Adopt Resolution

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:

(including AB 1234 Reports on Meetings and Conferences Attended at City Expense)

6. Councilmember Reports:

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

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MINUTES

SAN RAFAEL CITY COUNCIL – MONDAY, AUGUST 3, 2020

REGULAR MEETING AT 7:00 P.M.

Telephone: (669) 900-9128,

ID: 859-7732-5943#

CORONAVIRUS (COVID-19) ADVISORY NOTICE

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

Absent: None

Also Present: City Manager Jim Schutz
City Attorney Rob Epstein
City Clerk Lindsay Lara

OPEN SESSION - (669) 900-9128, MEETING ID 851-2675-0545# - 5:30 PM

1. Mayor Phillips announced Closed Session items.

CLOSED SESSION - (669) 900-9128, MEETING ID: 851-2675-0545#- 5:30 PM

2. Closed Session:
 - a. Conference with Labor Negotiators; Government Code Section 54957.6
Agency Designated Representatives: (Jim Schutz, Cristine Alilovich, Diana Bishop)
Employee Organization: San Rafael Police Association, San Rafael Police Mid-Managers Association
 - b. Conference with Real Property Negotiators
Government Code Section 54956.8
Property: 815 C Street and 855 C Street
Agency negotiators: Ethan Guy; Gerald Ramiza, Special Counsel; Elizabeth Seifel, Real Estate

Advisor
Negotiating parties: Centertown Associates Ltd.
Under Negotiation: Price and Terms of Payment of Ground Lease Option

REGULAR MEETING - VIRTUAL MEETING
Telephone: (669) 900-9128,
ID: 859-7732-5943#

Mayor Phillips called the meeting to order at 7:05 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.

City Attorney Rob Epstein announced that no reportable action was taken in Closed Session

CITY MANAGER'S REPORT:

3. City Manager's Report:

City Manager Jim Schutz provided updates on:

- the Police Department's use of force policy
- COVID-19 and the City's response
- Dining Under the Lights
- Coronavirus at San Quentin

Mayor Phillips commented on the City Manager's Report

OPEN TIME FOR PUBLIC EXPRESSION – 7:00 PM

Mayor Phillips invited public comment; however, there was none

CONSENT CALENDAR:

Mayor Phillips invited public comment on the Consent Calendar; however, there was none

Councilmember Colin moved and Councilmember Bushey seconded to approve the Consent Calendar

4. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council / Successor Agency Regular Meeting of Monday, July 20, 2020 (CC)

Approved minutes as submitted

b. **Nine-Year, One-Quarter Percent Transactions and Use Tax Ballot Measure**

Report on the City Attorney's Impartial Analysis of the San Rafael Transactions and Use Tax ballot measure on the November 3, 2020 General Municipal Election Ballot; and Authorize Mayor Phillips and/or His Designee to Prepare an Argument in Favor of the Measure and to Prepare a Rebuttal Argument in Opposition to Any Arguments Against the Measure, to be Published in the Ballot Materials for the November 3, 2020 General Municipal Election (CA)

Accepted report and approved staff recommendation

c. Southern Heights Bridge Replacement

Resolution Approving and Authorizing the City Manager to Execute a Professional Services Agreement with Substrate, Inc. for Construction Management, Inspection, and Materials Testing Services Associated with the Southern Heights Boulevard Bridge Replacement Project, City Project No. 11282, In an Amount Not to Exceed \$425,000 Funded by the Highway Bridge Program Grant (PW)

Resolution 14846 - Resolution Approving and Authorizing the City Manager to Execute a Professional Services Agreement with Substrate, Inc. for Construction Management, Inspection, and Materials Testing Services Associated with the Southern Heights Boulevard Bridge Replacement Project, City Project No. 11282, In an Amount Not to Exceed \$425,000 Funded by the Highway Bridge Program Grant

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

OTHER AGENDA ITEMS

5. Other Agenda Items:

a. [Wildfire Prevention In San Rafael](#)

Informational Report on the Marin Wildfire Prevention Authority and Current Activities that Reduce Wildfire Risk in San Rafael; and Resolution Accepting the City of San Rafael’s Final Wildfire Prevention and Protection Action Plan (FD)

Darin White, Fire Chief, and Quinn Gardner, Emergency Manager presented the staff report

Staff responded to comments and questions from Councilmembers

Mayor Phillips invited public comment

Speakers: Bill Carney, Sustainable San Rafael, Kate Powers

Councilmember Bushey moved and Councilmember Colin seconded to accept the report and adopt the resolution

Accepted report and Resolution 14847 - Resolution Accepting the City of San Rafael’s Final Wildfire Prevention and Protection Action Plan

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

b. [Canal Wi-Fi Network](#)

Update about the Canal Wi-Fi Network Project (DS)

Rebecca Woodbury, Digital Service and Open Government Director, and Javier Trujillo, County of Marin Chief Assistant Director of Information Services and Technology presented the staff report

Staff responded to comments and questions from Councilmembers

Mayor Phillips invited public comment

Speakers: Name withheld

Staff responded to public comment

Councilmember McCullough moved and Councilmember Colin seconded to accept the report

Accepted report

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

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:

(including AB 1234 Reports on Meetings and Conferences Attended at City Expense)

6. Councilmember Reports:

- Councilmember Colin reported on Marin Transit ridership impacts due to COVID-19.

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None

ADJOURNMENT:

Mayor Phillips adjourned the meeting at 8:49 p.m.

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SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: CITY ATTORNEY

Prepared by: Lisa Goldfien, Asst. City Attorney

City Manager Approval: _____

TOPIC: CONSENT TO CONCURRENT REPRESENTATION

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CONSENT TO CONCURRENT REPRESENTATION OF THE CITY OF SAN RAFAEL AND THE MARIN WILDFIRE PROTECTION AUTHORITY BY THE EPSTEIN + HOLTZAPPLE LAW FIRM

RECOMMENDATION:

Staff recommends the City Council adopt a resolution authorizing the Mayor to execute the attached Consent to Concurrent Representation of the City and the Marin Wildfire Protection Authority by the law firm of Epstein + Holtzapple LLP.

BACKGROUND:

San Rafael City Attorney, Rob Epstein, is also a partner in the law firm of Epstein + Holtzapple LLP ("E+H") in San Rafael. E+H was recently hired for the position of general counsel to the newly formed Marin Wildfire Prevention Authority ("MWPA"). The City is a member of the MWPA. Attorney Megan Acevedo will be E+H's primary attorney representing the MWPA. (Ms. Acevedo also serves as Town Attorney for San Anselmo, which also is a member of MWPA.)

Rule 1.7 of the California State Bar's Rules of Professional Conduct provides that a lawyer shall not, without informed written consent from each affected client, represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client. Moreover, such representation is only allowed if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

ANALYSIS:

City Attorney Rob Epstein has prepared the attached "Clients' Consent to Concurrent Representation" which contains the disclosures and assurances set forth in Rule 1.7.

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

As explained in the Consent document, Mr. Epstein and E+H do not believe there is a “significant risk” that E+H's representation of MWPA and Mr. Epstein's representation of the City will be materially limited by their responsibilities to or relationships with either of the two entities. The Consent also confirms that Mr. Epstein and E+H will ensure that each entity's confidential information is not shared with the other entity, and that they are aware of no current conflict of interest between the two entities. If in the future, either E+H, Mr. Epstein, or the City concludes that a conflict of interest does exist, Mr. Epstein and E+H will take steps to eliminate that conflict.

Staff agrees that at present, there appears to be no conflict of interest between San Rafael and the MWPA that would limit the effectiveness of Rob Epstein's representation of San Rafael, and therefore recommends that the City Council authorize the Mayor to execute the Consent document.

FISCAL IMPACT:

There is no fiscal impact associated with this action.

OPTIONS:

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

1. Adopt the resolution approving the Consent to Concurrent Representation.
2. Do not adopt the resolution.
3. Direct staff to return with more information.

RECOMMENDED ACTION:

Adopt the resolution approving the Consent to Concurrent Representation.

ATTACHMENTS:

1. Resolution Approving and Authorizing the Mayor to Execute the Consent to Concurrent Representation with attachment: Clients' Consent to Concurrent Representation

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CONSENT TO
CONCURRENT REPRESENTATION OF THE CITY OF SAN RAFAEL AND THE MARIN
WILDFIRE PROTECTION AUTHORITY BY THE EPSTEIN + HOLTZAPPLE LAW FIRM**

WHEREAS, San Rafael City Attorney Robert Epstein is also a partner in the law firm of Epstein + Holtzapple LLP ("E+H") in San Rafael; and

WHEREAS, E+H was recently hired for the position of general counsel to the newly formed Marin Wildfire Prevention Authority ("MWPA"), with attorney Megan Acevedo to act as E+H's primary attorney representing the MWPA; and

WHEREAS, the City of San Rafael is a member of the MWPA; and

WHEREAS, Rule 1.7 of the California State Bar's Rules of Professional Conduct provides that a lawyer shall not, without informed written consent from each affected client, represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client. Moreover, such representation is only allowed if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

WHEREAS, Mr. Epstein and E+H do not believe there is a "significant risk" that E+H's representation of MWPA and Mr. Epstein's representation of the City will be materially limited by their responsibilities to or relationships with either of the two entities, and the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

WHEREAS, Mr. Epstein and E+H have confirmed that they will ensure that each entity's confidential information is not shared with the other entity; and

WHEREAS, Mr. Epstein and E+H have confirmed that they are aware of no current conflict of interest between the two entities; if in the future, either E+H, Mr. Epstein, or the City concludes that a conflict of interest does exist, Mr. Epstein and E+H will take steps to eliminate that conflict;

NOW, THEREFORE IT IS HEREBY RESOLVED that the City Council does hereby approve and authorize the Mayor to execute the attached "Clients' Consent to Concurrent Representation" of the City of San Rafael and the Marin Wildfire Protection Authority by Robert Epstein and the law firm of Epstein + Holtzapple LLP.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, do 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 17th day of August 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

Clients' Consent to Concurrent Representation

Epstein + Holtzapple LLP ("the Firm") has been requested to represent the Marin Wildfire Prevention Authority ("MWPA"). Megan Acevedo will be the primary attorney working for the MWPA.

Rob Epstein is a partner in the Firm. Mr. Epstein also serves as part-time City Attorney for the City of San Rafael ("the City"). We are seeking your consent to this concurrent representation.

Under Rule 1.7 of the California Rules of Professional Conduct, a lawyer shall not, without informed written consent from each affected client, represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client. Pursuant to this rule, concurrent representation under such circumstances is permitted only if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal. (Cal. Bar RPC, Rule 1.7(d)).

The Firm and Mr. Epstein believe that the Firm's representation of MWPA and Mr. Epstein's representation of the City do not present such a "significant risk." Nevertheless, we note that the Firm believes that it will be able to provide competent and diligent representation to MWPA, while Mr. Epstein believes that he will be able to continue to provide competent and diligent representation to the City. This concurrent representation is permitted by law and does not involve the assertion of a claim by one client against the other in any proceeding before a tribunal.

We do not anticipate the Firm's representation of MWPA to interfere with the work that Mr. Epstein does for the City. Mr. Epstein will continue to serve as City Attorney and work closely with City staff and officials to offer advice on a broad range of legal issues that impact the City, including land use, emergency response, open meeting laws, and public contracting.

We similarly do not anticipate Mr. Epstein's representation of the City to interfere with the work that the Firm will do for MWPA. MWPA is a newly formed joint powers authority made up of 17 member agencies from across Marin, including the City. The Firm will serve as General Counsel for the MWPA and its Board of Directors. Ms. Acevedo will assist the Board and staff with legal issues related to government transparency, environmental compliance, and other questions that may arise as the Board develops and implements a comprehensive wildfire prevention and emergency preparedness plan for most of Marin County.

The Firm and Mr. Epstein will ensure that each client's confidential information will not be shared. The Firm and Mr. Epstein are aware of no current conflicts of interest, though it is possible that a conflict could develop. If either client believes that they see a conflict of interest, or if either or both believe concurrent representation is no longer in their individual or joint interest, we ask that you notify the Firm and Mr. Epstein. If a conflict occurs, we will discuss the potential need for hiring outside counsel in relation to the conflict.

Please be aware that MWPA and the City are invited to seek independent counsel at any time, regardless whether this consent form has been executed.

Dated: 8/4/20

EPSTEIN + HOLTZAPPLE LLP

By: _____

Robert F. Epstein

Partner

Client Consent

I have read and understand this consent to concurrent representation . I have had adequate opportunity to review it, and to decide whether to discuss it with separate counsel. I consent to the concurrent representation on the conditions stated above.

Dated: _____

CITY OF SAN RAFAEL

By: _____

Gary Phillips

Mayor

Dated: _____

MARIN WILDFIRE PREVENTION AUTHORITY

By: _____

Bruce Goines

President, Board of Directors



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: _____

TOPIC: SAN RAFAEL HIGH SCHOOL PEDESTRIAN CROSSWALK

SUBJECT: RESOLUTIONS RELATED TO THE THIRD STREET PEDESTRIAN CROSSWALK IMPROVEMENTS PROJECT, CITY PROJECT NO. 11354:

- 1. RESOLUTION AWARDDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE THIRD STREET PEDESTRIAN CROSSWALK IMPROVEMENTS PROJECT WITH SPOSETO ENGINEERING, INC. IN THE AMOUNT OF \$389,939 AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$60,061 FOR A TOTAL APPROPRIATED AMOUNT OF \$450,000**
- 2. RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH SAN RAFAEL CITY SCHOOLS REGARDING COOPERATION ON CONSTRUCTION OF THE THIRD STREET PEDESTRIAN CROSSWALK IMPROVEMENTS**

RECOMMENDATION: Staff recommends that the City Council:

1. Adopt the resolution awarding and authorizing the City Manager to execute a construction agreement with Sposeto Engineering, Inc. in the amount of \$389,939 and authorizing contingency funds in the amount of \$60,061.
2. Adopt the resolution authorizing the City Manager to execute a Memorandum of Understanding (MOU) with the San Rafael City Schools regarding cooperation on construction of the Third Street Pedestrian Crosswalk Improvements Project (Crosswalk Project).

BACKGROUND: San Rafael High School, located at 150 Third Street, is one of two high schools located in San Rafael. Third Street is impacted by the large number of students crossing this busy corridor throughout the day. To increase the safety of all pedestrians in this area, specifically students, the City and San Rafael City Schools (SRCS) desire to partner to construct a pedestrian crosswalk between the high school and Montecito Plaza shopping center on Third Street.

In 2019, SRCS responded to a call for applications issued by the Transportation Authority of Marin (TAM) for grant funding under the Safe Pathways to School program. On October 24, 2019, the TAM Board of Commissioners approved funding of SRCS's application in the amount of \$400,000

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

to fund the Crosswalk Project. With grant funding secured, SRCS retained a consultant to secure environmental clearance under the California Environmental Quality Act (CEQA) and prepare engineering drawings. SRCS spent approximately \$67,000 on this work. To capitalize on the City's expertise in delivering construction projects in the public right of way, SRCS has requested the City administer the construction phase of the Crosswalk Project using the remaining grant funds received by SRCS.

ANALYSIS: In addition to the actual construction contract, staff proposes to enter into an MOU delineating the roles and responsibilities for the project between the City and SRCS. Therefore, staff is recommending the City Council approve two separate agreements, as set forth below.

1. Resolution re Award of Construction Contract

On June 25, 2020, the project was advertised in accordance with San Rafael's Municipal Code and on July 29, 2020 at 10:30 AM, the following bids were received:

<u>NAME OF BIDDER</u>	<u>AMOUNT</u>
Sposeto Engineering, Inc.	\$389,939.00
FBD Vanguard Construction, Inc.	\$416,247.00
ERA.CO	\$424,509.60
CF Contracting	\$436,244.00
Ghilotti Bros, Inc.	\$437,447.00
Kerek Engineering, Inc.	\$498,625.00

The construction bids have been reviewed by Public Works staff and the low bid from Sposeto Engineering, Inc., in the amount of \$389,939, was found to be both responsive and responsible. City staff recommend awarding the construction contract to Sposeto Engineering, Inc. for the bid amount, and recommend the City Council authorize a construction contingency of approximately 15 percent for the project in an amount of \$60,061.

The recommended resolution (Attachment 1) therefore authorizes a construction budget of \$450,000 (\$389,939 + \$60,061 in contingency funds).

2. Resolution re Memorandum of Understanding with San Rafael City Schools

The City has agreed to provide staff time to manage the construction contract as well as participate financially in the project. The City and SRCS developed an MOU to memorialize their respective rights and obligations with respect to construction of the project (Attachment 4). Key elements of the MOU include:

- SRCS will commit the full \$400,000 TAM grant to help deliver the Crosswalk Project. However, project expenses including design work, construction, and construction management, will exceed the grant funding. The City and SRCS agree to share expenses above and beyond the grant funding equally between the City and SRCS. To date, SRCS has expended approximately \$67,000 for design and environmental work. Therefore, the anticipated total cost of the project is approximately \$517,000. \$400,000 will be paid for through the TAM grant and the balance will be split 50/50 between the City and SRCS, or approximately \$58,500 each.
- The City will administer the construction contract.

The recommended resolution (Attachment 3) authorizes the City Manager to execute the MOU subject to final approval as to form by the City Attorney.

PUBLIC OUTREACH: City staff have reached out to the Point San Pedro Road Coalition, Villa Real Homeowners Association, Montecito Area Residents Association, and the ownership of Montecito Shopping Center Coalition. The School Board, which includes parents and the principal, have also been notified of this upcoming project.

If the City Council approves this project to proceed, Public Works will renew outreach by contacting affected neighbors, businesses, and other groups to ensure that the public is aware of the upcoming construction project. This will be accomplished using various social media channels, the City website, and changeable message signs located near the project site.

FISCAL IMPACT: Staff recommends the City Council approve a contract amount of \$389,939 and a contingency amount of \$60,061 for a total of \$450,000. Though the City is entering into the contract with Sposeto Engineering, SRCS has agreed to provide funding for \$400,000 and for half of the cost in excess of that amount. Staff proposes an increase to appropriations in Gas Tax Funds (Fund#206) of \$450,000 to fund this project, of which \$400,000 will be reimbursed by SRCS.

OPTIONS:

1. Adopt the resolutions as presented, awarding the construction contract to Sposeto Engineering, Inc. and authorizing the MOU with SRCS.
2. Do not award the contract and direct staff to rebid the project. If this option is chosen, rebidding will delay construction by approximately two months and will not jeopardize the grant funding.
3. Do not award the contract and direct staff to stop work on the project. If the City does not advance the project into construction, the grant will expire, and SRCS will lose the funding.

ATTACHMENT:

1. Resolution Awarding Construction Contract to Sposeto Engineering, Inc.
2. Draft Construction Contract with Sposeto Engineering, Inc.
3. Resolution Authorizing Execution of a MOU with SRCS
4. Exhibit 1 to Resolution: MOU and corresponding Exhibit A ("Project Plans")

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE THIRD STREET PEDESTRIAN CROSSWALK IMPROVEMENTS PROJECT WITH SPOSETO ENGINEERING, INC., IN THE AMOUNT OF \$389,939, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$60,061 FOR A TOTAL APPROPRIATED AMOUNT OF \$450,000

WHEREAS, on the 16th day of July 2020, pursuant to due and legal notice published in the manner provided by law, inviting sealed bids or proposals for the work hereinafter mentioned, as more fully appears from the Affidavit of Publication thereof on file in the office of the City Clerk of the City of San Rafael, California, the City Clerk of said City did publicly open, examine, and declare all sealed bids or proposals for doing the following work in said City, to wit:

“Third Street Pedestrian Crosswalk Improvements”

City Project No. 11354

in accordance with the plans and specifications therefore on file in the office of the Department of Public Works; and

WHEREAS, the bid of \$389,939 from Sposeto Engineering, Inc., at the unit prices stated in its bid, was and is the lowest and best bid for said work and said bidder is the lowest responsible bidder; and

WHEREAS, staff has recommended that the project budget include a contingency amount of \$60,061;

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

1. The bid of Sposeto Engineering, Inc. is hereby accepted at the unit prices stated in its bid, and the contract for said work and improvements is hereby awarded to Sposeto Engineering, Inc., at the stated unit prices.
2. The City Manager is authorized and directed to execute a contract with Sposeto Engineering, Inc., for the bid amount, subject to final approval as to form by the City Attorney, and to return the bidder's bond upon the execution of the contract.

3. Funds totaling \$400,000 will be appropriated for this project from the City Gas Tax Fund #206 and will be reimbursed by the City and San Rafael City Schools through the Transportation Authority of Marin (TAM) Safe Pathways to School Program grant.
4. Funds totaling \$50,000 will be appropriated for this project from City Gas Tax Fund #206 to support the project above and beyond the TAM grant funding.
5. 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 City Council of said City held on Monday, the 17th day of August 2020 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

Contract

This public works contract ("Contract") is entered into by and between the City of San Rafael ("City") and Sposeto Engineering, Inc. ("Contractor"), for work on the Third Street Pedestrian Improvements Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On August 17, 2020, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Plans and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 Uniform Standards All Cities and County of Marin (available online at: <https://www.marincounty.org/-/media/files/departments/pw/engineering/2018-ucs-complete-set.pdf?la=en>); and
 - 2.14 The following: No Other Documents
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents, and in full compliance with Laws.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$389,939 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 40 working days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$500 per day for each day of unexcused delay in

completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

7. Labor Code Compliance.

7.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

7.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

7.3 DIR Registration. City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. **Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

City Clerk's Office
1400 Fifth Avenue, Room 209
San Rafael, CA 94901
Attn: City Clerk

Copy to: Director of Public Works
Email: Bill.Guerin@cityofsanrafael.org

Contractor:

Name: Sposeto Engineering, Inc.
Address: 4558 Contractors Place
City/State/Zip: Livermore, CA 94551
Phone: (925) 443-4200
Attn: John P. Sposeto
Email: johns@sposetoengineering.com

12. **General Provisions.**

- 12.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 **Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract.
- 12.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Marin County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Marin County, California.
- 12.4 **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 **Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 **Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 **Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

12.8 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313. If Contractor is a partnership, a signature from a general partner with authority to bind the partnership is required.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

s/ _____

s/ _____

Jim Schutz, City Manager

Robert F. Epstein, City Attorney

Date: _____

Date: _____

Attest:

s/ _____

Lindsay Lara, City Clerk

Date: _____

CONTRACTOR:

_____ Business Name

s/ _____

Seal:

Name, Title

Date: _____

Second Signature (See Section 12.8):

s/ _____

Name, Title

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH SAN RAFAEL CITY SCHOOLS REGARDING COOPERATION ON CONSTRUCTION OF THE THIRD STREET PEDESTRIAN CROSSWALK IMPROVEMENTS

WHEREAS, the voters of Marin County approved the authorization of Measure AA at General Elections held on November 6, 2018, thereby authorizing that Transportation Authority of Marin (TAM) be given the responsibility to administer the proceeds from a one-half cent transactions and use tax; and

WHEREAS, Measure AA financially supports TAM's Safe Pathways to School projects aimed at making capital improvements to enhance the safety of school trips; and

WHEREAS, the City of San Rafael and San Rafael City Schools (SRCS) have determined that it is desirable to create a new pedestrian crossing between San Rafael High School and Montecito Plaza shopping center (hereafter, the "Project"); and

WHEREAS, in 2019, SRCS responded to a call for applications under Cycle 4 of the Safe Pathways to School program, and on October 24, 2019, the TAM Board of Commissioners approved funding of SRCS's application in the amount of \$400,000 to fund the Project; and

WHEREAS, SRCS has prepared the design of the Project and has requested the City to administer the construction contract on their behalf and to participate in the funding of the Project; and

WHEREAS, SRCS and the City wish to cooperate to allow the Project to be expeditiously completed in a manner consistent with TAM Funding Agreement A-FY 20-33 requirements; and

WHEREAS, SRCS and the City wish to enter into a Memorandum of Understanding to memorialize their respective rights and obligations with respect to construction of the Project;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael hereby approves and authorizes the City Manager to execute the Memorandum

MEMORANDUM OF UNDERSTANDING

SAN RAFAEL CITY SCHOOLS AND CITY OF SAN RAFAEL

This Memorandum of Understanding ("Agreement") is entered into as of this ____ day of July, 2020, by and between the San Rafael City Schools (SRCS) Board of Education, a school district duly established under the laws of California ("SRCS") and the City of San Rafael, a California Charter City ("City"), (collectively referred to as the "Parties").

RECITALS

- A. The voters of Marin County approved the authorization of Measure AA at General Elections held on November 6, 2018 thereby authorizing that Transportation Authority of Marin (TAM) be given the responsibility to administer the proceeds from a one-half cent transaction and use tax.
- B. Measure AA financially supports TAM's Safe Pathways to School projects aimed at making capital improvements to enhance the safety of school trips.
- C. The Parties have determined that certain infrastructure located within City right of way is desirable. The Parties desire to create a new pedestrian crossing between San Rafael High School and Montecito Plaza shopping center, as more particularly described below (hereafter, the "Third Street Pedestrian Crosswalk Project" or "Project").
- D. In 2019, SRCS responded to a call for applications under Cycle 4 of the Safe Pathways to School program, and on October 24, 2019, the TAM Board of Commissioners approved funding of SRCS's application in the amount of \$400,000 to fund the Project, \$66,161.25 of which is specifically designated for design of the Project.
- E. SRCS has prepared the design of the Project and both Parties desire the City to administer the construction contract and to participate in the funding of the Project.
- F. The Parties wish to cooperate to allow the Project to be expeditiously completed in a manner consistent with TAM Funding Agreement A-FY 20-33 requirements attached hereto as Exhibit C, and to enter into this Memorandum of Understanding to memorialize their respective rights and obligations with respect to construction of the Project.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, SRCS and City agree as follows:

1. RECITALS

A. The above recitals are true and correct and are hereby incorporated in and expressly form a part of this Agreement.

2. COORDINATION

A. City shall coordinate all work on the Project with SRCS’s Dan Zaich, Senior Director of Capital Facilities, or his designee (“SRCS Representative”). SRCS shall coordinate all work on the Project with Bill Guerin, City’s Public Works Director, or his designee (“City Representative”). The City Representative and SRCS Representative will participate in decision making regarding the Project and resolve issues in a timely manner. Contact information for the Parties’ respective representatives are as follows:

SRCS Representative	City Representative
Dan Zaich, or designee	Bill Guerin, or designee
Director of Capital Facilities San Rafael City Schools (SRCS) 310 Nova Albion Way San Rafael, CA 94903	Public Works Director City of San Rafael 111 Morpew Street San Rafael, CA 94901
Phone: 415.492.3200	Phone: 415.485.3110
Email: dzaich@srcs.org	Email: bill.guerin@cityofsanrafael.org

B. The City Representative shall have, on behalf of City, the authority to make decisions, commit to financial obligations, and authorize major road and lane closures. The SRCS Representative shall not have authority to direct City or

City's Contractor, except with respect to any portion of the Project installed or constructed on or otherwise involving District property.

3. THIRD STREET PEDESTRIAN CROSSWALK PROJECT DESCRIPTION

The City and SRCS desire to install a pedestrian crosswalk with safety elements on Third Street between San Rafael High School and Montecito Plaza shopping center within City right of way. The Project consists of obtaining all applicable permits for and construction of the crosswalk, including but not limited to road work, drainage improvements, sidewalks, traffic striping, HAWK electrical system/signals, and any other appurtenances thereto.

4. SAN RAFAEL CITY SCHOOLS' RESPONSIBILITIES

SRCS shall be responsible for the following with respect to the Project:

- A. Payment: SRCS shall be responsible to expend the full value of the TAM Measure AA Safe Routes to School grant, in the amount of \$400,000, towards the Project, which is inclusive of the \$66,161.25 specifically earmarked for the Project design. SRCS shall advance payment of such sums when required for the Project and then will seek reimbursement of the Measure AA grant from TAM. In addition to the payment of grant funds, SRCS shall pay for one-half (i.e., 50 percent) of all Project costs in excess of the \$400,000 TAM grant, including but not limited to environmental and design fees, construction costs, and other consultant construction management fees. SRCS shall reimburse City for the costs of the Project in accordance with Section 6, below.

- B. Final Plans, Specifications and Estimate of Costs: SRCS has prepared final and complete construction documents including plans, specifications, and an engineer's estimate for the work. The construction documents prepared by Parisi Transportation Consulting and dated 5/28/2020, are included and incorporated hereto as Exhibit A (the "Project Plans").

- C. Inspection: SRCS may inspect, at their expense, the Project during construction and at the conclusion of the construction work. SRCS may not direct the City's contractor.

5. CITY'S RESPONSIBILITIES

City shall be responsible for the following with respect to the Project:

- A. Payment: City shall be responsible to pay one-half (i.e., 50 percent) of all Project costs in excess of the \$400,000 TAM grant, including but not limited to environmental and design fees, construction costs and other consultant construction management fees.
- B. Contract Administration: City shall administer the construction contract for the Project, including advertising for and receiving bids, choosing the lowest responsible bidder, and awarding the construction contract.
- C. Procedures: City shall prepare and submit to SRCS change orders that would be required to complete the Project for review and approval before said work occurs. SRCS shall review and approve change orders within 5 working days. SRCS and City will mutually develop a procedure for processing change orders prior to the start of construction.
- D. Environmental Documentation and Regulatory Permits: City has or shall obtain all required environmental clearances and regulatory permits for the Project. City shall provide SRCS with all required documentation prior to the start of construction. City understands that failure to provide these documents could delay construction. Any additional construction-related costs resulting from delay in obtaining such clearances and regulatory permits will be the sole financial responsibility of City.
- E. Utilities: City shall be responsible for conducting all utility investigation and conflict resolution and/or utility relocations according to the planned work and consistent with the Project schedule.
- F. Maintenance and Repair: Upon completion of the Project, City shall be solely responsible for the maintenance and repair of the Project, including the cost thereof.

6. **PAYMENT AND REIMBURSEMENT PROCEDURES**

- A. Upon City providing SRCS with notification of the actual cost of construction in accordance with the Project Plans, in the form of bid

results, SRCS shall provide written approval of cost within 10 working days in order to authorize construction.

- B. City will provide SRCS with detailed invoices for costs incurred in connection with construction of the Project, and SRCS shall remit payment within 30 days of receipt thereof. Except as provided in subsection 6.D., SRCS shall reimburse City for all (100%) of Project costs incurred until SRCS has exhausted the \$400,000 value of the TAM grant; thereafter, SRCS shall reimburse City for one-half (i.e., 50 percent) of all Project costs incurred above \$400,000, until the Project is completed.
- C. The Parties agree that the Project is estimated to cost approximately five hundred seventeen thousand dollars (\$517,000), inclusive of design fees, construction expenses, and a twelve percent (12%) construction contingency.
- D. The Parties agree that the City will not bill SRCS for City's staff time managing the Project.

7. ADDITIONAL REQUIREMENTS

A. Amendments to Agreement

This Agreement may be amended only by the mutual written consent of both Parties.

B. Indemnification

To the fullest extent permitted by California law, each Party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, the performance of the obligations under this Agreement, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the indemnitees, and/or to any extent that would render these provisions void or unenforceable.

C. Insurance

1. Commercial General Liability. City shall require its contractor and all subcontractors to procure and maintain, during the life of this Agreement, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect and name as an additional insured the contractor, City, SRCS, state, construction manager(s), and architect(s)/engineer(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from the design and construction of the Project or as otherwise contemplated under this Agreement. City's contractor's and subcontractor's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed \$25,000 unless approved in writing by City and SRCS. All such policies shall be written on an occurrence form.

2. Excess Liability Insurance. City shall require its contractor and all subcontractors to procure and maintain, during the life of this Agreement, an Excess Liability Insurance Policy to meet the policy limit requirements of the required policies if the contractor's underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall be written on a following form and shall protect and name as an additional insured the contractor, City, SRCS, state, construction manager(s), and architect(s)/engineer(s) in amounts that comply with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

3. Workers' Compensation and Employers' Liability Insurance. City shall require its contractor and all subcontractors to procure and maintain, during the life of this Agreement, in accordance with provisions of section 3700 of the California Labor Code, the payment of compensation to its employees. City shall require its contractor and subcontractors to procure and maintain, during the life of this Agreement, Workers' Compensation Insurance and Employers' Liability Insurance of not less than \$1 million for all of its employees engaged in work contemplated under this Agreement, on/or at the site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits.

4. Proof of Carriage of Insurance and Other Requirements:

Endorsements and Certificates. City shall not allow any contractor or subcontractor to commence work on the Project until contractor and its subcontractor(s) have procured all required insurance and delivered in duplicate to the City and SRCS complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the City and SRCS have approved these documents.

5. Endorsements, certificates, and insurance policies shall include the following:

- a. A clause stating: "This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the City of San Rafael and San Rafael City School District stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice."
- b. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- c. All endorsements, certificates and insurance policies shall state that City of San Rafael, San Rafael City School District, its trustees, employees and agents, the State of California, construction manager(s), project manager(s), and architect(s)/engineer(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance.
- d. Contractor's and subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by the City, SRCS, its trustees, employees and/or agents, the State of California, , construction manager(s), project manager(s), and/or architect(s)/engineer(s).

- e. All endorsements shall waive any right to subrogation against any of the named additional insureds. The Workers' Compensation policy shall be endorsed to waive any right of subrogation against the City of San Rafael and the San Rafael City School District.

D. Notice

Unless otherwise requested by a Party, all notices, demands, requests, consents or other communications which may be or are required to be given by either Party to the other shall be in writing and shall be deemed effective upon service. Notices shall be deemed to have been properly given when served on the Party to whom the same is to be given by hand delivery, or by generally recognized overnight courier service, or by deposit in the United States mail, addressed to the Party as follows:

SRSC: Dan Zaich
Director of Capital Facilities
San Rafael City Schools (SRCS)
310 Nova Albion Way
San Rafael, CA 94903

City: Bill Guerin
Public Works Director
City of San Rafael
111 Morphew Street
San Rafael, CA 94901

When a notice is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a notice or payment is sent via United States Mail, it shall be deemed received seventy-two (72) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid. In all other instances, notices, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

E. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in the County of Marin. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of the provisions shall remain in full force and effect.

F. Entire Agreement

This instrument contains the entire agreement between the Parties, and no statement, promise, or inducement made by either Party or agents of the Parties that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the Parties.

G. Authority of SRCS and City

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of SRCS and City, respectively.

H. No Waiver of Breach

The waiver by any of the Parties of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

I. Time of Essence

Time is and shall be of the essence of this Agreement and every provision hereof.

J. Parties to Cooperate

Each Party will, whenever and as often as it shall be reasonably requested by the other Party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement.

10. Drafting.

Both Parties contributed to the drafting of this agreement and in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.

11. No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

12. Disputes


Disputes will be handled initially through mutually agreed upon mediation, and if not resolved, will be adjudicated in Marin County Court.

IN WITNESS WHEREOF, SRCS and the City have executed this Agreement as of the date first above written.

CITY OF SAN RAFAEL

SAN RAFAEL CITY SCHOOLS

By: _____
Jim Schutz, City Manager

By: _____


ATTEST:

Lindsay Lara, City Clerk

APPROVED AS TO FORM
FOR CITY:

APPROVED AS TO FORM FOR SRCS

By: _____
Robert Epstein, City Attorney

By: _____
Legal Counsel


SAN RAFAEL CITY SCHOOLS AND CITY OF SAN RAFAEL

THIRD STREET PEDESTRIAN CROSSING

PROJECT No. 11354


CITY FILE No. 18.01.86

SH. 2-7 PREPARED UNDER THE DIRECTION OF:


 RICH SOUZA, PE, QSP
 PROJECT MANAGER, CSW-ST2

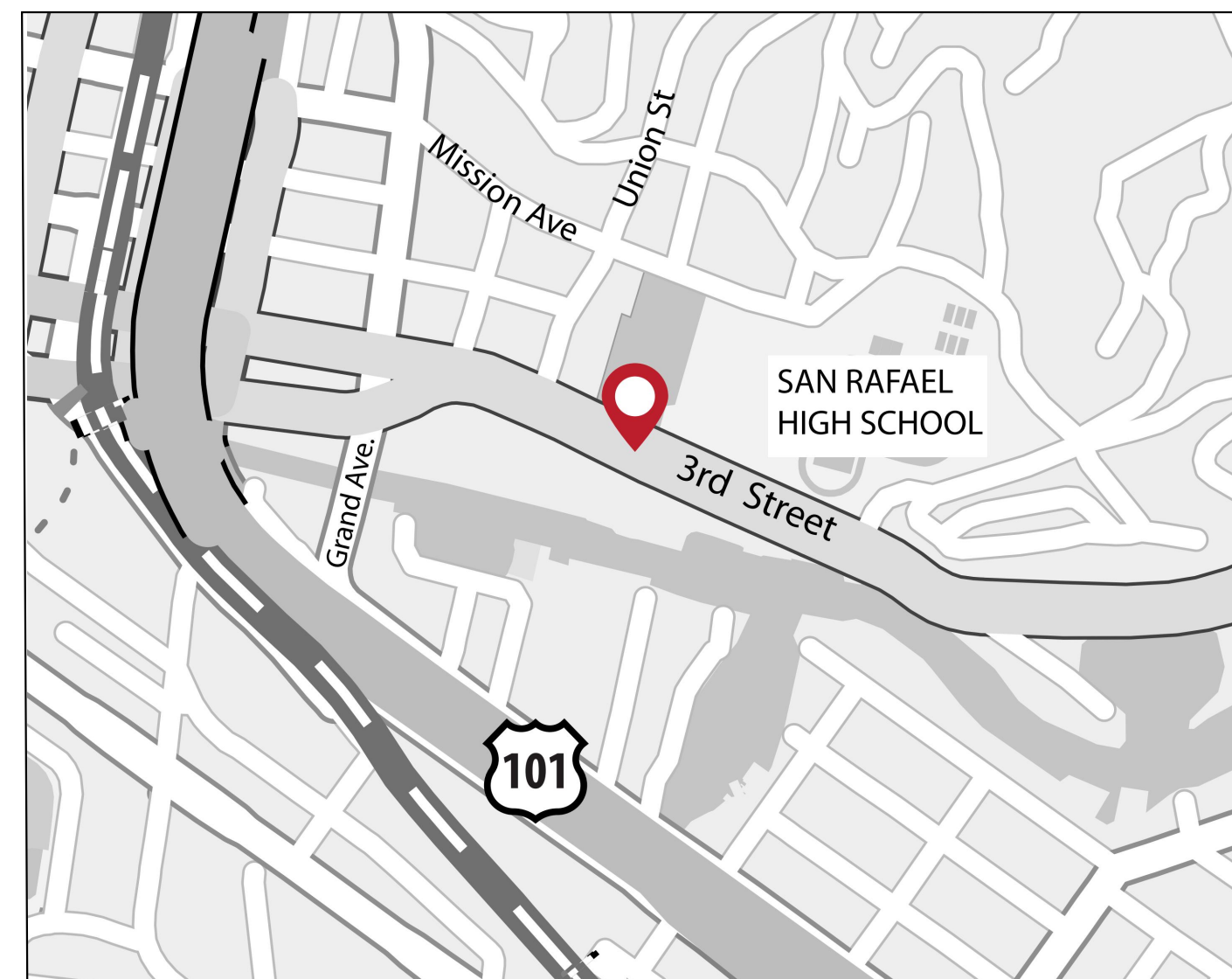
6/18/2020
 DATE

SH. 8-12 PREPARED UNDER THE DIRECTION OF:


 ANDREW LEE, PE, TE
 SR. ENGINEER, PARISI TRANSPORTATION CONSULTING

6/18/2020
 DATE

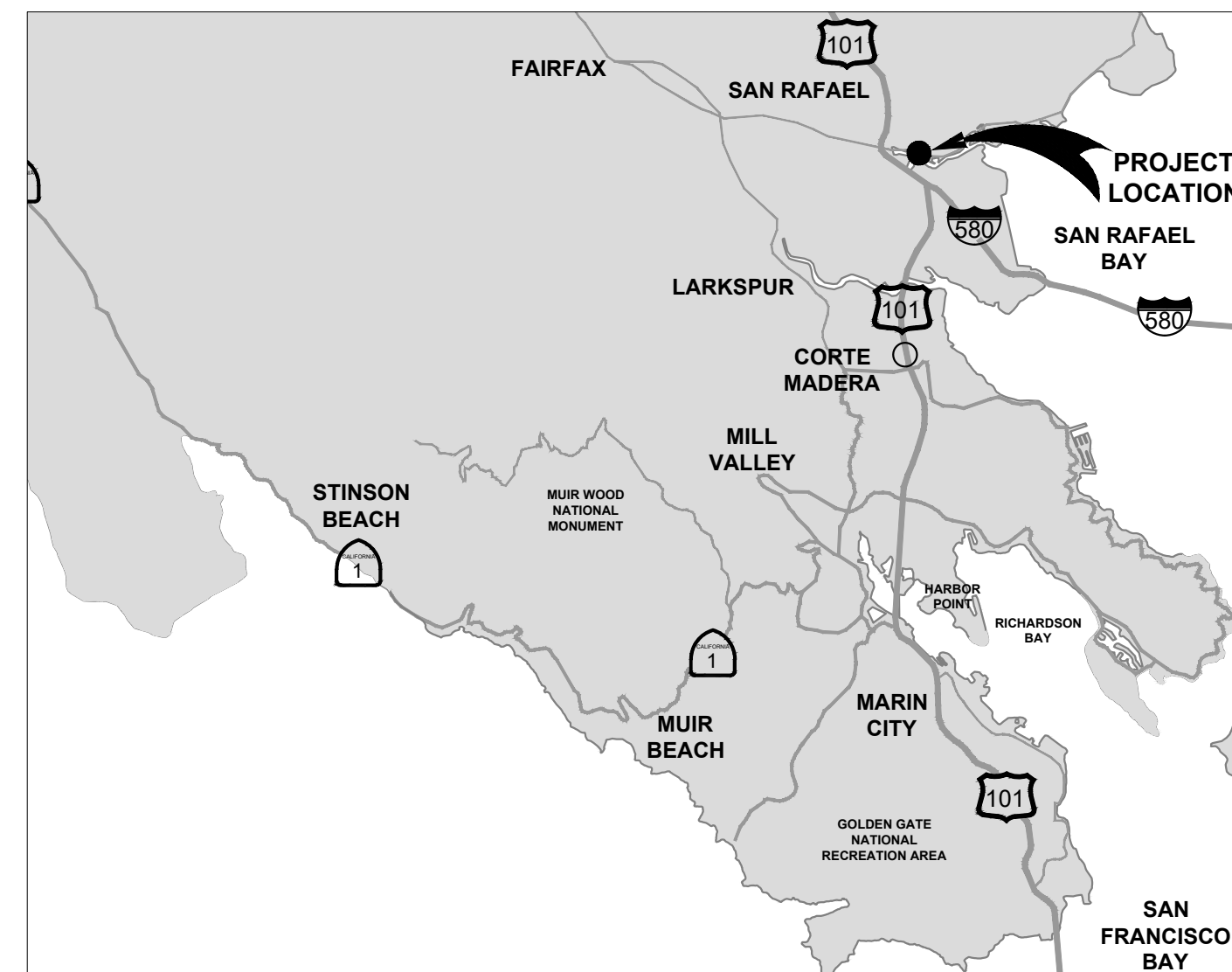
LOCATION MAP
 NOT TO SCALE



INDEX OF SHEETS

SHEET	DRAWING	DESCRIPTION
1	T-1	TITLE SHEET
2	EC-1	EROSION CONTROL PLAN
3	D-1	DEMOLITION PLAN
4	C-1	LAYOUT PLAN
5	C-2	GRADING DETAILS
6	DT-1	CONSTRUCTION DETAILS
7	DT-2	CONSTRUCTION DETAILS
8	PD-1	PAVEMENT DELINEATION PLAN
9	S-1	SIGNAGE PLAN
10	E-1	ELECTRICAL PLAN
11	E-2	ELECTRICAL SCHEDULE
12	E-3	ELECTRICAL DETAILS

VICINITY MAP
 NOT TO SCALE



100% CONSTRUCTION DOCUMENTS

Parisi
 TRANSPORTATION CONSULTING

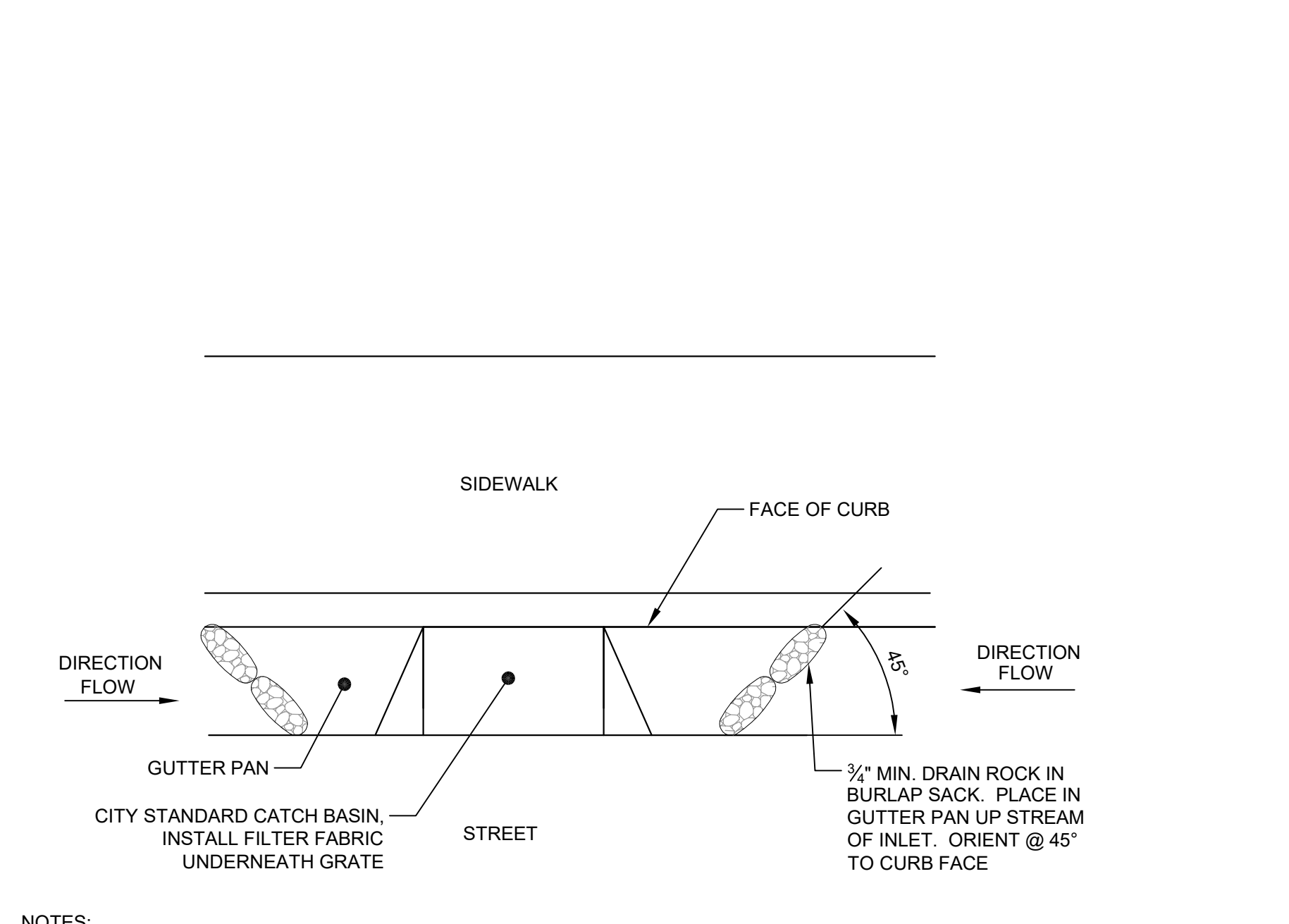
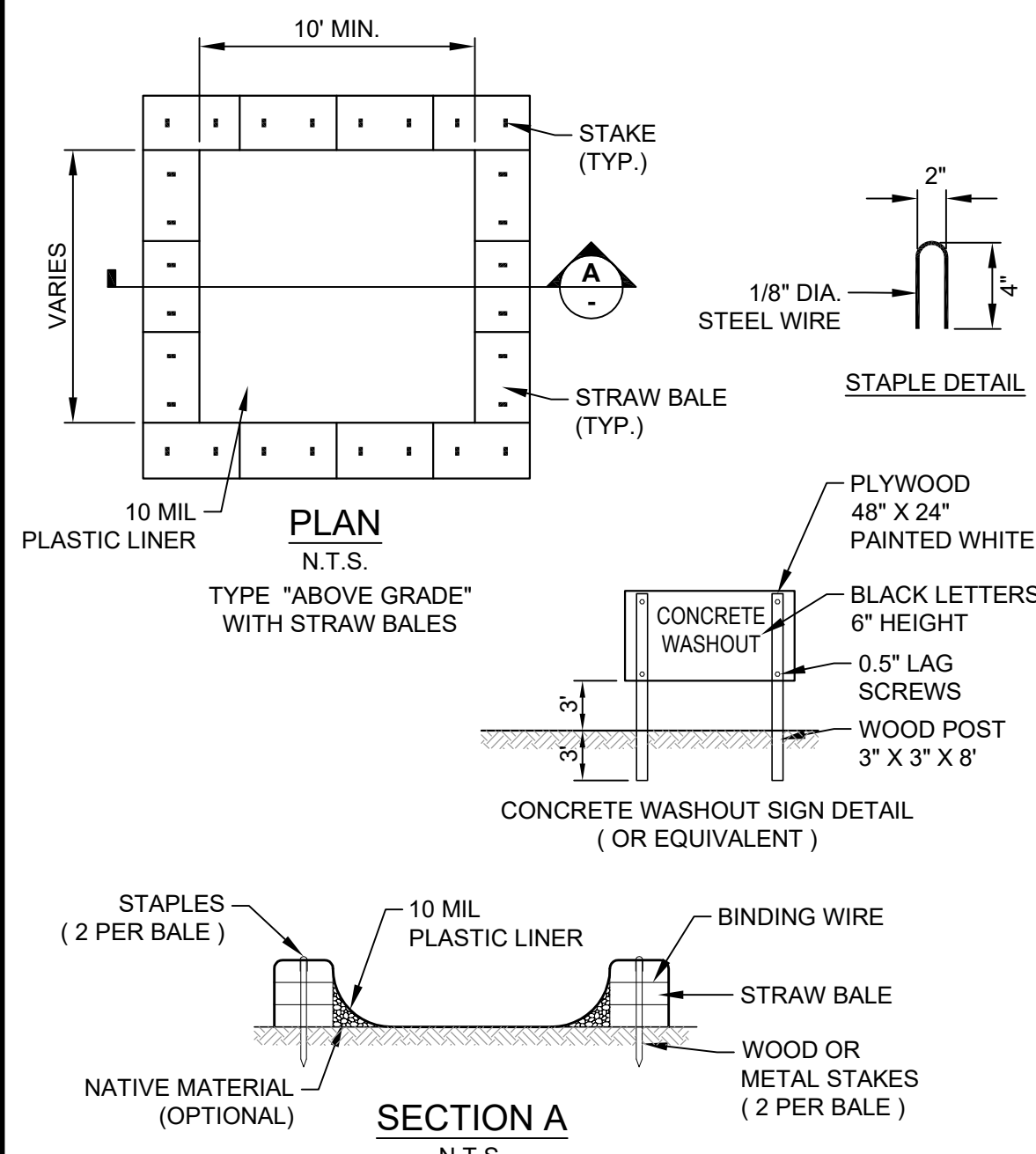


SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
TITLE SHEET



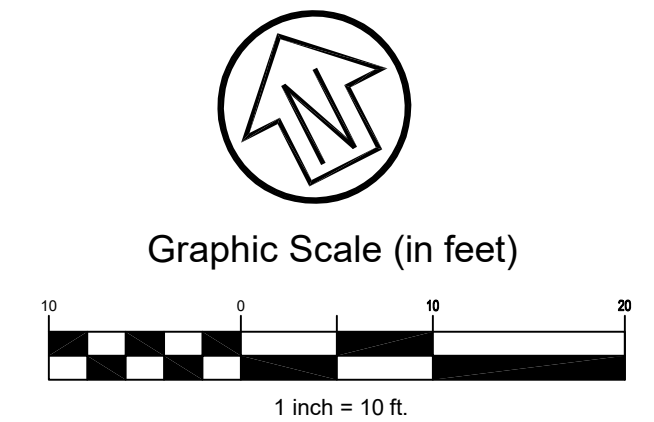
DRAWN: MG	CHECKED: AL
DESIGNED: MG	APPROVED: DP

REVISIONS		DATE	SCALE
		05/28/2020	AS NOTED
		PTC PROJECT NO.	20003
		DRAWING	T-1
		SHEET NO.	1 OF 12
NO.	DESCRIPTION		



EROSION CONTROL LEGEND

- WD CONCRETE WASHDOWN AREA, SEE DETAIL 1, THIS SHEET
- D DELIVERY AREA
- S NON HAZARDOUS STORAGE
- PT PORTABLE TOILET WITH LINER



NOTES:

- ACTUAL LAYOUT DETERMINED IN FIELD.
- THE CONCRETE WASHOUT SIGN SHALL BE INSTALLED WITHIN 30 FEET OF THE TEMPORARY CONCRETE WASHOUT FACILITY.

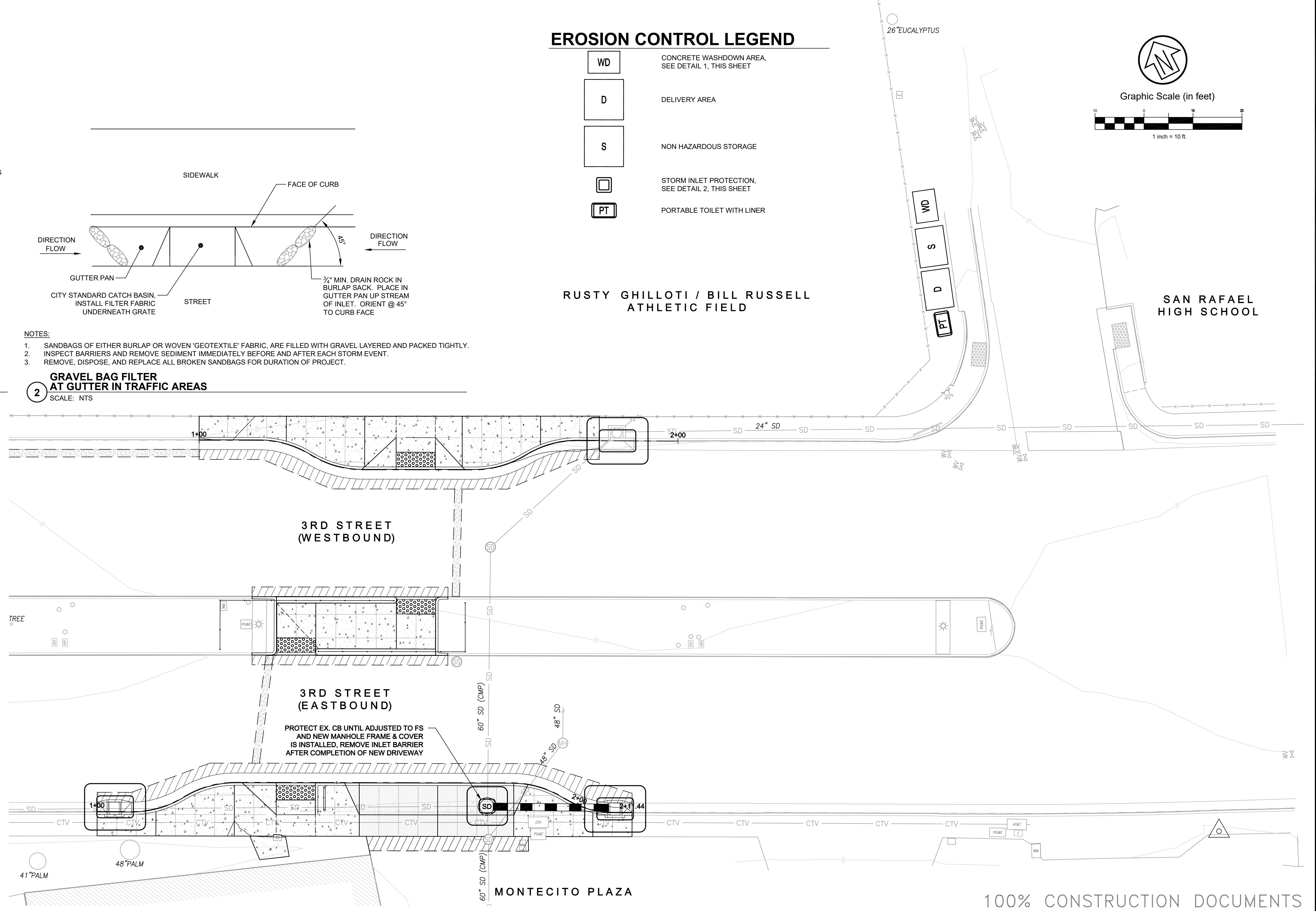
1 TEMPORARY CONCRETE WASHOUT DETAIL
SCALE: 1" = 1'

EROSION AND SEDIMENT CONTROL MEASURES:

- EROSION AND SEDIMENT CONTROL MEASURES SHALL BE EFFECTIVE FOR CONSTRUCTION ALL YEAR ROUND.
- ALL EROSION CONTROL MEASURES SHALL BE MAINTAINED UNTIL DISTURBED AREAS ARE STABILIZED AND CHANGES TO THIS EROSION CONTROL PLAN SHALL BE MADE TO MEET FIELD CONDITIONS.
- DURING THE RAINY SEASON, ALL MEASURES ARE TO BE REMOVED OR RE-INSTALLED UPON THE DIRECTION OF THE ENGINEER. ALL PAVED AREAS SHALL BE KEPT CLEAR OF EARTH MATERIAL AND DEBRIS. THE SITE SHALL BE MAINTAINED SO AS TO MINIMIZE SEDIMENT-LADEN RUN-OFF TO ANY STORM DRAINAGE SYSTEMS.
- ALL EROSION CONTROL FACILITIES MUST BE INSPECTED AND, IF NECESSARY, REPAIRED AT THE END OF EACH WORKING DAY.
- SEDIMENT BARRIERS SHALL BE CLEANED OUT WHENEVER SEDIMENT REACHES A LEVEL THAT PRODUCES SEDIMENT LADEN RUNOFF.
- THIS PLAN MAY NOT COVER ALL THE SITUATIONS THAT ARISE DURING CONSTRUCTION DUE TO ANTICIPATED FIELD CONDITIONS. VARIATIONS MAY BE MADE TO THE PLAN IN THE FIELD SUBJECT TO APPROVAL BY THE ENGINEER.

POLLUTION CONTROL NOTES:

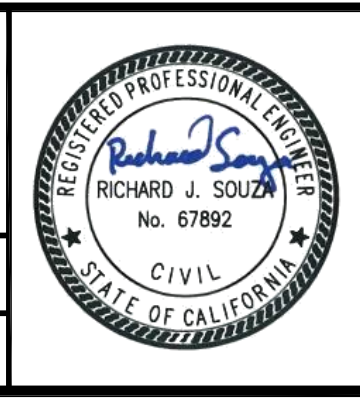
- IF SIGNIFICANT SEDIMENT OR OTHER VISUAL SYMPTOMS OF IMPURITIES ARE NOTICED IN THE STORM WATER, CONTACT THE CIVIL ENGINEER IMMEDIATELY.
- CONTRACTOR IS RESPONSIBLE FOR INSPECTION AND RESTORATION OF ALL ASPECTS OF THIS PLAN. SEDIMENT ON SIDEWALKS AND GUTTERS SHALL BE REMOVED BY SHOVEL OR BROOM AND PLACED IN STOCKPILES APPROVED BY THE ENGINEER.
- ALL DUMPSPTERS OR OTHER TRASH STORAGE ENCLOSURES SHALL BE UTILIZED SOLELY FOR NON-HAZARDOUS MATERIALS.
- THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL PERMITS AND FILING ALL PLANS WITH RELATED AGENCIES ASSOCIATED WITH THEIR WORK.



100% CONSTRUCTION DOCUMENTS

CSW ST2
CSW/Stuber-Stroeh Engineering Group, Inc.
45 Leveroni Court, Novato, CA 94949
(415) 883-9850

DESIGNED: JD
CHECKED: RS
APPROVED: DP



**SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
EROSION CONTROL PLAN**



REVISIONS	
NO.	DESCRIPTION

DATE: 05/28/2020
SCALE: 1" = 10'
PROJECT NO.: 2020010
DRAWING: EC-1
SHEET NO.: 2 OF 12

I:\Projects\2020\10 San Rafael City Schools - 3rd Street Crosswalk\DWG\Sheets\100% CD\ECT-1 Erosion Control Plan.dwg 05/28/2020 - 11:55 AM D:\A.B. 1/2/2018

NOTES:

- HORIZONTAL DATUM IS NORTH AMERICAN DATUM OF 1983 (NAD83), ZONE 3 PER GPS ROVER ON CALIFORNIA REAL TIME NETWORK (CRTN), EPOCH 2017.5.
- VERTICAL DATUM IS NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88), ZONE 3 PER GPS ROVER ON CALIFORNIA REAL TIME NETWORK (CRTN), EPOCH 2017.5.
- TOPOGRAPHY SHOWN WAS PERFORMED BY FIELD SURVEY ON MARCH 9, 2020.
- UNDERGROUND UTILITIES SHOWN HEREON ARE BASED ON LOCATING PAINT MARKING BY UNDERGROUND SERVICE ALERT. EXACT LOCATION AND ROUTE MAY VARY. VERIFY IN FIELD PRIOR TO CONSTRUCTION.

LINETYPES

- CTV CABLE TELEVISION
- 30 CONTOUR - MAJOR
- E ELECTRICAL LINE
- FENCE
- G GAS LINE
- SS SANITARY SEWER
- SD STORM DRAIN
- TIES
- W WATER

SYMBOLS

- SIGN
- TREE
- LIGHT - POST MOUNTED
- SANITARY SEWER - MANHOLE
- STORM DRAINAGE - CURB INLET
- STORM DRAINAGE - DROP INLET
- STORM DRAINAGE - MANHOLE
- GAS VALVE
- FIRE HYDRANT
- WATER METER
- WATER VALVE
- CONTROL POINT

DEMOLITION KEYNOTES

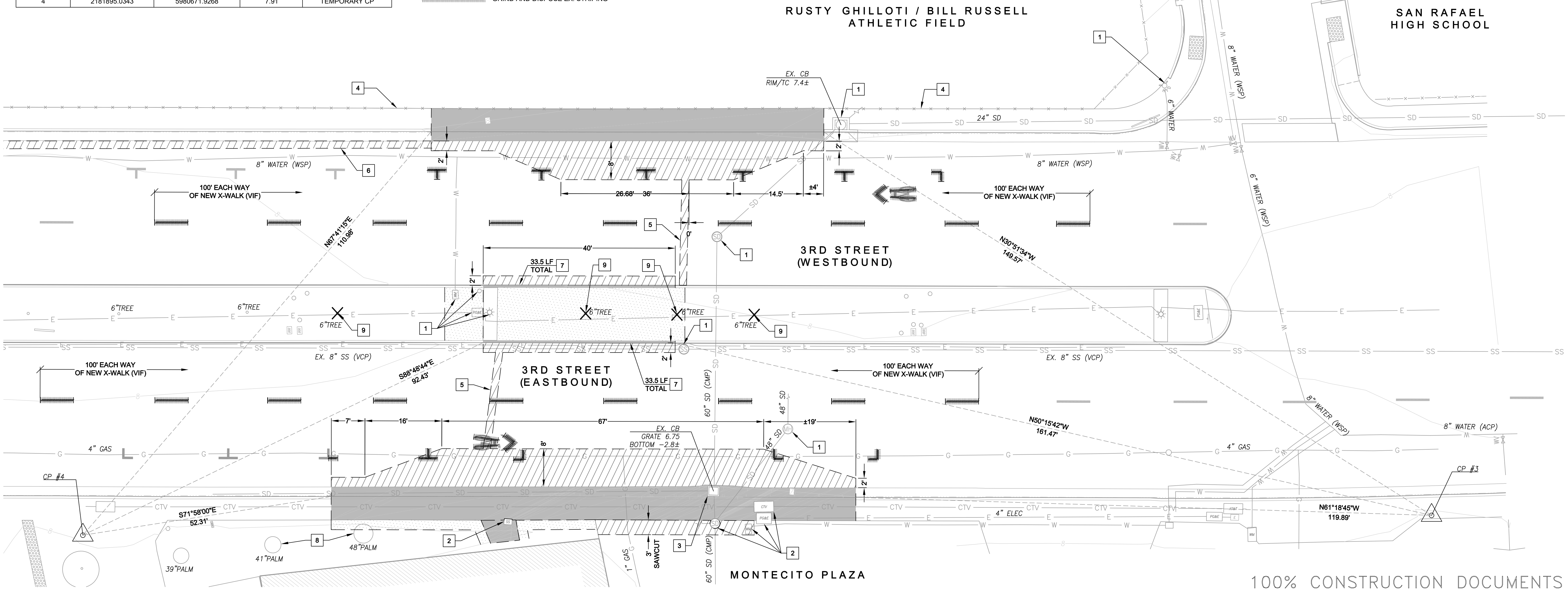
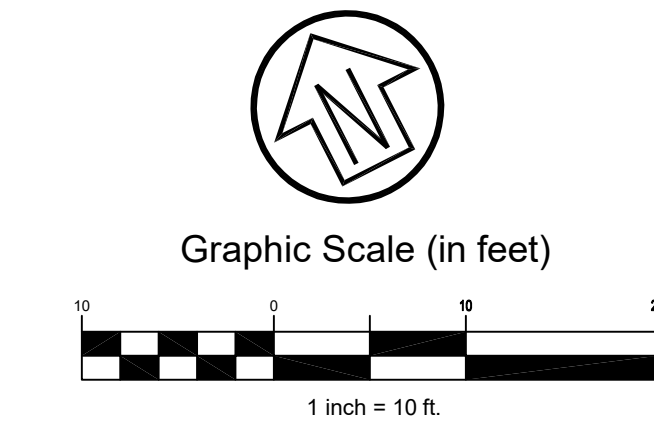
- PROTECT IN PLACE EX. UTILITY (INCLUDING MH, VALVES, LIDS, BOXES, METERS, PIPES, CONDUITS, ETC.)
- ADJUST EX. UTILITY TO FINISHED SURFACE.
- REMOVE AND DISPOSE EX. GRATE. ADJUST DI TO FINISHED SURFACE. REPLACE WITH GALVANIZED STEEL CHECKPLATE (TRAFFIC RATED)
- PROTECT IN PLACE EX. FENCE (TO REMAIN)
- TRENCH FOR NEW ELECTRICAL LINE PER UCS DWG 330. ADDITIONAL TRENCH NOTES PER UCS DWG 340 & 350. SEE SHEET 10 FOR ELECTRICAL IMPROVEMENTS.
- TRENCH FOR NEW ELECTRICAL LINE ~300' TO CONTROLLER AT UNION ST PER UCS DWG 300. SEE SHEET 10 FOR CONNECTION. PROTECT IN PLACE EX. CURB AND GUTTER.
- REMOVE AND DISPOSE EX. CURB (INCLUDING BASE ROCK)
- PROTECT IN PLACE EX. TREE
- REMOVE AND DISPOSE EX. TREE. GRIND AND DISPOSE ROOTS TO 12" MIN. BELOW GRADE.

LEGEND

- REMOVE AND DISPOSE OF EXISTING CONCRETE, CURB & GUTTER (INCLUDING BASE ROCK). FOR CONCRETE, SAWCUT AT NEAREST EX. JOINT BEYOND, VIF.
- CLEAR, GRUB, AND DISPOSE, INCLUDING ALL ROOT, SHRUB, AND ORGANIC MATTER
- SAWCUT, REMOVE AND DISPOSE EXISTING AC PAVEMENT (INCLUDING BASE ROCK)
- GRIND AND DISPOSE EX. STRIPING

SURVEY CONTROL POINTS

POINT NO.	NORTHING	EASTING	ELEVATION	DESCRIPTION
3	2181771.732	5980924.138	8.03	CUT X
4	2181895.0343	5980671.9268	7.91	TEMPORARY CP



100% CONSTRUCTION DOCUMENTS

CSW ST 2
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Richard J. Souza
 REGISTERED PROFESSIONAL ENGINEER
 CIVIL
 No. 67892
 STATE OF CALIFORNIA

DESIGNED: JD
 CHECKED: RS
 APPROVED: DP

SAN RAFAEL
 THE CITY WITH A MISSION

SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
DEMOLITION PLAN

SAN RAFAEL
CITY SCHOOLS

REVISIONS	
NO.	DESCRIPTION

DATE	05/28/2020	SCALE	1" = 10'
PROJECT NO.	2020010		
DRAWING	D-1		
SHEET NO.	3 OF 12		

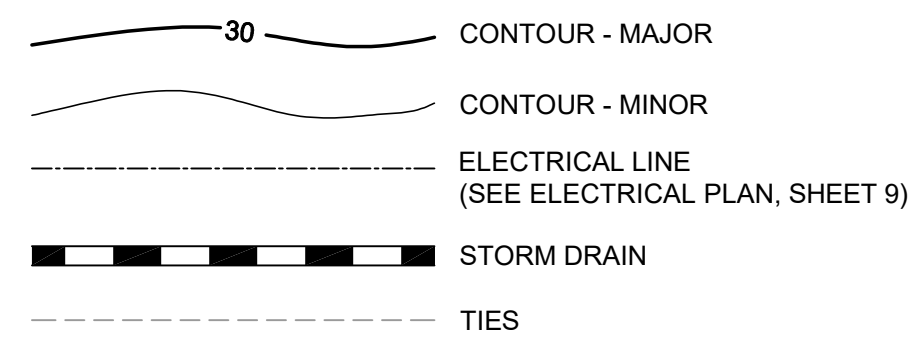
LINE TABLE

TAG	BEARING	DISTANCE
L1	N63°02'45"W	12.25'
L2	N32°04'55"W	0.58'
L3	N63°02'26"W	22.82'
L4	S85°59'26"W	0.58'
L5	N62°51'10"W	4.48'
L6	S63°00'35"E	7.12'
L7	N86°01'35"E	0.58'
L8	S63°00'35"E	1.42'
L9	S63°00'35"E	55.01'
L10	S32°02'46"E	0.58'
L11	S62°56'55"E	3.50'
L12	S71°58'00"E	52.31'
L13	N84°55'30"E	98.20'
L14	N67°40'58"E	110.98'
L15	N61°18'46"W	119.88'
L16	N50°15'42"W	161.47'
L17	N30°51'34"W	149.57'

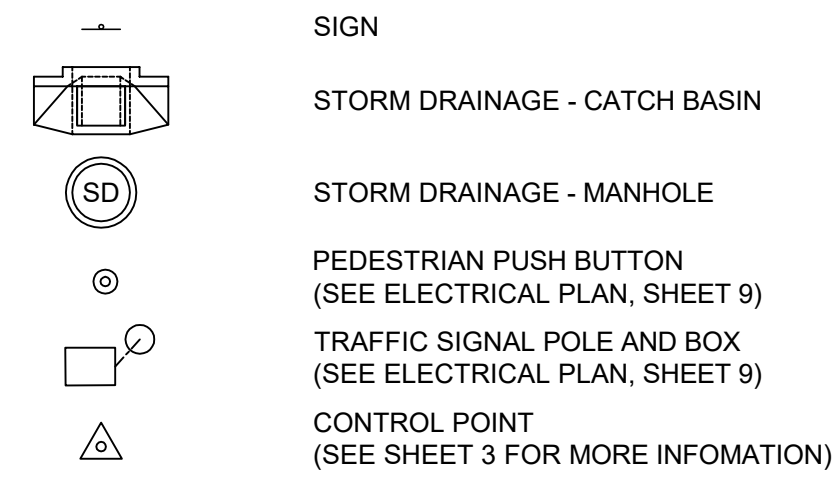
CURVE TABLE

TAG	RADIUS	LENGTH	DELTA
C1	20.00'	10.81'	030°57'50"
C2	20.00'	10.81'	030°57'50"
C3	20.00'	10.81'	030°57'50"
C4	20.00'	10.81'	030°57'50"
C5	20.00'	10.81'	030°57'50"
C6	20.00'	10.81'	030°57'50"
C7	20.00'	10.81'	030°57'50"
C8	20.00'	10.81'	030°57'50"

LINETYPES



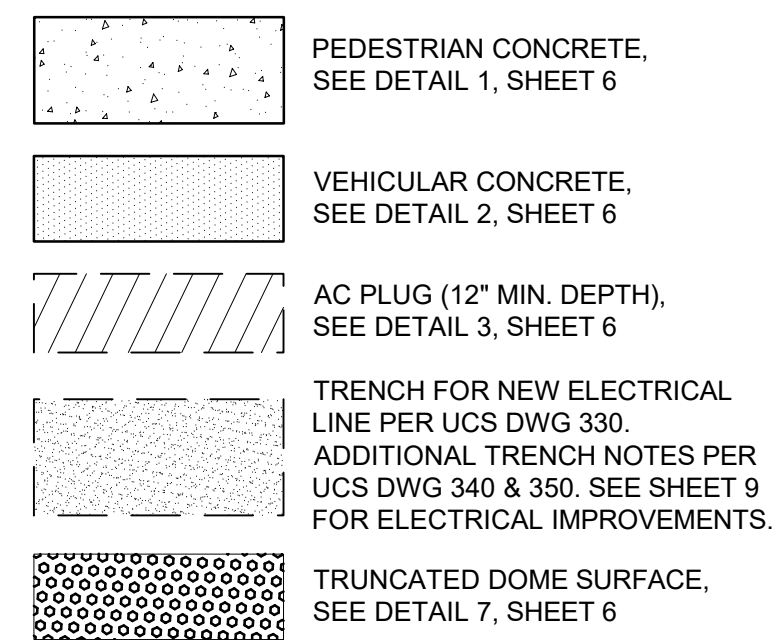
SYMBOLS



KEYNOTES

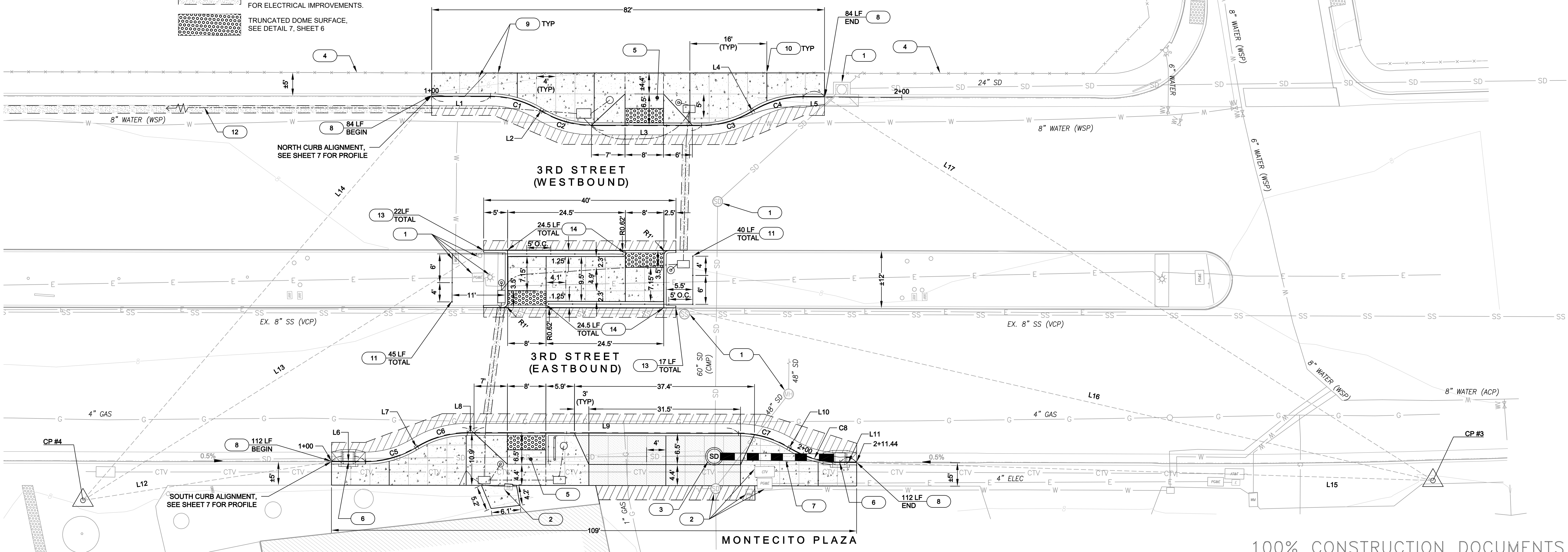
1	PROTECT IN PLACE EX. UTILITY (INCLUDING MH, VALVES, LIDS, BOXES, METERS, PIPES, CONDUITS, ETC.)	8	TYPE 'A' CURB AND GUTTER PER UCS DWG 105. SEE PLANS FOR LENGTH. SEE DETAIL 3, SHEET 6
2	ADJUST EX. UTILITY TO FINISHED SURFACE.	9	CONTROL JOINT AT 4' O.C., SEE DETAIL 5, SHEET 6
3	ADJUST DI TO FINISHED SURFACE PER DETAIL 8, SHEET 6. REPLACE GRATE WITH STANDARD MANHOLE PER UCS DWG 215. RIM = ±7.43	10	EXPANSION JOINT AT 16' O.C., SEE DETAIL 6, SHEET 6
4	PROTECT IN PLACE EX. FENCE (TO REMAIN)	11	INSTALL WROUGHT IRON FENCE PER DETAIL 1, SHEET 7. SEE PLANS FOR LENGTH.
5	CASE 'G' RAMP PER CALTRANS STD PLAN A88A WITH PEDESTRIAN BARRIER PER DETAIL 9, SHEET 6	12	TRENCH FOR NEW ELECTRICAL LINE ~300' TO CONTROLLER AT UNION ST PER UCS DWG 300. SEE SHEET 9 FOR CONNECTION. PROTECT IN PLACE EX. CURB AND GUTTER.
6	TYPE 'E' CATCH BASIN PER UCS DWG 245	13	TYPE 'E' CURB PER UCS DWG 105. SEE PLANS FOR LENGTH
7	26 LF 18" SD (RCP CLASS 5) @ S=0.02 FT/FT	14	NEW THICKENED CONCRETE CURB PER DETAIL 4, SHEET 6. SEE PLANS FOR LENGTH.

LEGEND



RUSTY GHILLOTI / BILL RUSSELL ATHLETIC FIELD

SAN RAFAEL HIGH SCHOOL



100% CONSTRUCTION DOCUMENTS

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(415) 883-9850



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**SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
LAYOUT PLAN**



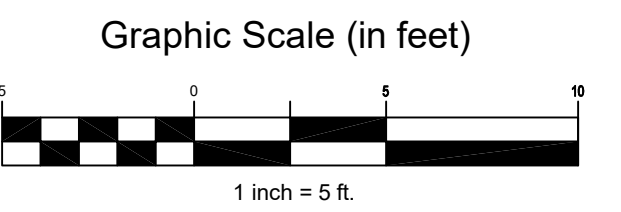
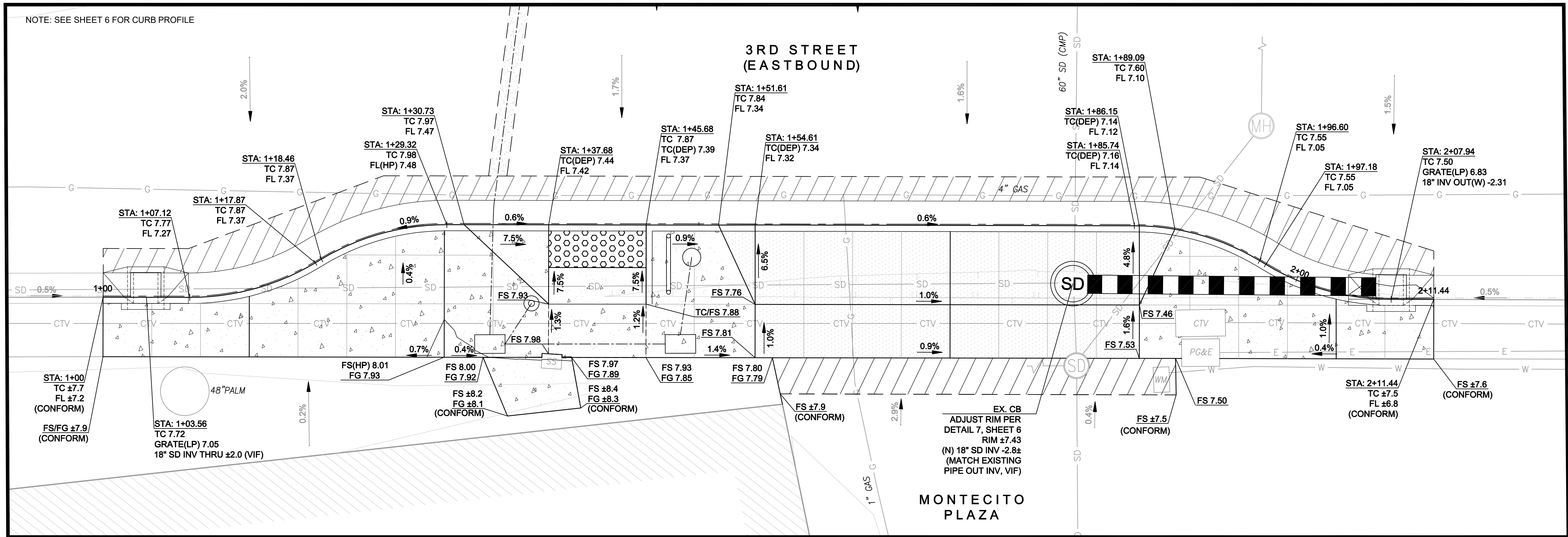
REVISIONS

NO.	DESCRIPTION

DATE	05/28/2020	SCALE	1" = 10'
PROJECT NO.	2020010		
DRAWING	C-1		
SHEET NO.	4 OF 12		

DRAWN	JD	CHECKED	RS
DESIGNED	JD	APPROVED	DP

I:\Projects\202010 San Rafael City Schools - 3rd Street Crosswalk\DWG\Sheets\100% CD\CT1 - Layout\Plan.dwg 05/28/2020 - 10:14 AM D:\AB 12.05.19

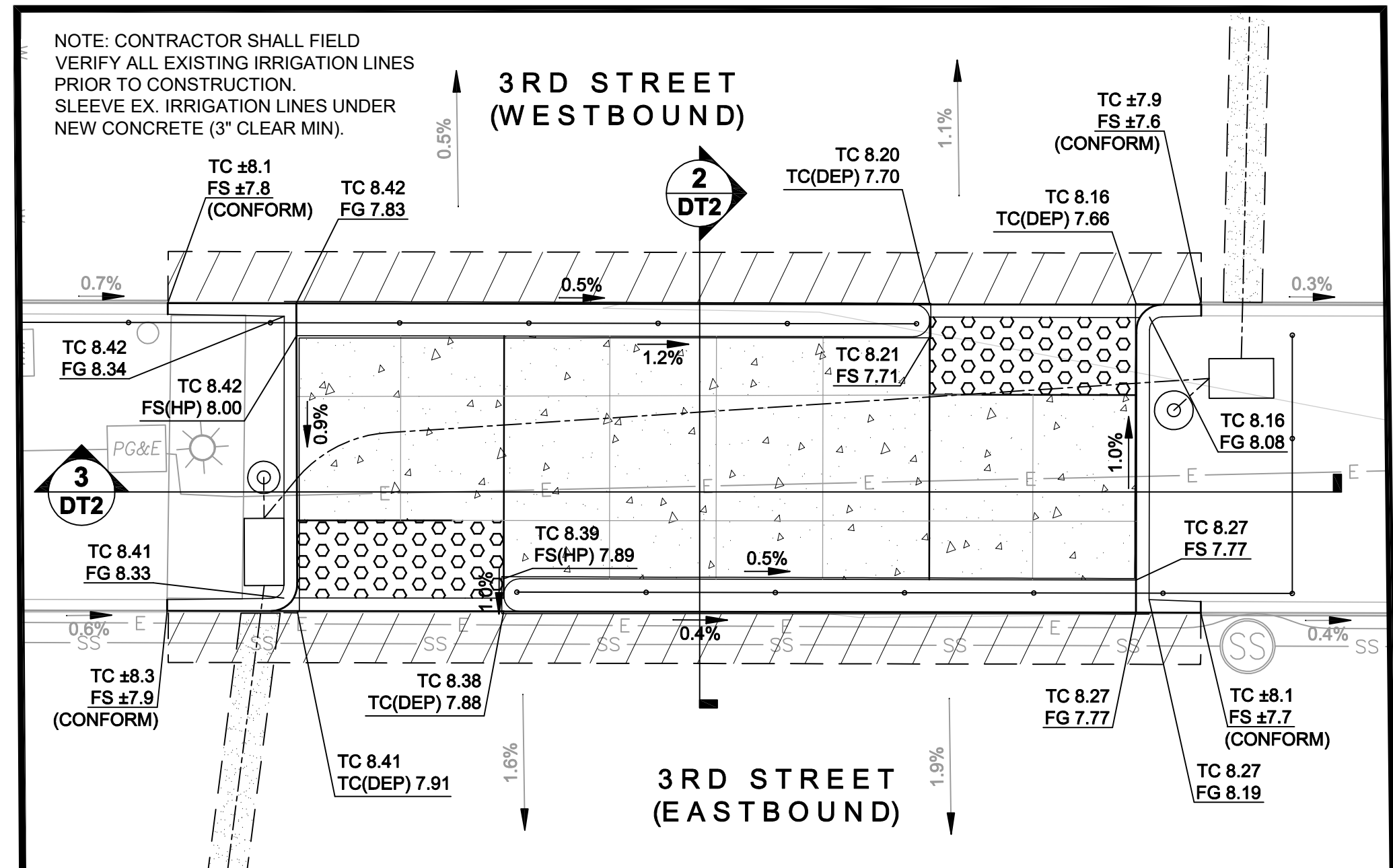


- LINETYPES**
- 30 CONTOUR - MAJOR
 - CONTOUR - MINOR
 - ELECTRICAL LINE (SEE ELECTRICAL PLAN, SHEET 9)
 - STORM DRAIN

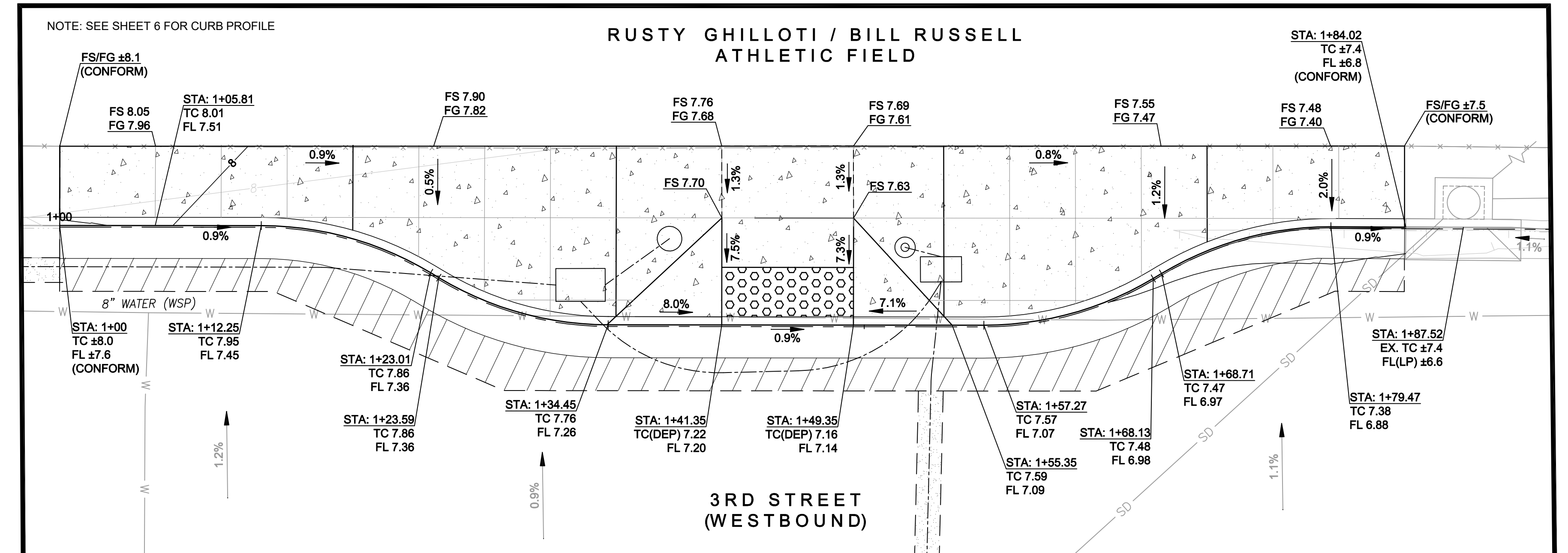
- SYMBOLS**
- SIGN
 - STORM DRAINAGE - CATCH BASIN
 - STORM DRAINAGE - DROP INLET
 - PEDESTRIAN PUSH BUTTON (SEE ELECTRICAL PLAN, SHEET 9)
 - TRAFFIC SIGNAL POLE AND BOX (SEE ELECTRICAL PLAN, SHEET 9)
 - CONTROL POINT (SEE SHEET 3 FOR MORE INFORMATION)

- LEGEND**
- PEDESTRIAN CONCRETE, SEE DETAIL 1, SHEET 6
 - VEHICULAR CONCRETE, SEE DETAIL 2, SHEET 6
 - AC PLUG (12" MIN. DEPTH), SEE DETAIL 3, SHEET 6
 - TRENCH FOR NEW ELECTRICAL LINE PER UCS DWG 330
 - TRUNCATED DOME SURFACE, SEE DETAIL 7, SHEET 6

1 SOUTH CURB GRADING DETAIL
SCALE: 1" = 5'



2 REFUGE AREA GRADING DETAIL
SCALE: 1" = 5'



3 NORTH CURB GRADING DETAIL
SCALE: 1" = 5'

100% CONSTRUCTION DOCUMENTS

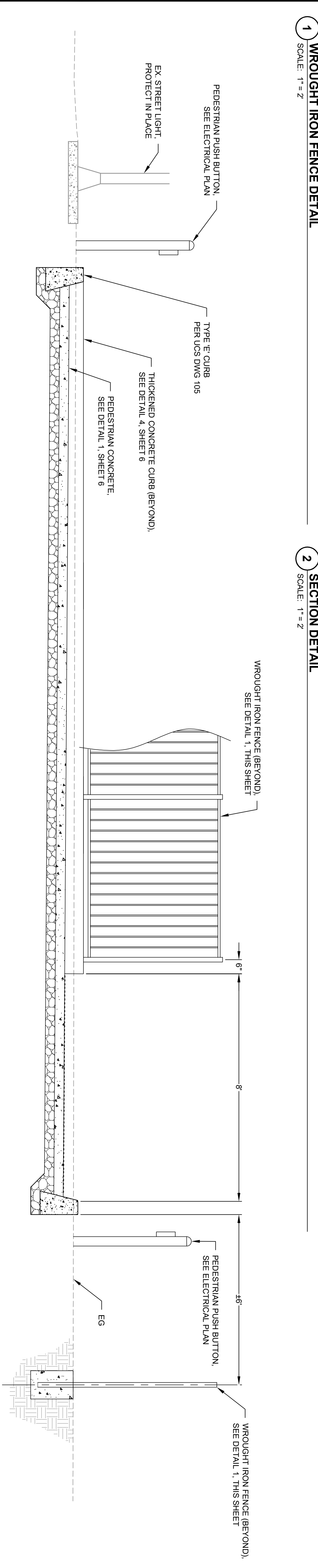
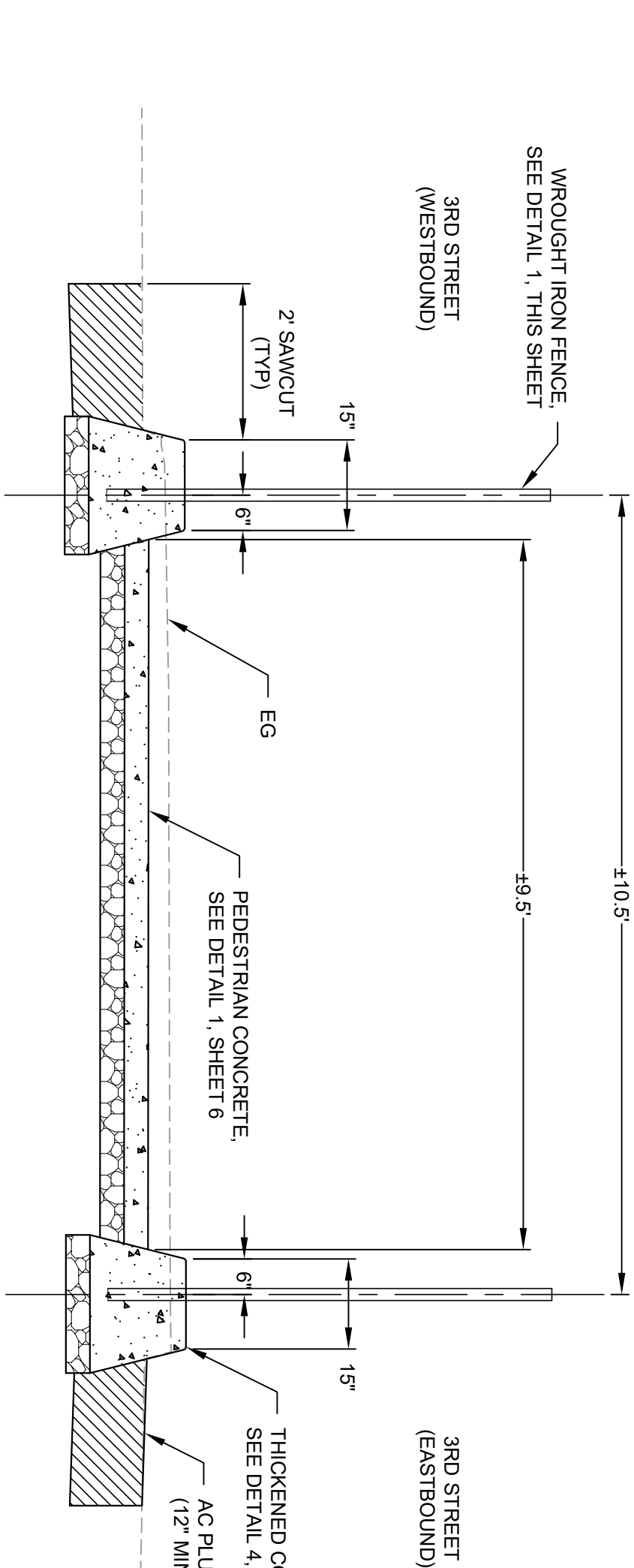
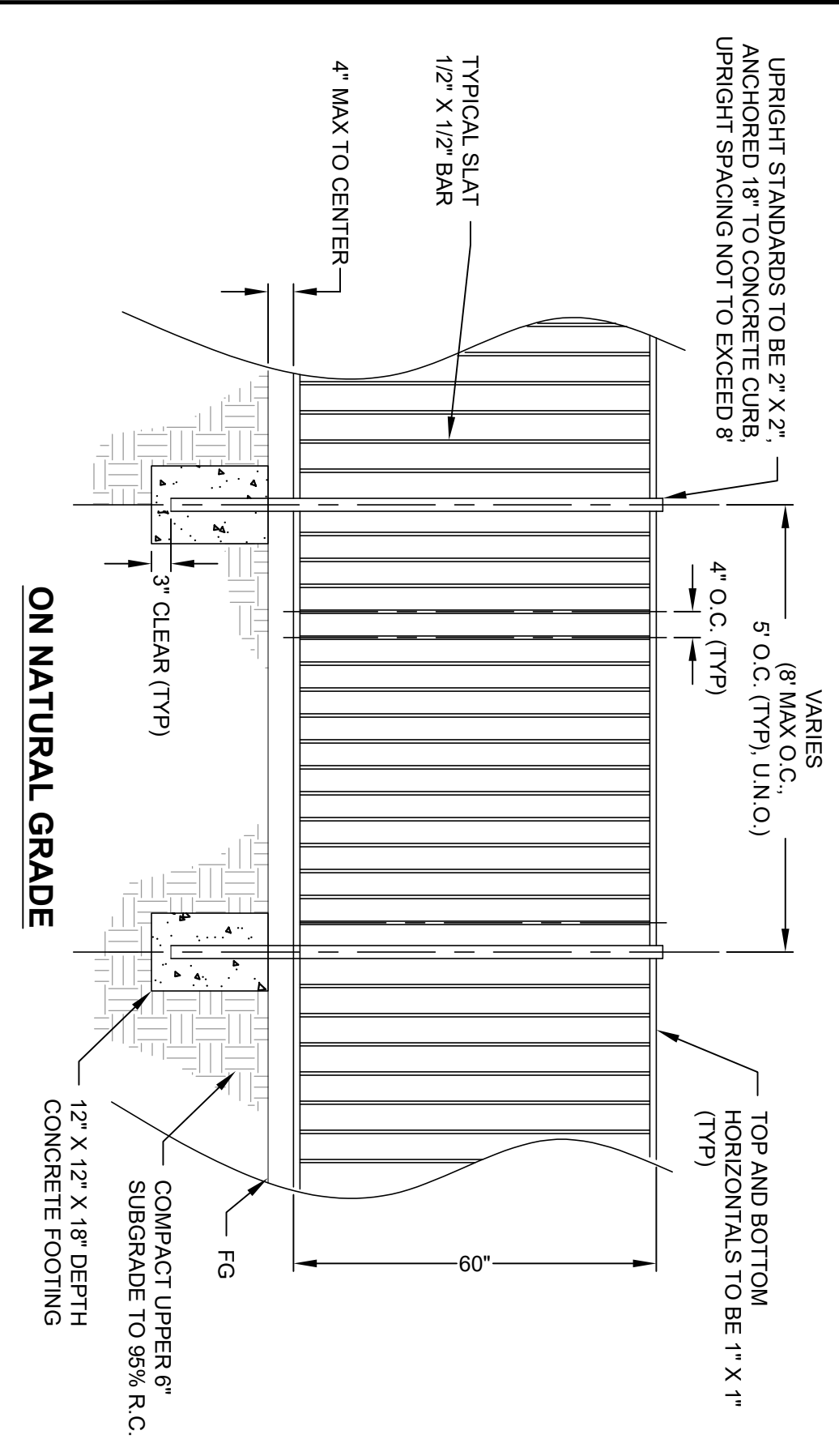
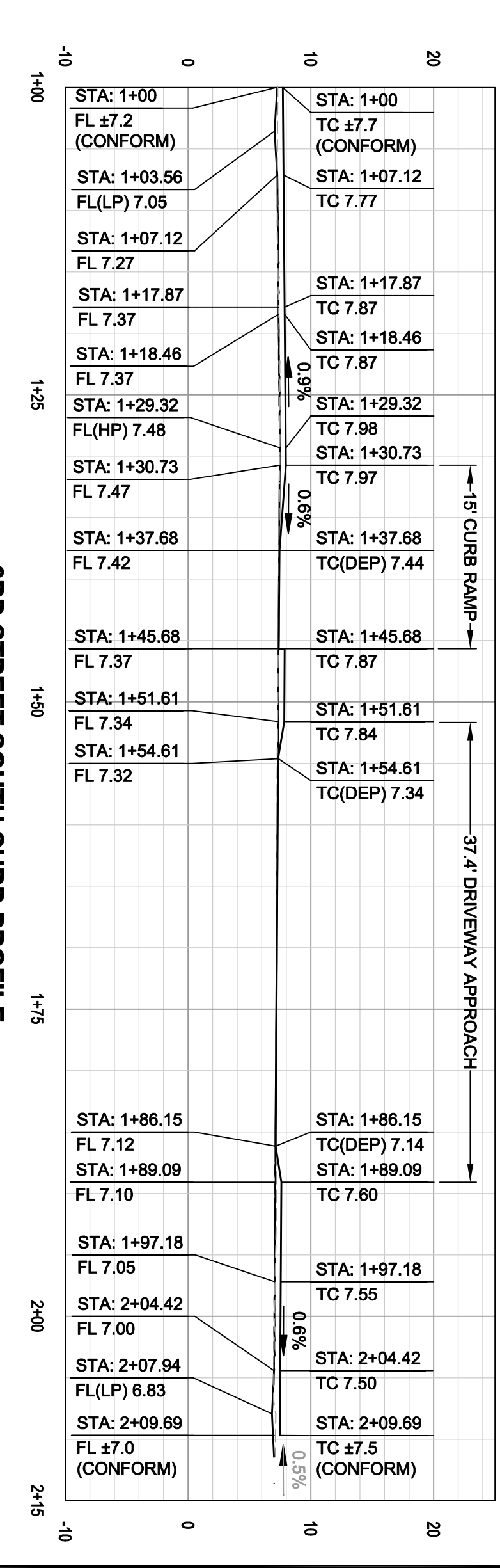
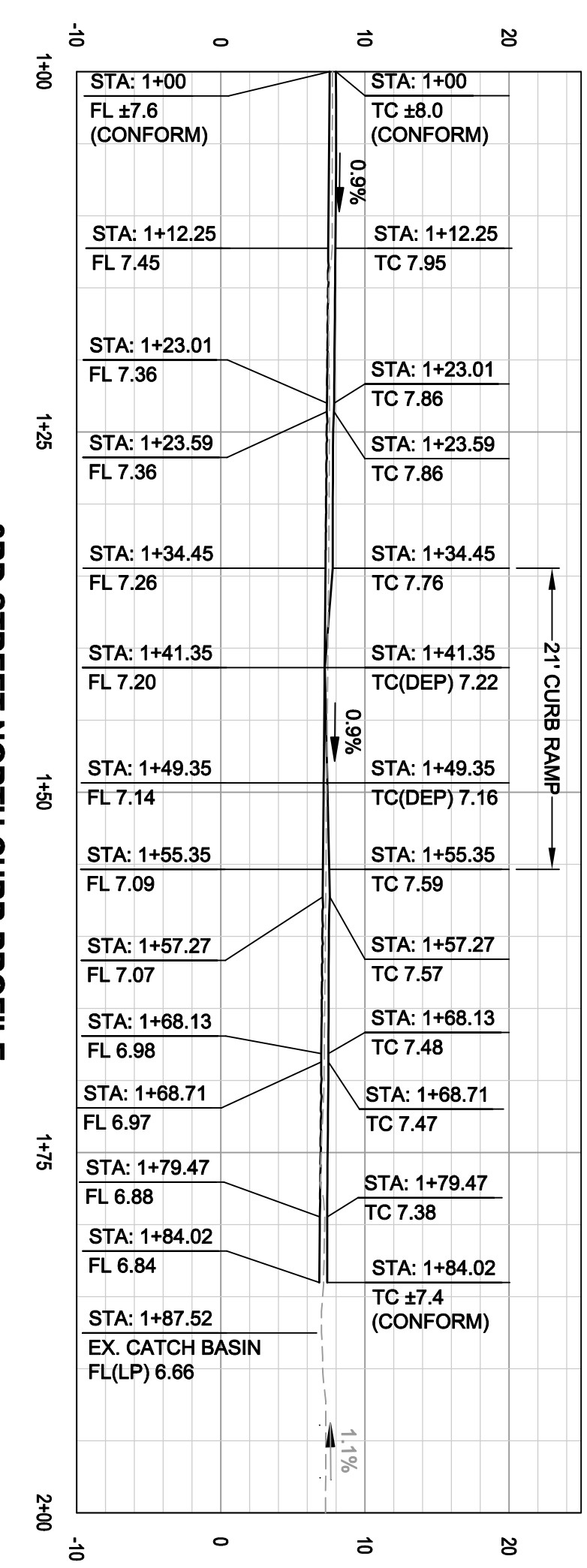
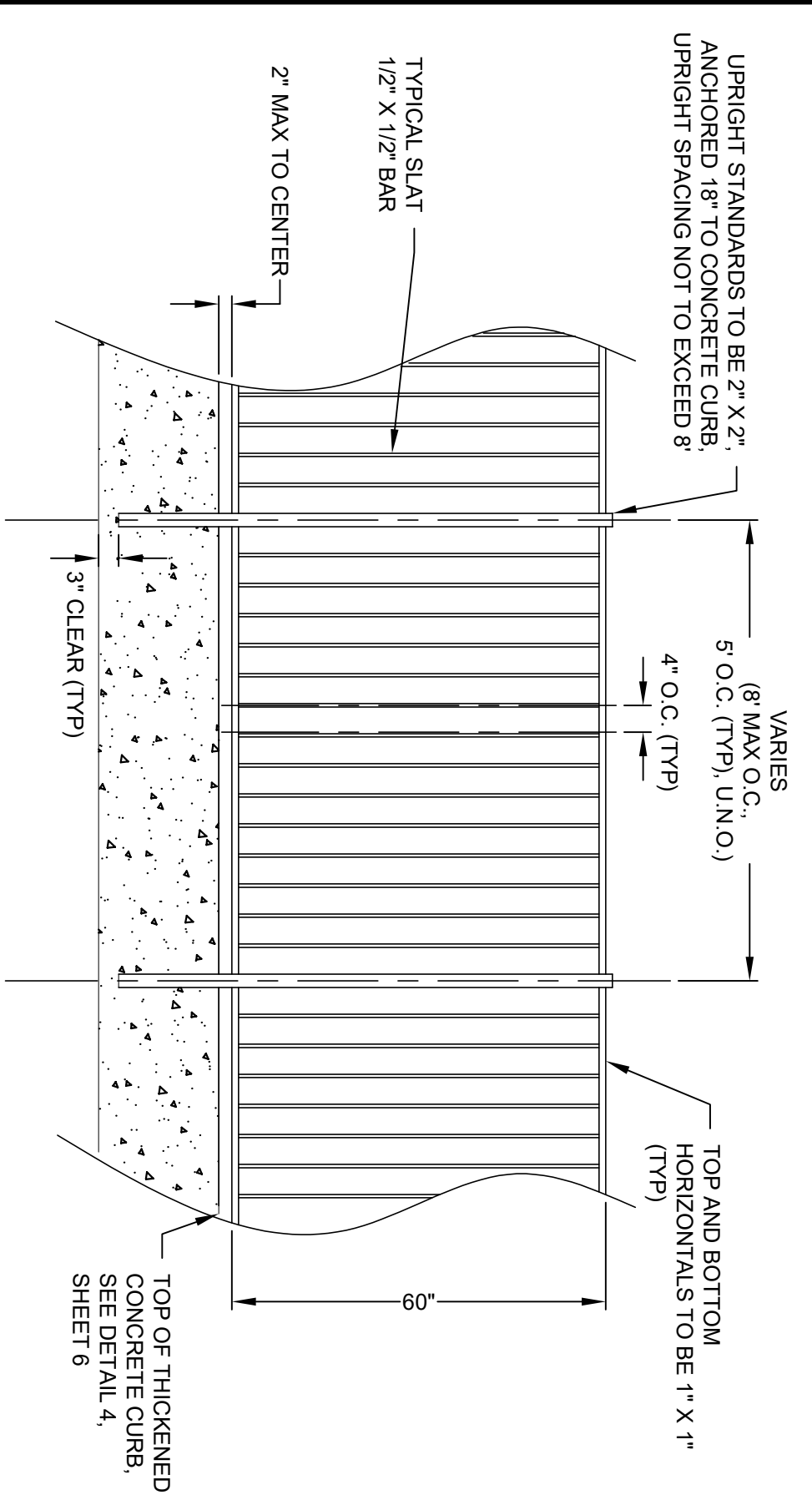
CSW ST2
CSW/Stuber-Stroeh Engineering Group, Inc.
45 Leveroni Court, Novato, CA 94949
(415) 883-9850



SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
GRADING DETAILS



REVISIONS		DATE	SCALE
NO.	DESCRIPTION	05/28/2020	1" = 5'
		PROJECT NO.	2020010
		DRAWING	C-2
		SHEET NO.	5 OF 12



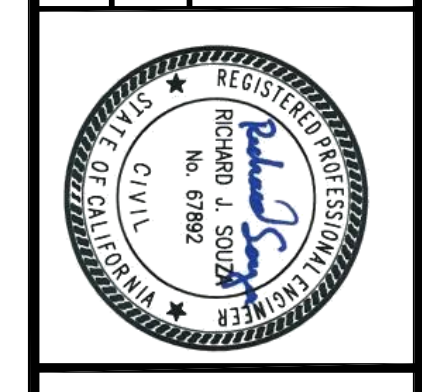
100% CONSTRUCTION DOCUMENTS

REVISIONS

NO.	DESCRIPTION	DATE	SCALE
1		05/28/2020	AS SHOWN
2			
3			
4			
5			
6			
7			

CSW ST 2
 GSW/Steven-Strub
 Engineering Group, Inc.
 45 Laverent Court
 Naperville, IL 60563
 (630) 883-3830

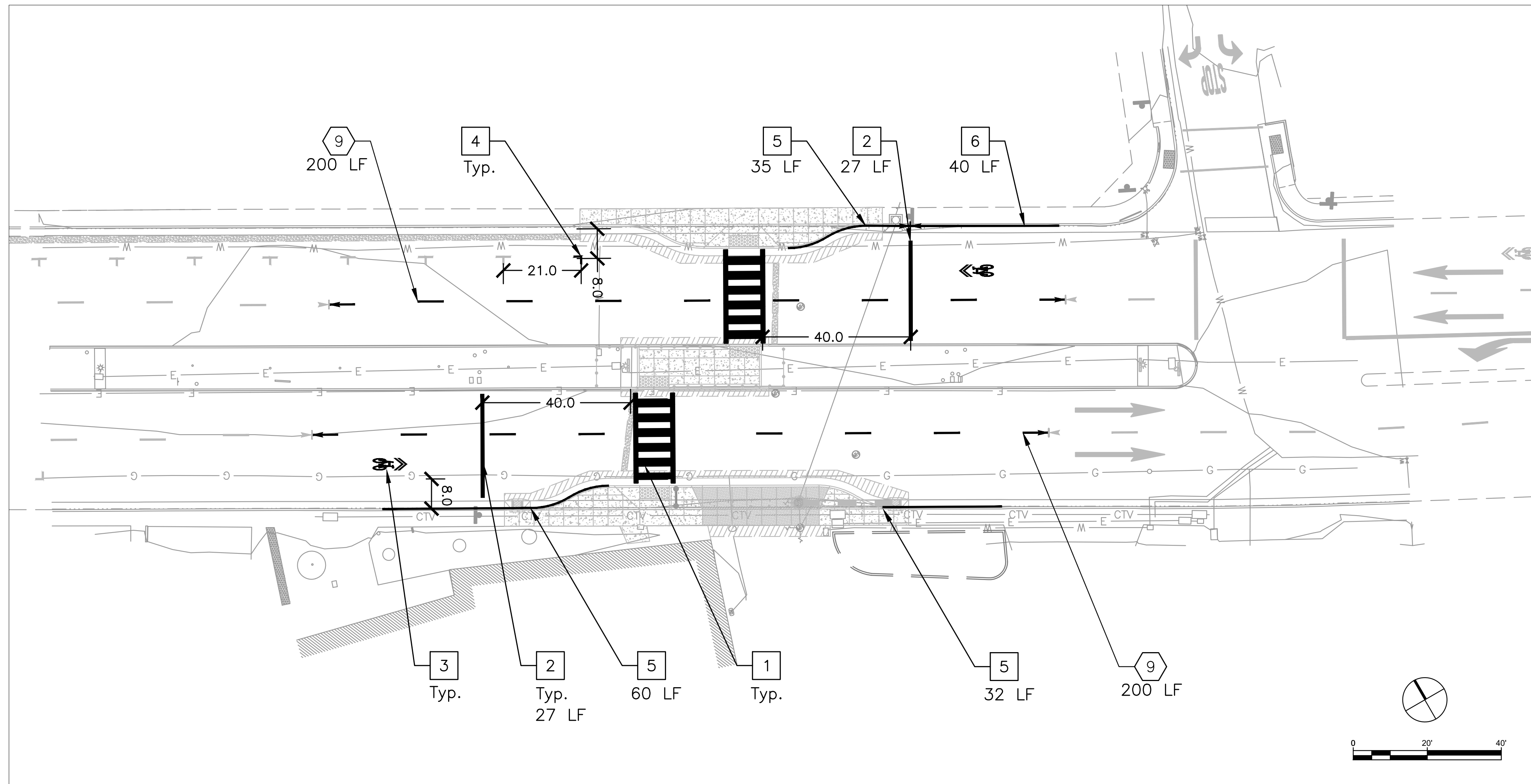
DESIGNED: JD
 CHECKED: RS
 APPROVED: DP



SAN RAFAEL
 THIRD STREET PEDESTRIAN CROSSING
 CONSTRUCTION DETAILS



DATE: 05/28/2020
 SCALE: AS SHOWN
 PROJECT NO.: 2020010
 DRAWING: DT-2
 SHEET NO.: 7 OF 12



GENERAL NOTES (THIS SHEET ONLY)

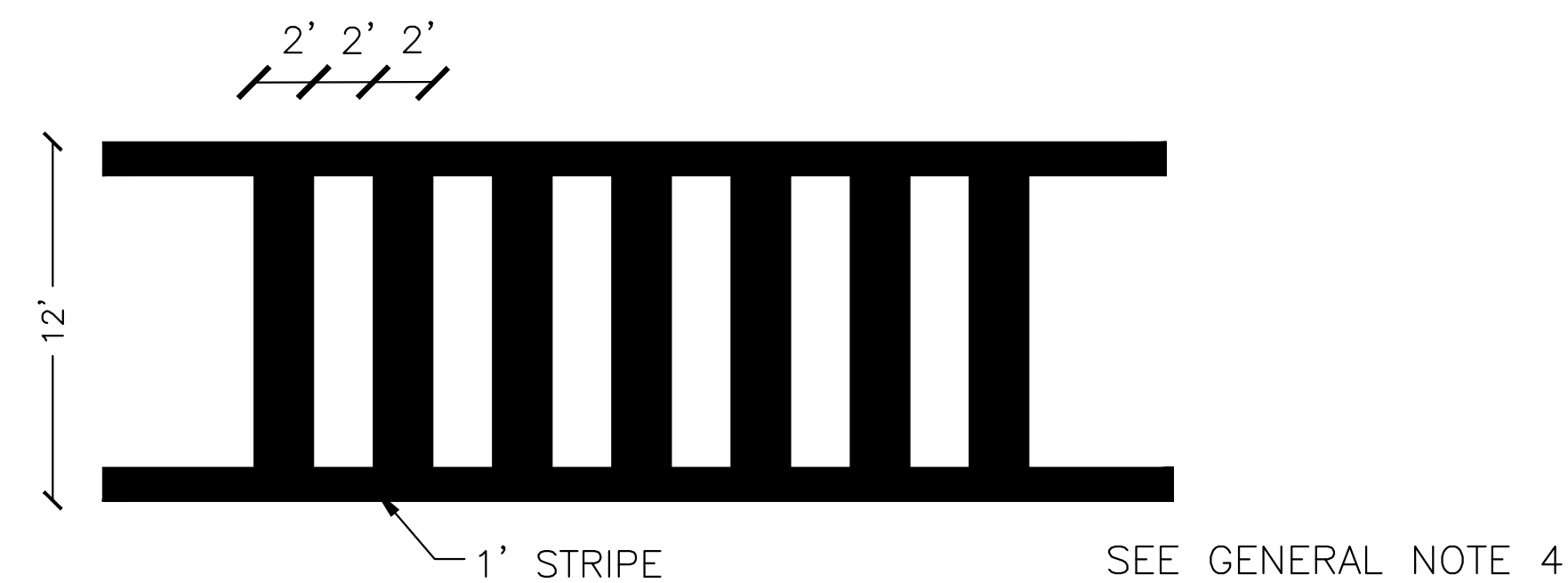
1. PAVEMENT MARKINGS PER CALTRANS STANDARD PLANS A20A-E AND A24A-F
2. NEW MARKINGS ARE SHOWN IN BLACK. EXISTING MARKINGS TO BE MAINTAINED ARE SHOWN IN GRAY
3. CONTRACTOR SHALL PROVIDE 24-HOURS NOTICE TO ALLOW THE CITY TRAFFIC ENGINEER TO REVIEW AND APPROVE ALL STRIPING AND MARKINGS AS "CAT-TRACKS" PRIOR TO PLACING PERMANENT MARKINGS
4. CROSSWALK BARS SHALL BE PLACED TO FALL BETWEEN WHEEL TRACKS OF THE MAJOR STREET. CONTRACTOR SHALL PLACE TEMPORARY MARKINGS FOR ENGINEER REVIEW PRIOR TO PLACING PAVEMENT MARKINGS. SEE CALTRANS STANDARD PLANS AS4F FOR DETAIL ON LADDER CROSSWALK SPACING.

CONSTRUCTION NOTES (THIS SHEET ONLY)

- | | |
|---|--|
| 1 | STRIPE YELLOW LADDER CROSSWALK SEE THIS SHEET DETAIL 1 |
| 2 | STRIPE 1'-WIDE WHITE PAVEMENT STRIPE (STOP BAR) |
| 3 | STRIPE SHARED LANE MARKING |
| 4 | STRIPE PARKING T |
| 5 | PAINT/REFRESH RED CURB |
| 6 | PAINT WHITE CURB (LOADING ZONE) |

LEGEND & ABBREVIATIONS

- CALTRANS STRIPING DETAIL
- (E)** EXISTING
- Typ.** TYPICAL



DETAIL 1 - LADDER CROSSWALK DETAIL

100% CONSTRUCTION DOCUMENTS

Parisi
TRANSPORTATION CONSULTING

1750 Bridgeway, Suite B208
Sausalito, CA 94965
(415) 649-6000

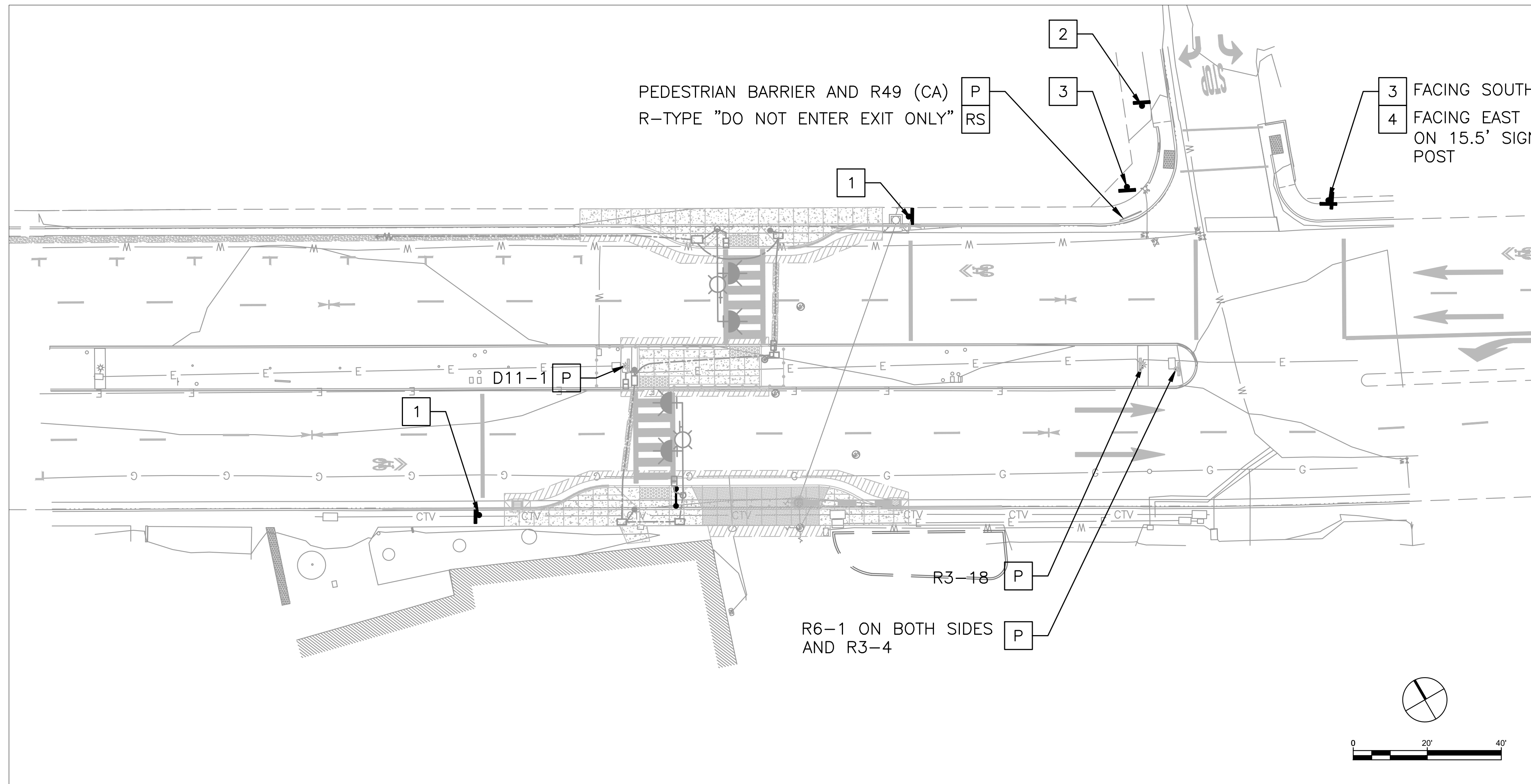
DRAWN: MG	CHECKED: AL
DESIGNED: MG	APPROVED: DP



SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
PAVEMENT DELINEATION PLAN



REVISIONS		DATE	SCALE
		05/28/2020	AS NOTED
		PTC PROJECT NO. 20003	
		DRAWING PD-1	
		SHEET NO. 8 OF 12	
NO.	DESCRIPTION		



CONSTRUCTION NOTES (THIS SHEET ONLY)

- 1 INSTALL NEW R10-6 SIGN ON NEW SIGN POST
- 2 INSTALL NEW R1-1 SIGN ON NEW SIGN POST
- 3 INSTALL NEW R5-1 SIGN ON NEW SIGN POST
- 4 INSTALL NEW R3-1 SIGN ON POST
- P PROTECT IN PLACE
- RS REMOVE AND SALVAGE

SIGNAGE SCHEDULE

SIGN/POST	REMOVE	NEW	SIZE
R10-6 "STOP HERE ON RED"		2	24" X 36"
R1-1		1	36" X 36"
R5-1 "DO NOT ENTER"		2	36" X 36"
R3-1		1	36" X 36"
R-TYPE "DO NOT ENTER EXIT ONLY"	1		
2" TELESPAR		4	13'-0"
2" TELESPAR		1	15'-5"

LEGEND & ABBREVIATIONS

- (E) EXISTING
- Typ. TYPICAL

GENERAL NOTES (THIS SHEET ONLY)

1. INSTALL SIGN POSTS PER COUNTY OF MARIN UNIFORM STANDARDS DWG 310.
2. SIGNS PER CA MUTCD 2014 REVISION 2 SIGN CHARTS

100% CONSTRUCTION DOCUMENTS

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TRANSPORTATION CONSULTING

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Sausalito, CA 94965
(415) 649-6000

DRAWN: MG
DESIGNED: MG

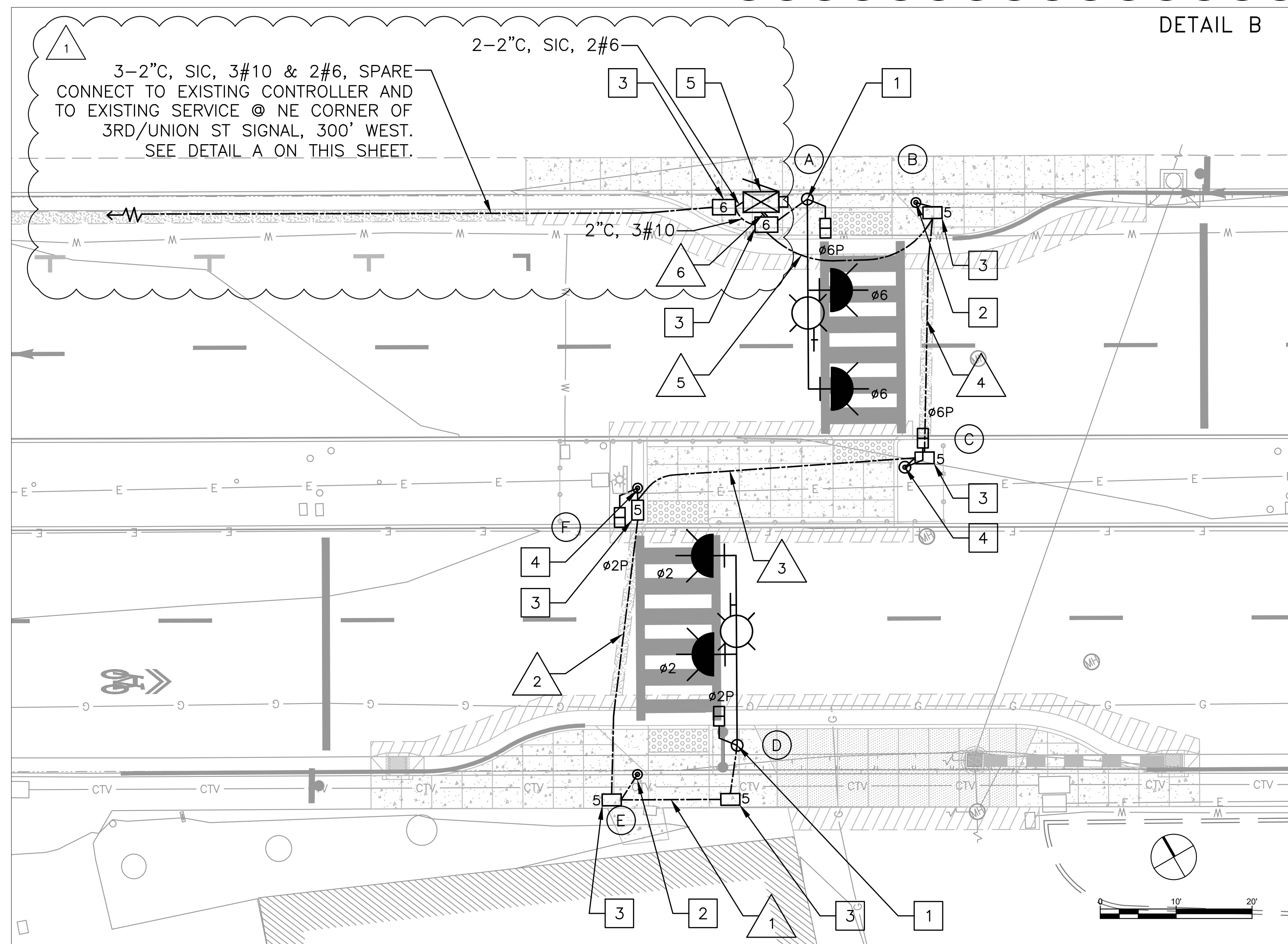
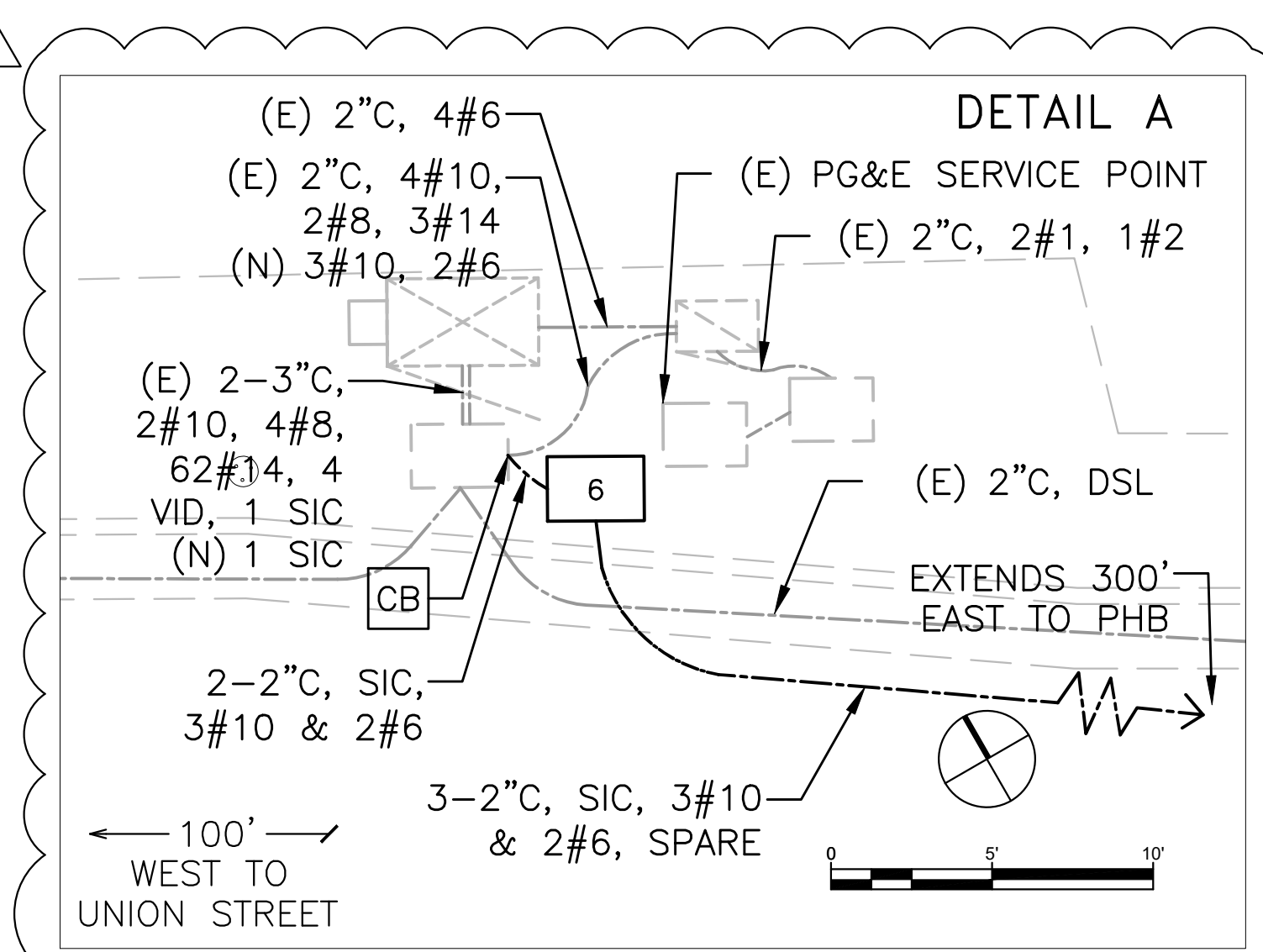
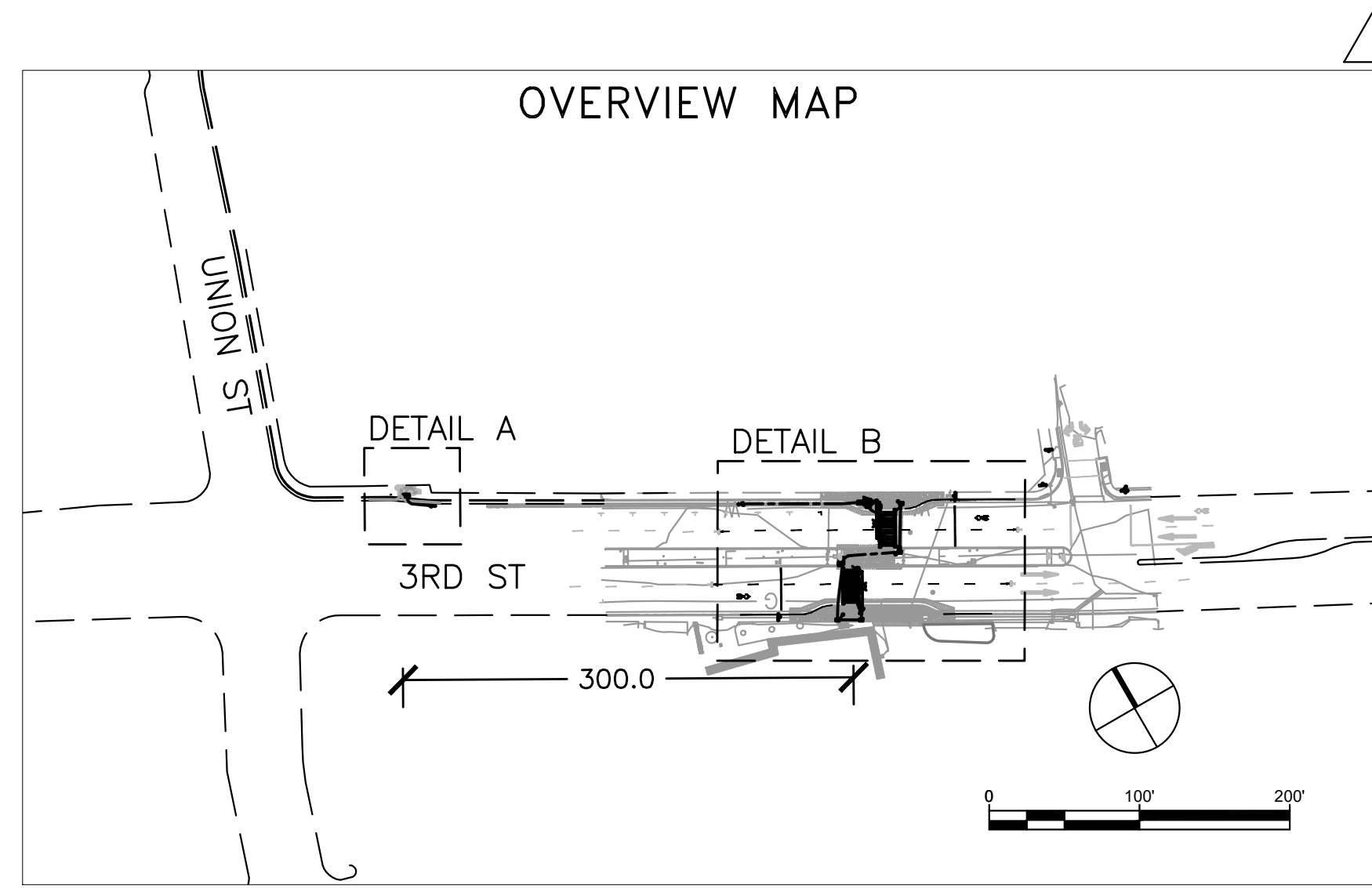
CHECKED: AL
APPROVED: DP



SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
SIGNAGE PLAN



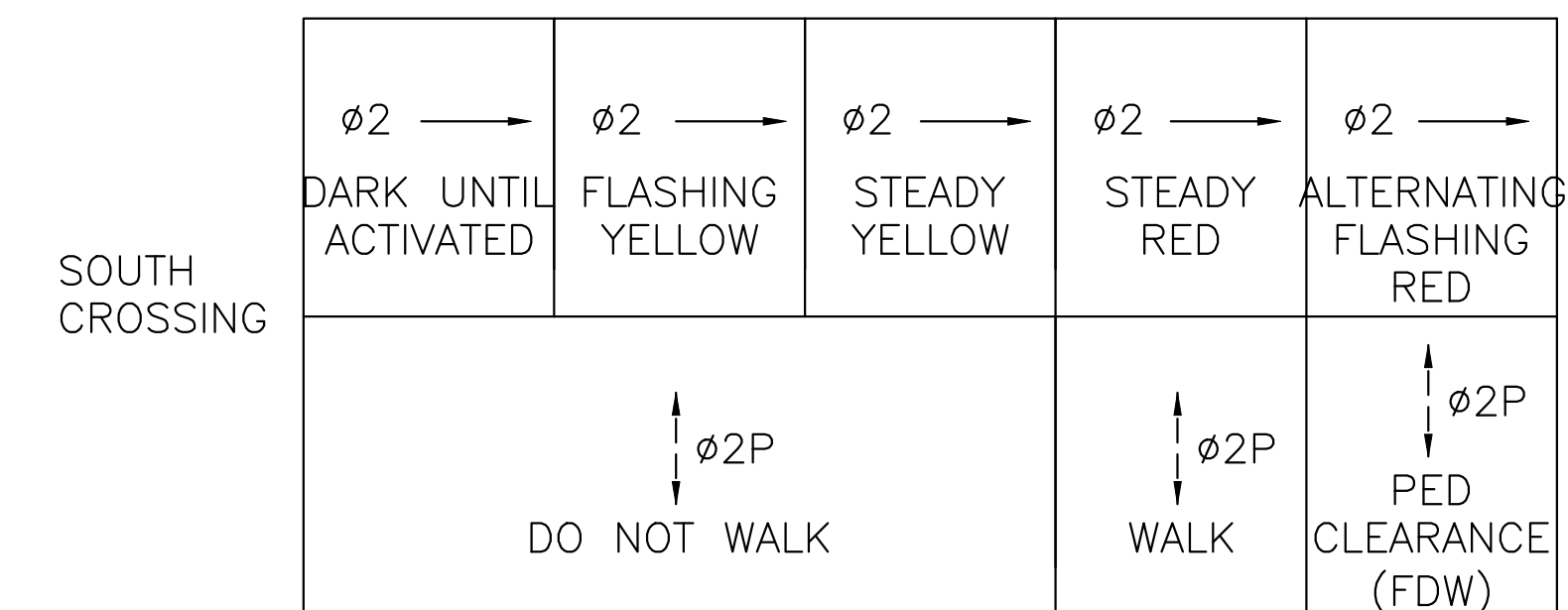
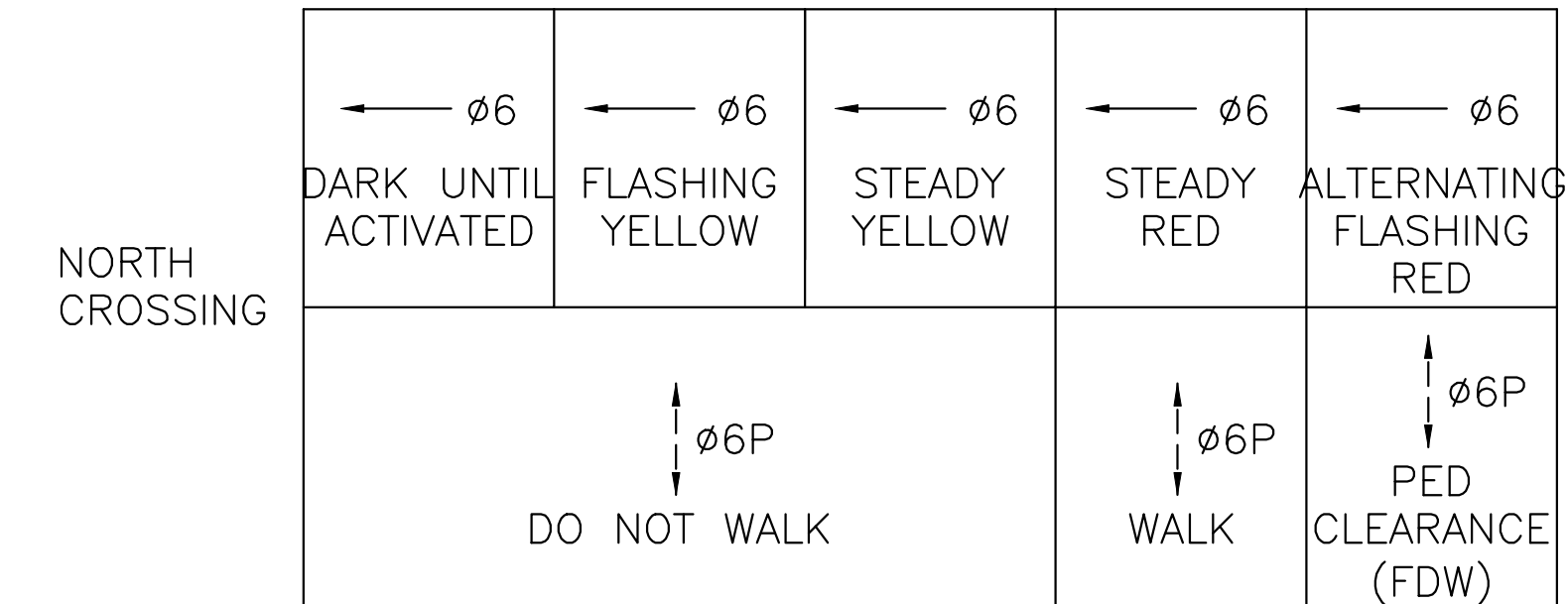
REVISIONS		DATE	SCALE
		05/28/2020	AS NOTED
		PTC PROJECT NO.	20003
		DRAWING	S-1
		SHEET NO.	9 OF 12
NO.	DESCRIPTION		



GENERAL NOTES (THIS SHEET ONLY)

1. SEE SH. D-3 DETAIL 1 FOR SERVICE CABINET DETAIL
2. SEE SH. D-3 DETAIL 2 FOR CONTROLLER CABINET DETAIL
3. SEE SH. D-3 DETAIL 3 FOR PPB POLE BANDING DETAIL
4. FDW - FLASHING DON'T WALK. SEE CA MUTCD FIGURE 4F-3 FOR FURTHER DETAIL

PROPOSED TRAFFIC SIGNAL PHASE DIAGRAM



STEADY DEMAND SEQUENCE

CONSTRUCTION NOTES (THIS SHEET ONLY)

1. INSTALL MAST ARM POLE AND FOUNDATION WITH PEDESTRIAN HYBRID BEACON ASSEMBLY. SEE SH. E-2, DETAIL 1
 2. INSTALL PEDESTRIAN PUSH BUTTON ON PPB POST. SEE SH. E-3, DETAIL 2 FOR PPB BANDING DETAIL
 3. INSTALL PULL BOX.
 4. INSTALL TYPE 1-B POST WITH PEDESTRIAN SIGNAL HEAD AND PEDESTRIAN PUSH BUTTON.
 5. FURNISH AND INSTALL ECONOLITE TYPE M49 CABINET, COBALT CONTROLLER, BATTERY BACKUP SYSTEM, AND FOUNDATION. SEE SH. E-3, DETAIL 1 FOR CABINET DETAILS.
- CB INSTALL CONDUIT INTO EXISTING PULLBOX

100% CONSTRUCTION DOCUMENTS

Parisi
TRANSPORTATION CONSULTING

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Sausalito, CA 94965
(415) 649-6000

DRAWN: MG CHECKED: AL
DESIGNED: MG APPROVED: DP



SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
ELECTRICAL PLAN



REVISIONS		DATE	SCALE
△		05/28/2020	AS NOTED
△			
△			
△			
△		07/16/2020	REVISED ELECTRICAL SYSTEM
NO.	DESCRIPTION		

DRAWING: **E-1**

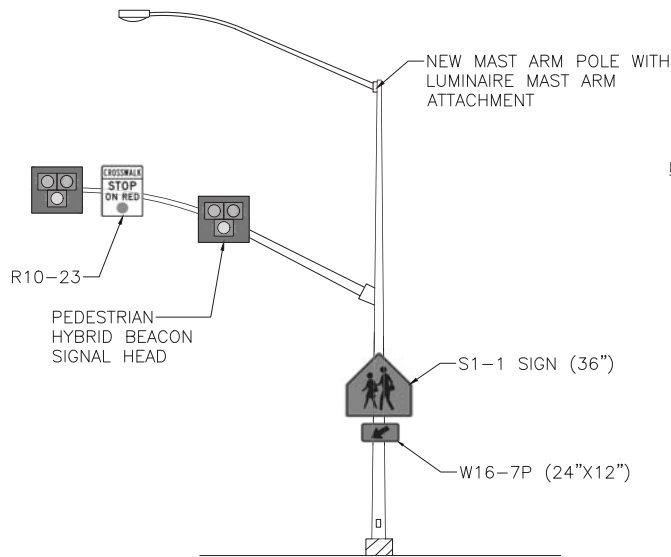
SHEET NO. **10 OF 12**

CONDUCTOR SCHEDULE							
AWG OR CABLE	CONDUCTOR RUN	NUMBER OF CONDUCTORS					
		RUN NUMBER					
		NEW	NEW	NEW	NEW	NEW	NEW
		1	2	3	4	5	6
#14	Ø2	3	3	3	3	3	3
	Ø6						3
	Ø2P	2	2	2	2	2	2
	Ø6P				2	2	2
	Ø2PPB		1	1	1	1	1
	Ø6PPB				1	1	1
	PPB COMMON	1	1	1	1	1	1
	SPARES	3	3	3	3	3	3
TOTAL #14	9	10	10	13	13	16	
#10	SIGNAL COMMON	1	1	1	1	1	1
	LUMINAIRES	2	2	2	2	2	2
	TOTAL #10	3	3	3	3	3	3
CONDUIT SIZE		3"	3"	3"	3"	3"	2",3"
PERCENT FILL		5%	5%	5%	6%	6%	5%

ALL POLES AND EQUIPMENT SHALL BE PER 2018 CALTRANS STANDARD PLANS

EQUIPMENT AND POLE SCHEDULE										
LOCATION	STANDARD			LED LUMINAIRE WATTAGE	VEHICLE SIGNAL MOUNTING		PED SIGNAL MOUNT.	APS		SPECIAL REQUIREMENTS
	TYPE	SIGNAL MAST ARM	LUMINAIRE MAST ARM		MAST ARM	POLE		PHASE (Ø)	ARROW	
(A)	19-3-100	25'	12'	100	MAS	MAS	SP-1-T			INSTALL R10-23 ON MA POLE AND S1-1+W16-7P ON SIGNAL POLE
(B)	PPB POST							Ø2	→	
(C)	1-B						TP-1-T	Ø2	←	
(D)	19-3-100	25'	12'	100	MAS	MAS	SP-1-T			INSTALL R10-23 ON MA POLE AND S1-1+W16-7P ON SIGNAL POLE
(E)	PPB POST							Ø6	→	
(F)	1-B						TP-1-T	Ø6	←	

ALL CITY FURNISHED POLES (WHERE SPECIFIED ABOVE) INCLUDE: POLE SHAFT WITH ANCHOR BOLTS/NUTS/WASHERS, SIGNAL MAST ARM (SMA), LUMINAIRE MAST ARM (LMA), MOUNTING BOLTS, AND POLE HARDWARE KIT (POLE CAP AND HAND-HOLE COVER). ALL OTHER NEW EQUIPMENT SHALL BE FURNISHED BY THE CONTRACTOR.



DETAIL 1: PEDESTRIAN HYBRID BEACON ASSEMBLY (ON MAST ARM POLE)
NOTE: DETAIL SHOWS ONLY 1 SIDE OF SIDE MOUNTED SIGNS.

DETAIL DOES NOT SHOW PEDESTRIAN SIGNAL HEAD.

S1-1 AND W16-7P SHALL BE RETROREFLECTIVE AND FLUORESCENT YELLOW-GREEN.

SIGN AND BEACON MOUNTING PER 2018 CALTRANS STANDARD PLAN AND MANUFACTURER SPECIFICATIONS.

100% CONSTRUCTION DOCUMENTS

Parisi
TRANSPORTATION CONSULTING
1750 Bridgeway, Suite B208
Sausalito, CA 94965
(415) 649-6000



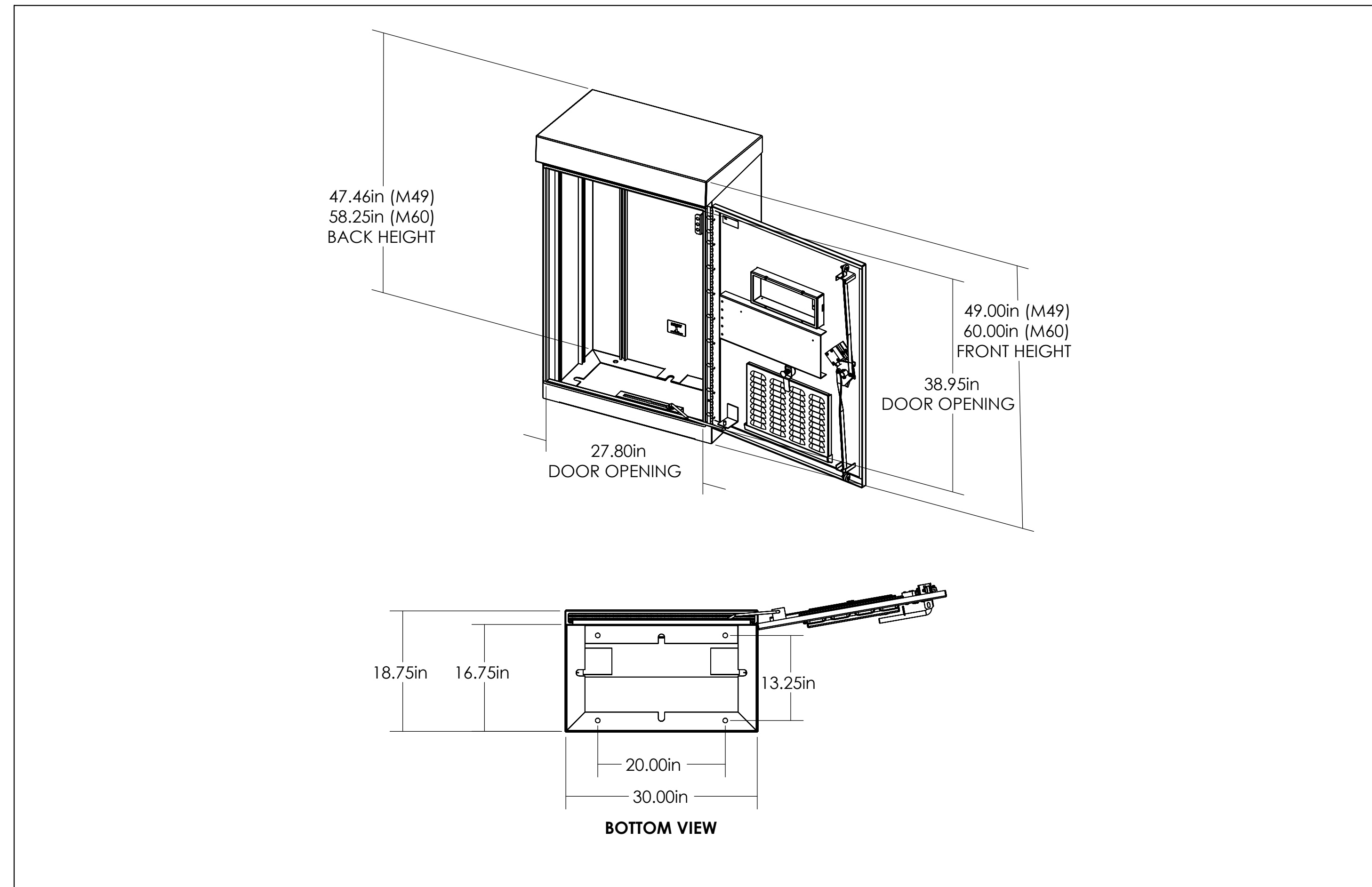
SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
ELECTRICAL SCHEDULE



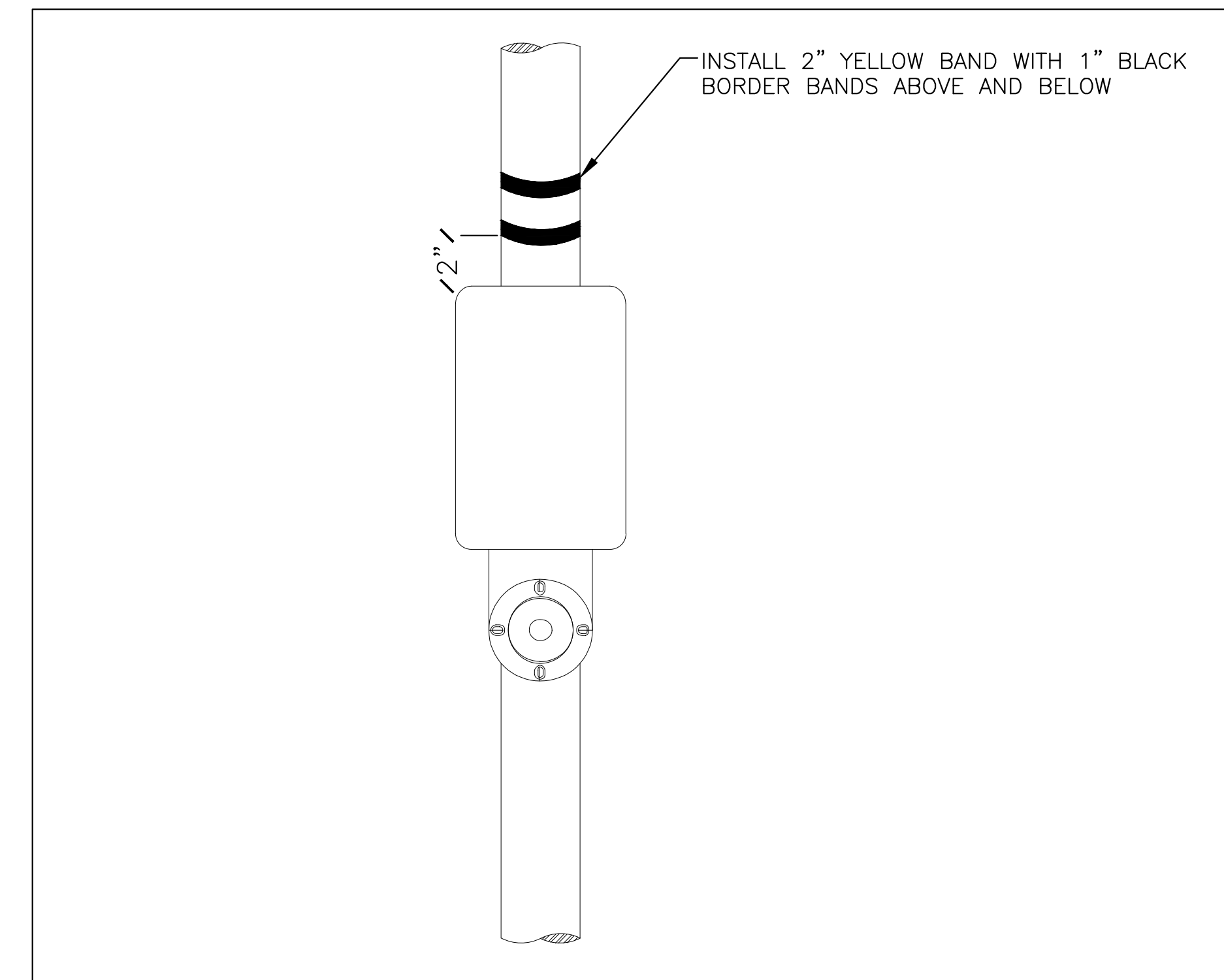
REVISIONS		DATE	SCALE
NO.	DESCRIPTION	05/28/2020	AS NOTED
		PROJECT NO.	20003
		DRAWING	E-2
		SHEET NO.	11 OF 12

DRWEN: MG CHECKED: AL
DESIGNED: MG APPROVED: DP

1



DETAIL 1 – ECONOLITE TYPE M CONTROLLER CABINET DETAIL



DETAIL 2 – PEDESTRIAN PUSH BUTTON DETAIL

100% CONSTRUCTION DOCUMENTS

Parisi
TRANSPORTATION CONSULTING

1750 Bridgeway, Suite B208
Sausalito, CA 94965
(415) 649-6000

DRAWN: MG	CHECKED: AL
DESIGNED: MG	APPROVED: DP



SAN RAFAEL
THE CITY WITH A MISSION

SAN RAFAEL
THIRD STREET PEDESTRIAN CROSSING
ELECTRICAL DETAILS



REVISIONS		DATE	SCALE
		05/28/2020	AS NOTED
		PTC PROJECT NO.	20003
		DRAWING	E-3
		SHEET NO.	12 OF 12
NO.	DESCRIPTION		
1	07/16/2020 – REVISED ELECTRICAL SYSTEM		



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Police

Prepared by: Diana Bishop,
Chief of Police

City Manager Approval: _____

TOPIC: POLICE USE OF FORCE POLICY

SUBJECT: PROPOSED REVISIONS TO THE CITY OF SAN RAFAEL POLICE DEPARTMENT'S USE OF FORCE POLICY

RECOMMENDATION:

Staff recommends the City Council accept this report and direct the Chief of Police to implement the recommended changes to the Police Department's Use of Force Policy.

EXECUTIVE SUMMARY:

In June 2020, Mayor Phillips signed President Barack Obama's "[Mayor's Pledge](#)" to review San Rafael's use of force policing policies. Additionally, the Mayor assembled a community task force to assist City leaders in reviewing and determining whether the City should make any changes to the Police Department's Use of Force Policy, particularly in light of Campaign Zero's [#8cantwait](#) policy recommendations. The task force members worked collaboratively alongside City leaders to review the current policies and discussed proposed changes to the policy. This specific analysis of the Use of Force Policy is not an end point, but rather a step along the way as the City reviews how our service delivery takes place and seeks solutions to address systemic racial injustice found throughout our society in governments, education, health care, employment laws/practices, criminal justice, and more.

BACKGROUND:

As noted above, in June 2020, Mayor Phillips signed President Barack Obama's "Mayor's Pledge" to review San Rafael's use of force policing policies and assembled a community task force to assist City leaders in reviewing and determining whether the City should make any changes to the Police Department's Use of Force Policy, with a particular focus on the [#8cantwait](#) policy recommendations.

["Campaign Zero"](#) is a non-profit organization that supports the analysis of policing practices across the country, conducts research to identify effective solutions to end police violence, and provides technical assistance to improve police accountability and model legislation to end police violence nationwide. The [#8cantwait](#) initiative is a project of Campaign Zero with the goal of improving police practices and reducing excessive use of force. Through the past few months, the messaging of the [#8cantwait](#) campaign has

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

been updated regularly, but the basic eight principles remain to encourage more restrictive use of force policies with the goal of saving lives.

While the task force used the #8cantwait as a framework/starting point, there have been other similar policy recommendations made by others such as California Attorney General Xavier Becerra. In fact, the [media release](#) announcing the Attorney General's recommendations says that they "largely align with the current nationwide #8cantwait campaign."

The Mayor's task force consisted of the following members:

Alyssa Martinez, Community Member
Bishlam Bullock, Community Member
Carly Bainbridge, Community Member
Cristine Alilovich, Assistant City Manager
Damien Oyobio, Community Member
Darin White, Fire Chief
Diana Bishop, Chief of Police
Ember A. Vosmek-Park, Community Member
Gary Phillips, Mayor
Iman Kayani, Analyst
Jim Schutz, City Manager
Justin Read, Community Member
Kate Colin, Vice Mayor
Lucia Martel-Dow, Community Member
Renee Vargas, Community Member
Rob Epstein, City Attorney
Ruth Etcheverria, Community Member
Shibani Nag, Director of Employee Experience and Culture
Zachary Brickell, San Rafael Police Association President

The task force met virtually on June 24th and July 9th. The meetings were led by community member Lorenzo Jones, a professional facilitator. Supervisor Damon Connolly was also an instrumental participant in the task force.

At the first meeting, the group started by getting to learn a little bit about one another. Then, there was a review and Q&A of an overview document that the police department published in mid-June regarding use of force policies, entitled "[We Will Never Wait: A Commitment to Our Community](#)." The Chief of Police spoke about the department's alignment with the goals of the #8cantwait proposals. She also discussed the de-escalation that officers perform daily that significantly lessens the number of times officers must use force. In 2019, for example, the department responded to 49,105 calls for service. Only 66 of those calls (0.13% - or about one-eighth of one percent) resulted in the use of force. The Chief also shared with the group that our officers are trained to use time, de-escalation, and crisis intervention techniques to safely resolve tense situations. After some initial discussion of the policies, the group needed to review the information and return for a subsequent meeting.

The task force then met again on July 9th and reviewed a first set of redlined changes to the policy document which led to a deeper discussion of the policies and the intent underlying them. The discussion spurred some additional changes that have been incorporated in the final draft of the policy. A more comprehensive summary of the task force meetings is attached after the recommended policy changes.

ANALYSIS:

Based on the meetings with the task force, staff is proposing numerous changes to the Police Department's Use of Force Policy (attached) which is Section 300 of the Departmental policy manual. The overall manual is more than 700 pages long, but the task force focused in on Section 300 which contains the use of force policy and is the appropriate section to consider the #8cantwait guidelines.

The first change that readers likely will notice is a "Chief's Preface" that is now page one of the overall policy manual. Previously, the manual did not have a Chief's preface. This preface is intended to set the context and tone for the rest of the document. It captures the values of the Police Department in the Chief of Police's own words. It stresses the department's guiding principle when using force, which is **reverence for human life**.

The other changes are intended for inclusion in Section 300 of the San Rafael Police Department policy manual. To make it simple to identify what has been changed, the attached is shown in "track changes" with underlined words or sentences being new and strike-out to show what has been removed.

As shown in the attachment, there are "track changes" throughout Section 300. While most of the changes arose from direct conversation with the task force, there are additional revisions that reflect the latest update from Lexipol, which is an organization that provides the Department the most up-to-date base policies based on the Government Code, Penal Code, legislative changes, and best practices.

The revisions to Section 300 begin with another new preface intended to set the context for use of force in the department. Each of the #8cantwait elements are now reflected in various parts of Section 300 including chokeholds/strangleholds, de-escalation, warning before shooting, exhausting alternatives before shooting, duty to intervene, shooting at moving vehicles, use of force continuum, and comprehensive reporting.

At the August 17 City Council meeting, the Chief of Police will review the key changes made to the policy manual. Changes have been made in each of the policy topics raised by #8cantwait in addition to other related topics. There is also a new focus on stating clear expectations for minimizing the use of force in particular situations, as opposed to simply providing authority to use force when other options are infeasible.

The proposed policy changes were shared and discussed with San Rafael Police Association (SRPA) per the Meyer-Miliias Brown Act. The SRPA supports the proposed changes to the use of force policy.

Again, these revisions to the Use of Force Policy are not intended to be an end point, but rather a step along the way as the City reviews how our service delivery takes place and seeks solutions to address

systemic racial injustice found throughout our society in governments, education, health care, employment laws/practices, criminal justice, and more.

Police professionals across our nation are addressing issues of use of force and racial injustice and reimagining the role of police services in response to quality of life concerns that may not necessitate an officer response. Once the revisions to the Use of Force Policy are accepted by the City Council, staff intends to continue examining public safety service delivery in the coming months as we review the City's annual goals and objectives.

Staff will develop a community process for the City Council's consideration to work with the Police Department to specifically analyze its calls for service and explore alternative means to better direct certain types of calls to assistance-providers that are not sworn peace officers. The Chief of Police has been consistently supportive of this concept since it was initially raised.

COMMUNITY OUTREACH:

The City created a [webpage](#) and form to capture input from our San Rafael community about actions to be considered by the City of San Rafael to make progress on racial and social justice in our community. We encourage the community to see the progress and directly comment on the webpage. The above mentioned "We Will Never Wait" was shared with our community using multiple forms of social media. The San Rafael Police Department has 15,100 Twitter followers, 10,985 Facebook followers, 2,450 Instagram followers and 36,633 subscribers on NextDoor.

FISCAL IMPACT:

There is no fiscal impact associated with this action.

RECOMMENDED ACTION:

Staff recommends the City Council accept the report.

ATTACHMENTS:

1. Revised Use of Force Policy
2. Summary of Community Task Force Meetings

CHIEF'S PREFACE

We in law enforcement must continue to improve and hold ourselves to the highest standard. The women and men of the San Rafael Police Department (SRPD) strive to reach that standard every day and are committed to providing professional, fair, compassionate, and dedicated law enforcement with integrity and respect.

This Police Department Policy Manual covers all our general, patrol, traffic, and investigation operations. It also covers equipment, support services, personnel rules, and more. Most of the Policy Manual sets forth legal procedures established by State and Federal statutes and case law which must be followed by the SRPD.

However, legal procedures are not always successful in revealing the heart and passion of our organization or exactly what we mean by the values shown on page three of the manual.

Over San Rafael's history, this isn't the first "Chief's Preface" to a SRPD Policy Manual and it won't be the last. But I write this at a time of incredible challenge and opportunity for our country due to a renewed national focus on social and racial equity. The fact we are also in a global pandemic serves to highlight inequity and systemic racism that exists in our country.

I want to assure our community that the San Rafael Police Department is committed to being part of the solution and working with City leaders and our community to find better ways for us to serve; to help uplift, build trust, protect, and guarantee the health and safety of all people in San Rafael.

I could not be prouder of the amazing individuals who embody the SRPD. I acknowledge the efforts made by our Department to address the problems of racial and social inequity through bias-based policing training, de-escalation techniques, being the first in Marin to use body worn cameras department-wide, and our focus on community engagement. Although we strive to be leaders in our profession, there is still work to be done by **all** Police Departments to deter the violence we have witnessed at the hands of Police officers nationwide.

We have recently modified the Use of Force section in this Policy Manual to stress our guiding principle when using force which is **reverence for human life**. We instruct our officers to use the least amount of force needed to successfully resolve an incident. We take the policies in this Manual very seriously and will hold all our officers accountable to them.

We investigate all citizen complaints and initiate our own internal investigations of our officers' conduct. In addition, certain investigations OF OUR OFFICERS are referred to separate law enforcement agencies, rather than SRPD. A variety of sanctions can and will be used to address

violations of these policies, including demotion, reduction in pay, suspension from employment, termination from employment, or criminal prosecution of the offending officer.

We also recognize that the same injustice and prejudice seen through the unlawful use of force against Black and Brown Americans lies at the foundation of so many other challenges facing our communities, including equal access to housing, education, healthcare, and employment.

The San Rafael Police Department stands ready to work with our community, community-based organizations, and other governmental agencies to continually improve and reimagine ways to ensure community safety that don't necessarily involve traditional law enforcement. There will always be the need for highly trained, ethical police officers. That is the makeup of the San Rafael Police Department. But I am excited to work with our officers, support staff, and our community to be a part of the best possible social justice system that uniquely meets the needs of the City of San Rafael.

This Policy Manual is, first and foremost, the guide for our officers. But we proudly post it on our website in a spirit of transparency and striving for both excellence and continual improvement.

Diana Bishop
Chief of Police
August 2020

San Rafael Police Department

San Rafael PD Policy Manual

DRAFT POLICY

300

The use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, officers are sometimes called upon to use force in the course of their duties. The San Rafael Police Department also recognizes that members of law enforcement must be ever mindful that they are not only the guardians but also the servants of the public.

The San Rafael Police Department's guiding principle when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communication, and available resources in an effort to de-escalate the situation, whenever it is safe, feasible, and reasonable to do so, however, officers shall have no obligation or duty to retreat or desist from lawful enforcement action.

As set forth and in further detail below, Department personnel may use objectively reasonable force to carry out their duties. Officers may use deadly force only when they reasonably believe, based on the totality of the circumstances, that such force is necessary in defense of human life or against serious bodily injury. Officers who use unreasonable force degrade the confidence of the community we serve, expose fellow officers to physical hazards, violate the law and rights of individuals upon whom unreasonable force or unnecessary deadly force is used, and subject the Department and themselves to potential civil and criminal liability. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.

Officers shall carry out their duties, including use of force, in a manner that is fair and unbiased. Discriminatory conduct based on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability is prohibited.

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code § 7286).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the

potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Government Code § 7286(a)).

Force - The application of physical techniques or tactics that a reasonable officer would believe is likely to cause more than momentary discomfort, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

Reasonable force – An objective standard of force viewed from the perspective of a reasonable officer, without benefit of 20/20 hindsight, and based on the totality of the circumstances known or perceived by the officer at the time. Determination of reasonableness will be through Policy 300.3.2.

Serious bodily injury - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)).

Totality of the circumstances - All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE AND REPORT

Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, intercede to prevent the use of unreasonable force when and where it is safe and feasible to do so. An officer's duty is not diminished or impeded due to the experience,

rank, or assignment of the individual engaging in the unlawful conduct. An officer who observes a law enforcement officer or an employee use force that potentially exceeds what the officer reasonably believes to be necessary shall promptly report these observations to a supervisor as soon as feasible (Government Code § 7286 (b)).

300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.3 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See the Bias-Based Policing Policy for additional guidance.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, techniques or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

De-escalation is a fundamental principle of how we conduct police work. Taking no action, passively monitoring a situation, or bringing in partners such as a mobile crisis unit may be the most reasonable response to a situation, particularly those involving mental health crises. This policy manual refers to the importance of de-escalation in multiple sections. See, in particular, Section 466.6, our de-escalation policy.

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers, should consider actions that may increase officer safety and may decrease the need for using force, such as:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)(1)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).

- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer leading up to the use of force (Penal Code § 835a).
- (e) The effects of suspected drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.4 CAROTID CONTROL HOLD AND CHOKE HOLD

San Rafael Police Officers are banned from using any technique, including the Carotid Control Hold and Choke Hold, that restricts the air or blood flow by restricting the neck or throat of a person.

Officers may use these techniques *only* if an individual is presently violent to the point where the officer reasonably believes that the individual will cause serious bodily injury or death to officers or others.

~~The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is subject to the following:~~

- ~~(a) The officer shall have successfully completed department approved training in the use and application of the carotid control hold.~~
- ~~(b) The carotid control hold may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:
 - ~~1. The subject is violent or physically resisting.~~
 - ~~2. The subject, by words or actions, has demonstrated an intention to be violent and reasonably appears to have the potential to harm officers, him/herself or others.~~~~
- ~~(c) The application of a carotid control hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold:
 - ~~1. Females who are known to be pregnant~~
 - ~~2. Elderly individuals~~
 - ~~3. Obvious juveniles~~
 - ~~4. Individuals who appear to have Down syndrome or who appear to have obvious neck deformities or malformations, or visible neck injuries~~~~

- ~~(d) Any individual who has had the carotid control hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel.~~
- ~~(e) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the subject lost consciousness as a result.~~
- ~~(f) Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.~~
- ~~(g) The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.~~

300.3.5 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers ~~should~~ shall not use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the San Rafael Police Department for this specific purpose.

300.4 DEADLY FORCE APPLICATIONS

Providing a verbal warning before an application of deadly force is the default and should always take place, unless it is not feasible and/or the officer has objectively reasonable grounds to believe the person is aware they are a peace officer and that deadly force may be used.

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers ~~should~~ shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286 (b); Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

A ban on shooting at or from a moving vehicle is the default unless the following conditions exist: An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the **imminent** threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others (Government Code § 7286(b)).

Shots fired at or from a moving vehicle are rarely effective and may involve additional considerations and risks. When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, officers should use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- (a) If the officer does not perceive an imminent threat but reasonably believes that the potential for such threat exists (e.g., building search), firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If the officer reasonably believes that an imminent threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such imminent threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a Conducted Energy Weapon (CEW) such as a Taser or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Section policy.

300.6 MEDICAL CONSIDERATION

Once it is reasonably safe to do so, properly trained officers should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any

use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.7 SUPERVISOR RESPONSIBILITY

A supervisor shall respond to any reported use of force, when the supervisor is reasonably available. The responding supervisor is expected to (Government Code § 7286(b)):

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation.
 - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 SHIFT SUPERVISOR RESPONSIBILITY

The Shift Supervisor shall review each use of force by any personnel within his/her command to ensure compliance with this policy.

300.8 TRAINING

The Department shall provide training to officers, investigators, and supervisors on this policy a minimum of three times per year and demonstrate their knowledge and understanding (Government Code § 7286(b)). De-escalation and situational reassessment are part of all range, scenario, simunition, defensive tactics, and active shooter training. The Department also provides 12 scenario-based training bulletins each month to assist officers in learning how to apply policies and improve their ability to make well-reasoned decisions.– Policy 466 Crisis Intervention Incidents outlines de-escalation techniques and considerations.

Subject to available resources, the Training Manager should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include (Government Code § 7286(b)):

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- (b) Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

300.9 USE OF FORCE COMPLAINTS

The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Government Code § 7286(b)).

300.10 ADMINISTRATIVE REVIEW

The supervisor shall attach a completed "Use of Force Analysis Form" to a copy of the associated incident report and route through the chain of command for staff review and recommendations. If the incident involved the use of a Conducted Energy Weapon (CEW), then the supervisor shall complete and attach an "CEW Use Form", along with the Electro Muscular Disruption Technology (EMDT) data download.

The report is based on the initial information available at the time the incident is reviewed. Once the form has been reviewed by the Chief of Police it shall be forwarded to his or her designee for

statistical information gathering and early intervention purposes. The completed and signed "Use of Force Analysis Form" will be retained, but the attached copy of the associated report will then be destroyed. The review of control holds, or other pain compliance techniques does not require review above the rank of Lieutenant unless there are associated injuries.

The purpose of this review is to meet the stated objectives of this policy and is not intended to determine whether each application of force was within policy. This review is independent of any notification and review required under "Supervisor Responsibility" or any subsequent internal administrative investigations.

The administrative review shall be used to provide direction to command staff regarding general policy issues, identify any potential training concerns and maintain statistical information related to Use of Force incidents. The statistical information shall be maintained in a spreadsheet format and minimally include the following categories:

Date, Case Number, Type of Force Used, Overall Effectiveness, and Injuries Sustained (Officer and Subject). Any application of force other than a simple control hold or pain compliance technique is required to be documented on the "Use of Force Analysis Form." The pointing of a firearm at a person shall be reported as an application of force.

The statistical information spreadsheets shall be stored in the following file location: "W:\Staff Share\Use of Force Reports."

Yearly, the Department will post Use of Force statistics on the Department's website and other platforms for review.

300.11 USE OF FORCE ANALYSIS

At least annually, the Operations Bureau Commander or designee should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

300.12 POLICY REVIEW

The Chief of Police or the authorized designee should regularly review and update this policy to reflect developing practices and procedures (Government Code § 7286(b)).

300.13 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

300.14 PUBLIC RECORDS REQUESTS

Requests for public records involving an officer's personnel records shall be processed in accordance with Penal Code § 832.7 and the Personnel Records, Personnel Complaints, and Records Maintenance and Release policies (Government Code § 7286(b)).

Summary of Community Task Force Meetings on Police Use of Force Policy

In June 2020, San Rafael Mayor Phillips created a community task force to review the [#8cantwait](#) policy recommendations and determine if the City should make any changes to our Police Department's use of force policy. The task force, including community members and key City leaders collaboratively reviewed the current policies together and discussed the Chief of Police's proposed changes based on the feedback from the community members. A list of the members of the task force can be found on the City's [website](#).

The task force met twice, with meetings facilitated by Lorenzo Jones, a professional consultant/facilitator.

Task Force Meeting #1 via Zoom: June 24, 2020

- Chief Bishop reviewed her most recent messaging to the community in a document titled "[We Will Never Wait – A Commitment to Our Community](#)" which includes specific information in an effort to assure our community that our police department is committed to being part of the solution as it relates to racial justice and to will continue working with City leaders and our community to find better ways for our police department to serve.
- The task force also reviewed the San Rafael Police Department's (SRPD) current use-of-force policies. The Chief of Police clarified that these policies are based on Federal and California law and most of the language is provided by Lexipol who sets the industry rules and standards for policies following adoption of new laws. The taskforce also learned more about the SRPD's extensive training program and how many of the concepts put forward by the #8cantwait campaign are already incorporated into policy and practiced here in San Rafael.
- The task force discussed the key elements related to #8cantwait policies and how these could be incorporated into SRPD's operational protocols and discussed specific changes to the use of force policy itself. It was noted that altering some of the language in the current policies would help clarify the operational protocols and make it easier for the public to understand.
- Chief Bishop shared the use of force statistics for 2019, in which only 66 of 49,105 reports (or 0.13%) taken required use of force.
- Several members of the task force suggested that the "use of force" data be made public and accessible online for the community. SRPD reports certain uses-of-force cases to the Department of Justice on an annual basis, having this information readily available online will help build trust between the community and local law enforcement. There was discussion about the expansion of comprehensive reporting requirements requiring officers to report all incidents involving a threat to use force or pointing of firearm at an individual.
- Several task force members raised questions related to accountability if an officer were not to not intercede if they were to witness another officer using excessive force. Chief Bishop clarified that the duty to intercede is clear requirement in the department's current policy.

- The Chief of Police clarified that the department conducts internal investigations when there is alleged misconduct and holds officers accountable for violating department policy. There are various levels of discipline (i.e. reduction in pay, demotion, suspension from employment, termination). The City Attorney further elaborated that there are also civil and criminal proceedings that could occur if the conduct of the officer warranted it.

Task Force Meeting #2: July 9, 2020

- The second task force meeting focused on the review of use-of-force policies and the intent behind them, starting with a discussion of the Police Chief's Preface to the Police Procedure Manual. This preface is essentially an introduction by the Chief of Police about her policing philosophy and vision for the Police Department. Chief Bishop's preface highlighted the disproportionate use-of-force against people of color nationwide and the underlying inequities in policing, and other parts of our society, as well as, the role of leaders to drive change.
- Next, the task force discussed the SRPD's "Policy 300" which outlines the use-of-force guidelines. Several task force members suggested revising the language in these policies to add clarity. For example, the language on the Carotid Control Hold policy was considered to be longwinded and somewhat confusing. The original language went into the details of when, how, and where to use this technique. The Chief of Police clarified that in effect the carotid hold is currently prohibited because officers have not been trained in using it and therefore are not authorized to do so. The Chief agreed to simplify this language to make it more clear that the use of a carotid hold is banned.
- The Chief of Police discussed the department's philosophy and practice to use de-escalation techniques as a best practice in the course of their duties. Additional language is proposed to confirm this approach is clearly preferred over use of force.
- The group discussed the definition of the word "reasonable", which is used throughout the policy. Factors used to determine "reasonableness" are based partly on [Assembly Bill 392](#). This standardized terminology is used because it is impractical to foresee every conceivable situation that an officer might encounter. Several members of the task force felt the need to clarify this further, therefore the Chief of Police is proposing adding additional language to the policy to define "reasonable force".
- The task force members shared a concern regarding the language qualifying when an officer has the duty to intercede. This feedback helped to inform edits to this language proposed by the Police Chief which will further clarify the duty to intercede.
- The task force also reviewed SRPD's training standards. The policy states that training is provided "periodically," however in actuality SRPD conducts training multiple times per year on an ongoing basis. All training is documented, and the State of California audits these records to make sure required training courses are documented properly. Some of the task force members expressed that the training should not be used as a punitive measure after an incident, but rather it should be conducted more proactively to train officers as a preventative measure. The Chief of Police proposed adding language to the policy to clarify the frequency of proactive training.

- The task force also discussed the desire to make data available publicly for the community. Currently, the data provided by SRPD is divided into two categories: criminal vs. non-criminal. Members of the task force expressed that more specific data would help build trust with the community and help the community better understand the types and number of cases.
- Lastly, the task force discussed the use of bodycams. It was noted that in 2014, SRPD was the first agency in Marin County to incorporate body cameras across the board. The task force wanted to better understand how this footage is used. The Chief shares that body camera footage is audited by supervisors to review any problematic incidents and used in the course of internal investigations.

Next Steps

The Chief of Police will prepare recommended changes to the SRPD Use of Force Policy based on feedback from the task force and the San Rafael Police Association for the City Council to consider at an upcoming meeting.



Agenda Item No: 5.b
Meeting Date: August 17, 2020

SAN RAFAEL CITY COUNCIL AGENDA REPORT	
Department: Community Development	
Prepared by: Ethan Guy, Principal Analyst	City Manager Approval: _____

TOPIC: AGREEMENT GRANTING TO CENTERTOWN II, LLC AN OPTION TO LEASE 855 C STREET

SUBJECT: RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT GRANTING TO CENTERTOWN II, LLC AN OPTION TO LEASE THE REAL PROPERTY LOCATED AT 855 C STREET IN THE CITY OF SAN RAFAEL

RECOMMENDATION:

Adopt resolution approving and authorizing the City Manager to execute the attached "Option to Lease," agreement, which grants Centertown II, LLC an option to lease the City-owned property at 855 C Street.

BACKGROUND:

*Note, the following staff report has been compiled based upon due diligence analysis performed by Seifel Consulting, Inc. The complete due diligence analysis is provided as **Attachment A**.*

Centertown Apartments is located at 855 C Street on a 0.98-acre lot in downtown San Rafael owned by the City of San Rafael. The property was a housing asset of the former San Rafael Redevelopment Agency (SRRRA). The City also owns the adjoining property at 815 C Street.

The apartment building contains approximately 85,469 gross square feet of building area and is arranged around a central courtyard. Centertown provides 59 affordable family apartments– 17 one-bedroom units, 27 two-bedroom units, and 15 three-bedroom units. An onsite property manager occupies a two-bedroom manager’s unit for a total of 60 units. Additionally, the property includes 102 parking spaces, including six offsite spaces on 815 C Street. Centertown residents may use these spaces under the terms of a recorded Declaration of Restrictions for as long as the property remains residential and parking is required by the City.

All of the residents of Centertown are lower income households, with many of them being extremely low income. The average household income of Centertown residents is about 32% of the Marin County Areawide Median Income (AMI).

_____ **FOR CITY CLERK ONLY**

File No.: _____

Council Meeting: _____

Disposition: _____

Development Financial History

The property was originally planned as market rate condominiums, but the condominium development failed financially prior to construction completion. The SRRA collaborated with BRIDGE Housing and EAH Housing (BRIDGE/EAH) to acquire the property and redevelop it as 60 units of affordable rental housing.

As part of the project's financial structure, the City owns the land, and a BRIDGE/EAH-controlled limited partnership (Centertown Associated, Ltd) ground leases the property from the City and owns the Centertown building improvements. EAH is the property manager for the property.

The ground lease was originally recorded on November 30, 1989, and the term of the ground lease is 75 years. Three ground lease amendments have occurred since 1989 that amended specific sections related to the payment of ground rent given evolving financial conditions over time.

Current Development Status

While BRIDGE/EAH were able to redevelop the property into apartments in 1992 by incorporating the existing, partially built foundation, Centertown has unfortunately experienced subsequent construction related issues including significant problems related to water intrusion. BRIDGE/EAH commissioned Marx | OKUBO Associates to perform a Facility Condition Assessment of the property to determine its condition and the need for repairs to the building systems. The total estimated cost for the proposed improvements is approximately \$10 million, which includes an approximately 10 percent hard cost contingency that is typical for rehabilitation of older properties.

BRIDGE/EAH are proposing to re-syndicate and refinance Centertown using tax exempt bonds and low income housing tax credits (LIHTC), in order to rehabilitate the property to address all immediate physical needs and establish reserves and cash flow to address future maintenance needs as they arise. All of the existing residents will be able to continue to reside in their apartments, although some residents could be temporarily moved depending on the extent of renovation in their units. These residents will be able to move back to their original unit once renovated.

ANALYSIS:

BRIDGE/EAH need a contractual option to enter a new ground lease in order to meet requirements for applying for tax credits and tax-exempt bond monies. Entering into a new ground lease will enable the proposed re-syndication and rehabilitation to occur, which will significantly improve the building improvements. As the City will ultimately receive the building improvements at the end of the lease, the rehabilitation will enhance the City's long-term asset. Any new ground lease will have to be approved by the City Council, but subject to the material terms agreed to in the Option.

Under a proposed ground lease option BRIDGE/EAH would form a new legal entity, Centertown II, LLC, that would serve as the Optionee. The proposed ground lease option (Attachment C) would enable BRIDGE/EAH and the City to negotiate a new lease under the following terms, which may be modified as the financing program is refined over the next few months:

- A new ground lease term of 99 years from the date of execution.
- \$83,000 upfront ground lease payment based on a 2020 property appraisal that indicates the current land value is \$83,000, due to existing regulatory restrictions on the property. (This amount would be paid to the City at closing).

- Payment of a \$5,000 per year annual City monitoring fee, which could escalate at 3% per year after permanent financing is in place. This amount will be determined in collaboration with City staff based on experience with other projects, taking into account the size of this development.
- The ground lease language will be modernized in connection with the re-syndication, which will include a provision that the ground rent won't exceed the market value of the land.
- As described above, the consolidated City loan would be entered into at the same time.

FISCAL IMPACT:

The purpose of this report is to provide BRIDGE/EAH the option for them to obtain re-syndication and refinancing. There is no fiscal impact in adopting a resolution that approves and authorizes the City Manager to execute the attached "Option to Lease" agreement. Any fiscal impacts would occur upon the execution of a new ground lease, which would be negotiated upon BRIDGE/EAH successfully obtaining project re-syndication and refinancing and exercising this option. This new ground lease will have to be approved by the City Council.

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 approving and authorizing the City Manager to execute the attached "Option to Lease" Agreement.

ATTACHMENTS:

1. San Rafael Centertown Apartments Due Diligence Analysis
2. Resolution
3. Exhibit A to Resolution



Memorandum

Date August 7, 2020

To: City of San Rafael

From: Seifel Consulting, Inc.

Subject: San Rafael Centertown Apartments Due Diligence

Seifel Consulting, Inc. (Seifel) has performed a due diligence analysis regarding a proposed ground lease amendment and funding request from BRIDGE Housing and EAH Housing (BRIDGE/EAH) that would substantially rehabilitate Centertown Apartments (Centertown) in downtown San Rafael. The current residents of Centertown are in substantial need of affordable housing as their incomes are significantly below typical household incomes in Marin County.

Prior to BRIDGE/EAH acquiring the site, the property was originally planned as condominiums, but the condominium development failed financially prior to construction completion. The City of San Rafael (City) and its former Redevelopment Agency collaborated with BRIDGE/EAH to acquire the property and redevelop it as 60 units of affordable rental housing. As part of the project's financial structure, the City owns the land, and a BRIDGE/EAH-controlled limited partnership (Centertown Associated Ltd) ground leases the property from the City and owns the Centertown building improvements. EAH is the property manager for the property.

While BRIDGE/EAH were able to redevelop the property into apartments in 1992 by incorporating the existing, partially built foundation, Centertown has unfortunately experienced subsequent construction related issues including significant problems related to water intrusion.. These problems, coupled with the overall age of the building, have resulted in the need for substantial ongoing investment out of operating cash flow. BRIDGE/EAH have requested and been granted the deferral of payments on the City's ground lease and outstanding promissory note, as well as loan payment deferrals from other soft lenders, to pay for needed repairs and increase replacement reserves to help pay for the proposed substantial rehabilitation of the property.

BRIDGE/EAH commissioned Marx | OKUBO Associates to perform a Facility Condition Assessment of the property to determine its condition and the need for repairs to the building systems. As will be further described below, the property is in significant need of repair given its age and construction type. BRIDGE/EAH are proposing to undertake rehabilitation improvements to the property as recommended in the Facility Condition Assessment and to provide additional building common area for residents and property management. The proposed re-syndication of the property and amendment to the ground lease is anticipated to leverage substantial funding from the State of California, County of Marin and private capital to holistically correct the property's waterproofing issues and to undertake other needed rehabilitation.

Both BRIDGE and EAH have a long history of developing, rehabilitating and managing affordable housing. As the property manager of Centertown, EAH provides a broad array of resident services and regularly communicates with residents. Once BRIDGE/EAH have been able to secure funding for the

rehabilitation, they will provide information to the residents regarding the likely rehabilitation schedule and information regarding any temporary moves that households may need to make during the rehabilitation process. Alternative housing will be provided at no additional cost to residents who need to be temporarily relocated, and they will receive assistance with their move and will not have to pay any costs associated with the move or storage for personal belongings. The main focus will be to provide ample information and support to residents, as well as comfortable and convenient accommodations during any temporary moves.

In order to perform its due diligence analysis, Seifel analyzed a series of technical documents that were provided by City and BRIDGE/EAH staff and are referenced in this memorandum. Seifel also interviewed City staff and BRIDGE/EAH staff regarding specific elements of the proposed project and worked with staff and outside counsel to refine the proposed terms of the ground lease amendment and funding request to the City.

This memorandum is organized into the following sections:

- A. Project Description
- B. Existing Ground Lease
- C. Existing City Loan and Other Financial Obligations
- D. Proposed Rehabilitation Program
- E. Proposed Funding Program and Ground Lease Modifications
- F. Due Diligence Findings
- G. Conclusion

The due diligence analysis in this memorandum documents why BRIDGE/EAH's proposed modifications to the ground lease and City loan requests are reasonable, and how they will help the City of San Rafael preserve and substantially rehabilitate an important source of affordable housing for local residents, consistent with the City's Housing Element goals. The proposed resyndication and rehabilitation program will improve the living environment for approximately 180 of the City's lower income residents and will leverage sufficient public and private funding to accomplish much needed repairs and building improvements that will enhance the City's long-term interests in the property.

A. Project Description

Centertown Apartments is located at 855 C Street on a 0.98-acre lot in downtown San Rafael owned by the City of San Rafael. The property was a housing asset of the former San Rafael Redevelopment Agency (SRRA). The City also owns the adjoining property at 815 C Street.

BRIDGE/EAH redeveloped the property into 60 affordable apartments in 1992 by incorporating an existing, partially completed foundation structure that was part of a former condominium development.¹ The former condominium developer declared bankruptcy before construction was complete, and the property was foreclosed in 1984 by the United States Bank. The foundations remained as they were constructed in 1983 until BRIDGE/EAH began construction on Centertown Apartments in the early 1990s.²

¹ For purposes of this memorandum, the use of the term BRIDGE/EAH refers to the Centertown legal entities that have developed and are proposing to rehabilitate and resyndicate the property.

² A detailed history of the development and key terms of the City's ground lease and loans are presented in the Centertown Deal Memo, which was prepared by Page Robbins Associates for the City of San Rafael on February 1, 2000. This is a major source of information that was used in this due diligence analysis, which was verified to the extent feasible with current City and BRIDGE/EAH staff, as well as outside counsel.

The apartment building contains approximately 85,469 gross square feet of building area and is arranged around a central courtyard. Centertown provides 59 affordable family apartments– 17 one-bedroom units, 27 two-bedroom units, and 15 three-bedroom units. An onsite property manager occupies a two-bedroom manager’s unit for a total of 60 units. The property includes 102 parking spaces including six offsite spaces on 815 C Street that are able to be used by Centertown residents under the terms of a recorded Declaration of Restrictions for as long as the property remains residential and parking is required by the City.

All of the residents of Centertown are lower income households, with many of them being extremely low income. According to BRIDGE/EAH, the average household income of Centertown residents is about 32% of the Marin County Areawide Median Income (AMI).

B. Existing Ground Lease

On March 8, 1988, BRIDGE entered into the initial Purchase Agreement with United Savings Bank to acquire the property. Later that year, property ownership was transferred from United Savings Bank to the former San Rafael Redevelopment Agency (SRRA). In 1989, property ownership of the adjacent 815 C Street was transferred from BRIDGE to SRRA. Both sites were then leased by the Lessor, SRRA, through a long-term ground lease to the Lessee, a project specific legal entity called Centertown Associates managed by BRIDGE/EAH.

The ground lease was originally recorded on November 30, 1989, and the term of the ground lease is 75 years. Three ground lease amendments have occurred since 1989 that amended specific sections related to the payment of ground rent given evolving financial conditions over time.

The original ground lease and subsequent amendments describe a complicated stream of payments that occur during specific periods of time. These payment amounts were tied to the project’s projected ability to meet its financial obligations including the repayment of loans that were provided by the City and the former SRRA. The most critical portions of the ground lease payment structure are summarized here:

- For the first five years, the Lessee’s initial ground lease payment or ground rent was \$1 per year.
 - A reconciliation was done in the sixth year to determine if the Lessee’s equity investment had been returned, and the rent continued at \$1 per year until this occurred.
- Once the Lessee’s equity investment was returned, the ground rent became 9% of gross income paid annually in arrears until it accumulates to \$1,061,104.
 - As further described below, the California Department of Housing and Community Development (HCD) provided a loan to the property that is subject to an HCD Regulatory Agreement that limits the amount of annual ground lease payments to a maximum of \$69,880 (\$84,880 minus a \$15,000 partnership management fee).³
- Once \$1,061,104 in ground rent payments have accumulated, the ground lease payment is \$1 per year until all of the original City and SRRA loans are repaid. (Only one City loan is currently outstanding as described below.)
- After the City and SRRA loans are repaid, ground rent is then based on 6% of gross income.

³ The HCD Regulatory Agreement does not allow cumulative distributions, but instead allows an annual distribution of up to \$84,880 in any year when there is net cash flow. After the allowable deduction of \$15,000 for a Partnership Management Fee, \$69,880 is available for payment of the deferred ground lease rent, although in recent years, surplus revenues have been used to fund reserves in order to meet repairs.

Based on an analysis of historical payments that were reported in annual financial audits performed on Centertown, the Lessee has made approximately \$430,000 in payments on the ground lease through December 2019, which means that about \$631,000 is remaining to be paid on the current \$1,061,104 ground lease payment tranche. Since 2016, almost all of the remaining cash flow has been deposited in the replacement reserve account to help pay for repairs on the property, and only about \$4,500 in ground lease payments have been made since then.

C. Existing City Loan and Other Loan Obligations

The property has several outstanding loans that are payable to the City of San Rafael, State of California, County of Marin, and Citibank.

1. Existing City Loan

The former SRRA and the City provided three loans to help finance redevelopment of the property. All but one loan was repaid in the early 1990s. The remaining \$303,000 promissory note from the former SRRA was transferred to the City, which is referred to in this memo as the existing City loan.

According to the City's FY 2018/19 Consolidated Annual Financial Report (CAFR), the former SRRA loaned \$303,000 at 3% simple interest to Centertown Associates, Ltd, which was due to be paid semi-annually. This existing City loan is fully secured by a deed of trust. With the dissolution of the Redevelopment Agency effective February 1, 2012, the assets of the Agency's Low and Moderate Income Housing Fund (LMHAF), including the Centertown Associates loan, were assumed by the City's Low and Moderate Income Housing Special Revenue Fund.

The existing City loan was amended, with the relevant terms being contained in the Amended and Restated Promissory Note dated May 6, 1991, with a maturity date of June 30, 2023.

Payments have been made on this loan over the years, and the remaining balance is about \$260,000 according to the most recent City Consolidated Annual Financial Report (CAFR) and Centertown 2019 Audit performed on behalf of BRIDGE/EAH.⁴ (Please see Appendix Table A-1 for additional information regarding this loan and other loan obligations.)

2. California Housing and Community Development (HCD) Loan

The California Department of Housing and Community Development (HCD) provided a Rental Housing and Construction Program (RHCP) loan to the property in the early 1990s, which is subject to an HCD Regulatory Agreement that restricts rents on 29 units (RHCP units). The loan is for 3% simple interest and is payable by November 5, 2052. The current principal balance is \$1,722,662, and about \$1.45 million in interest has accrued on this loan as of the end of 2019.

3. County of Marin Loan

The County of Marin (County) provided two loans totaling \$99,504 loan to the property in the early 1990s, which is subject to a loan agreement that has a unique set of interest and payment provisions. No interest or principal is currently due, but the loan comes due on May 1, 2021. (The County also provided a CDBG loan of \$59,504 that has since been retired.)

⁴ The remaining balance on the City loan is \$259,756 (including accrued interest) as of December 31, 2019, according to the most recent Centertown 2019 Audit (Centertown Associates, Ltd. Financial Statements and Independent Auditor's Report, December 31, 2019). The City's FY 2018/19 Consolidated Annual Financial Report (CAFR) indicates that the remaining balance as of the end of June 30, 2019 was \$256,870.

4. Citibank Loans (AHP and Permanent Mortgage)

In addition to these soft, public agency loans, two private loans were provided to the project. The Affordable Housing Program (AHP) loan is a soft private loan that is provided through Citibank (Citi). It has a 0% interest rate and a 30-year term, with a due date of June 30, 2023. BRIDGE/EAH believe that this loan will be forgiven and will no longer apply to the property in the future.

A senior permanent mortgage with a remaining balance of \$236,321 is payable to Citibank and serviced by Berkadia Commercial Mortgage. This loan is senior to all other loan obligations, and the required payments are due in monthly installments of \$5,981, based on a 30-year amortization including interest at 4.690%. The loan is due in full in the year 2023. (Please refer to Appendix Table A-1 for a summary of these loans that is organized according to the seniority of the loans based on the City's records.)

5. Deferral of Loan Payments

In the past five years, BRIDGE/EAH have requested and been granted annual deferral of payments on the City's ground lease and outstanding promissory note, as well as loan payment deferrals from HCD in order to contribute additional funds to the replacement reserves. According to the Centertown 2019 Audit, the property currently has about \$614,354 in replacement reserves available for capital improvements as of the end of 2019.

D. Proposed Rehabilitation Program

As described above, the Centertown development has experienced numerous construction related issues, which include significant problems related to water intrusion, aging building systems and deferred maintenance, as identified in the Facility Needs Assessment performed by Marx | OKUBO Associates. These problems are not uncommon for a building that was constructed about three decades ago, particularly for affordable housing that does not generate sufficient cash flow to pay for significant rehabilitation costs. While ongoing repairs have been undertaken, the needed level of repairs substantially exceeds the replacement reserve account that has been accumulated from project cash flow, and the apartments require substantial renovation to improve the health, safety and quality of life for residents.

BRIDGE/EAH are proposing to resyndicate and refinance Centertown using tax exempt bonds and low income housing tax credits (LIHTC), as further described in the next section, in order to rehabilitate the property to address all immediate physical needs and establish reserves and cash flow to address future maintenance needs as they arise. All of the existing residents will be able to continue to reside in their apartments, although some residents could be temporarily moved depending on the extent of renovation in their units. These residents will be able to move back to their original unit once renovated.

The rehabilitation program is proposed to include the following improvements in the following priority order:

1. Waterproofing-related repairs, including the replacement of windows and sliding glass doors, repair of the roof membrane, shingles, gutters, and downspouts, and the removal and replacement of all cement plaster, repair of gypsum and plywood siding.
2. Exterior improvements to improve health and safety, including replacement of ceramic tiles, use of non-skid strips, signage, upgrades to handrails and entrances.
3. Accessibility upgrades to meet Americans with Disabilities Act (ADA) requirements, including the renovation of six apartment units to serve persons with disabilities.
4. Upgrade and/or replacement of HVAC, plumbing and electrical that will make the property safer, healthier, and environmentally sustainable and provide more efficient operations.

5. Upgrade of unit interiors to address critical repairs related to plumbing leaks and decayed unit finishes.
6. Community building addition of approximately 1,100 square feet to be located on the property's lower, interior courtyard, which will provide a community room, common area restrooms, kitchen area, resident service rooms and management offices.
7. Upgrade of common areas, including replacement of damaged exterior common area and dwelling unit doors and installation of resilient flooring in corridors.
8. Repair and upgrade of the courtyard and parking areas.
9. Should sufficient funds be available, additional rehabilitation of unit interiors will be done to those units most in need of updated interior finishes, which would include new kitchens, bathrooms, flooring and lighting fixtures.

These improvements will be done approximately in the priority order described above. The total estimated cost for the proposed improvements is approximately \$10 million, which includes an approximately 10 percent hard cost contingency that is typical for rehabilitation of older properties. The City's Building Department will monitor the rehabilitation efforts through its permitting and inspection process. Appendix Table A-2 shows the proposed development sources, which presents all of the costs associated the renovation and resyndication including the construction hard cost.

To permit the new addition proposed for the lower, interior courtyard, the BRIDGE/EAH team have submitted a design review application to the City's Zoning Administrator, and approvals were received on July 22, 2020. The remainder of the rehabilitation scope is by-right and a building permit application will be submitted in February 2021, in anticipation of a May 2021 construction start.

E. Resident Communication and Temporary Relocation

As the property manager of Centertown, EAH regularly communicates with Centertown residents and provides an array of social services through the EAH "StayWell!" program for families, individuals, and aging adults. Once BRIDGE/EAH have been able to secure funding for the rehabilitation, they will provide information to the residents regarding the proposed rehabilitation schedule and any temporary moves that households may need to make during the rehabilitation process.

The proposed exterior rehabilitation and a substantial portion of the interior rehabilitation, including window/sliding door replacement, lighting, heating and water saving upgrades to all 60 units, can be performed while residents remain in their units. However, the proposed ADA retrofits for 6 units, and the potential kitchen and/or bathroom replacements in about 6-12 units, will be most effectively and safely done if households are temporarily moved while these upgrades are performed.

This means that some households will be temporarily relocated for a period of approximately 4-8 weeks while their units undergo interior rehabilitation work. Every effort will be made to minimize the time when residents must leave their homes. A relocation consultant and on-site property management staff will work with all affected households to address their immediate needs and resolve health and safety concerns.

Accommodations will be provided to residents who are temporarily relocated at no additional cost to the tenants. Packing materials, moving and storage of tenant belongings will also be coordinated and facilitated for them. The rehabilitation budget includes projected costs associated with the temporary relocation, and affected residents will not have to pay any of these expenses. The main focus will be to provide ample information and communication regarding any required move and to provide comfortable and convenient alternative housing for them during the relocation period. Once unit renovations are complete residents will be able to return to their original units.

BRIDGE/EAH are in the process of retaining a relocation consultant who will interview residents, prepare a relocation plan and then implement the plan to accomplish the temporary relocation in compliance with all relevant State and Federal laws. Interviews will be conducted with current residents to understand their housing needs, including any special needs related to disabilities and health problems, and their preferences related to the location and type of temporary housing. Relocation information and assistance will be provided in the primary language of the residents in order to assure that they understand the relocation plan and how their housing needs will be addressed.

A relocation schedule and noticing will be provided to households once the construction phasing is confirmed and BRIDGE/EAH know which households may be affected. A BRIDGE/EAH rehabilitation project manager will work closely with the General Contractor, relocation consultant, and property management staff to ensure a smooth construction schedule and facilitate temporary relocation.

F. Proposed Funding Program and Ground Lease Amendment

BRIDGE/EAH are proposing to renegotiate the existing City, County and State loans to extend their term and modify their interest rates in some cases, among other modifications to be negotiated between the parties. BRIDGE/EAH are also proposing to resyndicate and refinance the development using tax exempt bonds and LIHTC that would be applied for in September 2020 to the California Debt Limit Advisory Committee (CDLAC). Each of the major proposed sources of funding are described below and shown in Appendix Table A-3.

As part of the proposed funding program, the apartments will continue to be restricted as affordable rental units for another 55 years. BRIDGE/EAH propose to maintain the current income restrictions, which range from 50% to 60% of the Area Median Income (AMI). More than 40% of the units will continue to house residents earning 50% AMI or less. Currently, fifteen residents receive Housing Choice Vouchers (HCV) from the Marin County Housing Authority that provide additional annual revenues to Centertown.

The 29 RHCP units will be maintained, which are subject to the HCD Regulatory Agreement and have rents that are subject to review and approval by HCD. Table 1 shows the proposed household income distribution at Centertown, which will remain substantively the same as the current income mix.

Table 1
Resident Affordability by Unit Type
Centertown Apartments

Bedrooms	Rental Restriction	AMI	Total Units
1	TCAC (RHCP)	50%	6
1	TCAC + HCV	60%	10
1	TCAC (Rent Burdened)	60%	1
2	TCAC (RHCP)	50%	11
2	TCAC + HCV	60%	5
2	TCAC (Rent Burdened)	60%	10
2	TCAC	60%	1
3	TCAC (RHCP)	50%	8
3	TCAC (RHCP)	60%	4
3	TCAC (Rent Burdened)	60%	2
3	TCAC	60%	1
2	Manager's Unit	N/A	1
<i>Subtotal RHCP Units</i>			29
<i>Subtotal HCV Units</i>			15
Total			60

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

The current resident population is primarily families, with a number of single adults and seniors. This resident mix is proposed to continue in the future. While Centertown does not currently have any special needs or targeted populations, BRIDGE/EAH are proposing to retrofit six units to be fully ADA accessible, as required by TCAC. These units will be available to current households with disabilities and will be also be provided to new households with disabilities if residents were to move. Although no special needs units would be designated, some of the units will continue to be rented to extremely low-income households that earn 30% or less of AMI. (Although these units are designated as very low-income units affordable at 50% AMI, some are occupied by extremely low-income households.

1. Modifications to City Loans and Ground Lease

BRIDGE/EAH are proposing that the City amend the loan terms of the existing City loan, and this loan would continue to remain a source of funding for the rehabilitation program. The existing City loan would be modified to change the interest rate to meet tax credit requirements (from 3% simple to compounding interest at the Applicable Federal Rate or AFR), extend the loan term to 55 years, and other needed changes to be negotiated with the City. The existing City loan would be assigned to the new tax credit partnership when this occurs, anticipated to be in May 2021.

A Fourth Amendment to the Ground Lease is proposed to occur at the end of 2020, and an option to enter into a new ground lease would be entered into during August 2020, with the formal agreement for the new ground lease to occur only if and when the re-syndication and refinancing process moves forward. The Option to Ground Lease is a required document to be submitted with the project's joint TCAC/CDLAC application to establish site control (a Purchase and Sale Agreement will also be entered into for the improvements).

a. Fourth Amendment to the Ground Lease (To be Executed by End of 2020)

Under the City's existing ground lease, the City is unlikely to receive substantive ground lease payments in the future as surplus cash flow will likely continue to be needed for repairs. The estimated hard cost for repairs (before consideration of soft costs related to professional services to undertake them) is \$10 million in 2020 dollars. If this amount of rehabilitation were divided by the 42 years remaining on the ground lease, the operating cash flow would need to contribute \$238,000 per year (in 2020 dollars) toward these repairs to accomplish them by the end of the ground lease. As noted in Section C, only \$69,880 is allowed by HCD to be annually paid out of project cash flow, so there would not be sufficient cash flow to pay for all of the proposed repairs before the end of the lease term.

In recent years, the developer has requested permission to contribute excess cash flow into replacement reserves, rather than make residual receipts distributions to ground lease and soft debt payments. These requests have consistently been approved by the City and HCD. The replacement reserves have been used to make immediate repairs and to save for the upcoming substantial rehabilitation that is planned for 2021.

Additionally, structural changes to the current ground lease payment structure are needed to bring the ground lease into compliance with IRS rules. These changes need to occur prior to the anticipated construction financing closing/resyndication event that is anticipated for May 2021. The developer and investor's respective tax counsel advise that amendments to the ground lease and the new loan be completed in 2020.

Taking into account these considerations while also seeking to enhance potential revenues to the City, the fourth amendment of the ground lease is proposed to modify the lease as follows:

- \$1 per year ground lease payment plus a \$5,000 per year annual City monitoring fee. These annual payments will continue until a new lease is negotiated.
- The remaining balance of the second ground lease payment tranche, which is approximately \$631,000, will become the principal amount on a new City loan.⁵
 - The precise loan amount will be verified with City staff and be based on the Centertown 2019 Audit as of 12/31/19 and the City's FY 2018/19 CAFR.)
 - This new City loan will ultimately be consolidated with the existing City loan and become part of a consolidated City loan to the new Limited Partnership should the resyndication and refinancing proceed. This consolidated City loan will be a part of the overall residual receipts distributions.
- The fourth amendment and the new City deferred loan are proposed to be entered into by the end of 2020 with City Council approval, once receipt of the tax credit and bond allocation is received.

The proposed 4th Amendment and the New City Loan allows the accrued ground rent of \$631,000 to be recast as a loan, which paves the way for an optimal structure for the project's resyndication and future

⁵ The New City Loan will be evidenced by a promissory note, with a maturity date of November 6, 2052 (after the HCD loan term has expired but before the expiration of the current Ground Lease term, which expires November 5, 2064) and will be a fully deferred soft loan. It will not be secured by the Property, but a default under the promissory note will be a default under the Ground Lease, which is how the Ground Lease payment is secured now. The New City Loan will essentially be a placeholder loan, as it will be consolidated with the City's Existing Loan when that loan is modified (to change some of the terms to comply with tax credit requirements such as: changing the interest rate from 3% simple to compounding AFR, extending the term to 55 years, and other needed changes to be negotiated with the City) and assigned to the new tax credit partnership in May 2021.

ground lease, while at the same time preserving the City’s ability to retain the ability to collect residual receipts payments from \$631,000 in the resyndication financial plan.

b. Option to Ground Lease and New Ground Lease (Option To be Executed in August 2020; New Ground Lease Agreement to Occur with Proposed Resyndication and Refinancing)

The proposed ground lease option would enable BRIDGE/EAH and the City to negotiate a new lease under the following terms, which may be modified as the financing program is refined over the next few months:

- A new ground lease term of 99 years from the date of execution.
- \$83,000 upfront ground lease payment based on a 2020 property appraisal that indicates the current land value is \$83,000, due to existing regulatory restrictions on the property. (This amount would be paid to the City at closing.)
- Payment of a \$5,000 per year annual City monitoring fee, which could escalate at 3% per year after permanent financing is in place. This amount will be determined in collaboration with City staff based on experience with other projects, taking into account the size of this development.
- The ground lease language will be modernized in connection with the resyndication, which will include a provision that the ground rent won't exceed the market value of the land.
- As described above, the consolidated City loan would be entered into at the same time.

As noted above, BRIDGE/EAH need a contractual option to enter a new ground lease in order to meet requirements for applying for tax credits and tax exempt bond monies. Entering into a new ground lease will enable the proposed resyndication and rehabilitation to occur, which will significantly improve the building improvements. As the City will ultimately receive the building improvements at the end of the lease, the rehabilitation will enhance the City’s long-term asset. Any new ground lease will have to be approved by the City Council, but subject to the material terms agreed to in the Option.

c. New Housing Trust Fund Loan

BRIDGE/EAH is applying to the City for between \$500,000 and \$1 million in Housing Trust Funds to help fund the rehabilitation of the development. (The City’s funds will be solely used for this purpose.) If approved, these loan funds would collectively be repaid out of residual cash flow from the project in proportion to the City’s contribution, as the project stabilizes. Table 2 summarizes the proposed City funding.

**Table 2
Proposed City Funding
Centertown Apartments**

Proposed City Loans	Potential Loan Amount
City- Existing Loan	\$259,576
City- New Loan	\$631,000
City- Housing Trust Fund	<u>\$524,927</u>
Total Proposed Loans	\$1,415,503

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

2. California Housing and Community Development (HCD) Loan

BRIDGE/EAH are proposing that HCD amend the existing HCD loan terms and allow this loan to remain a source of funding for the rehabilitation program pursuant to HCD's Loan Portfolio Restructuring Program and Guidelines. The existing HCD loan would be modified to change the interest rate to AFR, extend the loan term to 55 years, and other needed changes to be negotiated with HCD. The HCD loan would also be assigned to the new tax credit partnership. HCD would likely continue to receive an annual senior payment of \$10,311 per year, as well as a proportionate share of residual receipts.

3. County of Marin Loan

BRIDGE/EAH are also proposing that the County amend the loan terms of its existing County loan and allow this loan to remain a source of funding for the rehabilitation program. In addition, BRIDGE/EAH have received additional funding of approximately \$1 million to help fund the project's substantial rehabilitation. The existing and new County loan would likely have the same terms, which would need to be consistent with tax credit requirements and would be similar to the City and HCD loan terms as described above.

4. Private Loans

In addition to these soft, public agency loans, BRIDGE/EAH will secure a permanent mortgage, which is projected to be about \$5 million in size. This loan will be senior to all other loan obligations, and the required payments will likely be due in monthly installments based on a 40-year amortization at an interest of about 4.25%. (The AHP loan is assumed to be forgiven.)

5. Replacement Reserves

BRIDGE/EAH are proposing to utilize about \$680,000 in funding from replacement reserves to help pay for the rehabilitation. As indicated earlier, the Centertown replacement reserve account has \$614,354 in funds as of 2019. Assuming the continuation of substantial HCV payments to tenants, additional funds could be available from surplus cash flow to be deposited in the replacement reserve. The final amount of replacement reserves that could be available to help pay for future rehabilitation costs will be finalized at the close of construction period financing, and upon finalization of the 2020 financial audit of the property. If additional reserves result in a surplus of project sources, the City of San Rafael Housing Trust Fund would be reduced by an amount commensurate to the surplus.

6. Syndication Proceeds, General Partner Equity and Seller Carry Back Loan

BRIDGE/EAH are applying for low income housing tax credits, which will be syndicated and are projected to yield about \$9.1 million in investor equity. BRIDGE/EAH will also contribute about \$1.7 million in General Partner Equity that is equal to the portion of the developer fee that is in excess of the allowable fee pursuant to State guidelines. The seller carry back loan represents the difference between the appraised value for Centertown and the sum of the refinanced loans and the sponsor loan.

G. Due Diligence Findings

The Centertown apartments are in substantial need of rehabilitation, which is evident from the Facility Needs Assessment performed by Marx | OKUBO Associates. In addition, BRIDGE/EAH retained an experienced General Contractor (Saarman) to review the building conditions and prepare a detailed cost estimate to undertake the rehabilitation in alignment with the findings of the Facility Needs Assessment.

Seifel reviewed the Facility Needs Assessment and interviewed BRIDGE/EAH to understand what rehabilitation elements are most critically needed, as there may not be sufficient funding to undertake all

of the improvements that have been identified. Section D of this memorandum describes the proposed rehabilitation and the proposed order of priority to undertake these improvements depending on the level of available funding from all sources.

Seifel has reviewed BRIDGE/EAH's funding plan as it evolved over the past two months and agrees that BRIDGE/EAH has identified all relevant public funding sources that could be utilized for this rehabilitation effort. BRIDGE/EAH will work to maximize the amount of revenues that are generated from LIHTC, and BRIDGE/EAH will contribute about 40 percent of its eligible developer fee (in the form of a General Partner contribution) to help fund the planned rehabilitation. In addition, BRIDGE/EAH is providing a seller back carry loan to the development that is equal to the difference between the appraised property value and the existing debt. Repayment on this loan is limited to 50% of cash flow per the HCD Loan Portfolio Restructuring Guidelines.

Seifel reviewed BRIDGE/EAH's financial pro forma, and the proposed high priority rehabilitation projects that can be feasibly undertaken if the City, County, State and private lender provide the requested level of funding. BRIDGE/EAH has included a 10% contingency to take into account cost escalation and potential rehabilitation needs that could occur once construction begins.

Should less funding be available, the scope of the rehabilitation may need to be reduced. If additional funding is available or not all of the construction contingency funds are needed, additional rehabilitation improvements could be undertaken. Seifel worked with BRIDGE/EAH to identify and prioritize these improvements, and BRIDGE/EAH is committed to implementing as many of the needed rehabilitation improvements as possible, following the order of priority in this memorandum, or as this priority may be further revised in consultation with City staff.

BRIDGE/EAH proposes that the existing public loans (soft debt) from the City of San Rafael, Marin County and the State of California will be amended to a compounded interest rate equal to the AFR, which is currently approximately 1.2%. While this proposed modification could generate less interest than the City's current 3% simple interest rate, this modification will generate additional tax credit equity for the project. Furthermore, the AFR may increase by the time this project proceeds and be closer to the City's current effective interest rate.

Seifel worked with City staff, BRIDGE/EAH and outside counsel to refine what BRIDGE/EAH originally proposed with respect to the ground lease and City funding. The proposed Fourth Amendment to the Ground Lease and proposed Option to Ground Lease, and the recommended provision of a new City loan equal to the outstanding balance on the ground lease, will enable the City to properly secure its interest in the property and provide for greater participation in future residual receipts. Seifel also prepared a comparative analysis of what the City would likely receive under the existing ground lease and with the proposed project under two alternative revenue scenarios. Table 3 on the next page compares the City revenues under these three scenarios. As this shows, the City will likely receive a larger stream of revenues with the proposed project than under the existing ground lease scenario.

1. Scenario 1– Existing Ground Lease With Fourth Amendment

Scenario 1 assumes that the City would enter into the Fourth Amendment to the Ground Lease by the end of 2020. As described above under Section E, the Fourth Amendment to the Ground Lease will revise the existing payment terms to conform with current IRS rules, provide for the payment of an annual monitoring fee, and will facilitate the creation of a new City loan that will be refinanced in the syndication of the project, generating revenues to the City from residual receipts.

2. Scenario 2A and 2B– Proposed Project Under Two Revenue Scenarios

Two proposed project scenarios are analyzed that assume the proposed resyndication and rehabilitation occurs based on key financial projections in the BRIDGE/EAH proforma. Scenario 2A assumes that future rental revenues do not include payments from Housing Choice Vouchers, as HCV payments cannot be underwritten to secure a permanent mortgage. Scenario 2A assumes that the resyndication occurs in May 2021, the new ground lease is signed in connection with the resyndication's financial closing, an upfront ground lease payment of \$83,000 is made at this time, and the City's annual monitoring fee payments continue throughout the term.

Scenario 2B assumes that 15 residents will continue to receive HCV, and revenues from these HCV payments are included in the cash flow projections. Scenario 2B assumes that the resyndication is delayed two years and occurs in May 2023, the new ground lease is signed prior to this date, an upfront ground lease payment of \$83,000 is made in May 2023, and the City's annual monitoring fee payments continue throughout the term. Scenario 2B generates significantly more revenues than the other two scenarios as additional cash flow is generated, and about 12.7% of this cash flow accrues to the City.

**Table 3
Comparison of City Revenues from Alternative Scenarios
Centertown Apartments**

Lease Year (Fiscal Year Beginning)	Pro Forma Year	Scenario 1: Existing (Amended)	Scenario 2A: Proposed Project	Scenario 2B: Proposed Project (Plus HCV)
2020		\$5,001	\$0	\$0
2021		\$5,001	\$8,000	\$5,001
2022		\$5,001	\$5,000	\$5,001
2023	1	\$5,001	\$5,680	\$101,066
2024	2	\$5,001	\$5,759	\$18,392
2025	3	\$5,001	\$5,816	\$18,702
2026	4	\$5,001	\$5,850	\$18,994
2027	5	\$5,001	\$5,860	\$19,267
2028	6	\$5,001	\$5,846	\$19,521
2029	7	\$5,001	\$5,805	\$19,753
2030	8	\$5,001	\$5,736	\$19,963
2031	9	\$5,001	\$5,638	\$20,150
2032	10	\$5,001	\$5,510	\$20,312
2033	11	\$5,001	\$5,350	\$20,449
2034	12	\$5,001	\$5,157	\$20,557
2035	13	\$5,001	\$5,000	\$20,637
2036	14	\$5,001	\$5,000	\$20,686
2037	15	\$5,001	\$5,000	\$20,703
2038	16	\$5,001	\$6,942	\$22,953
2039	17	\$5,001	\$6,645	\$22,969
2040	18	\$5,001	\$6,306	\$22,950
2041	19	\$5,001	\$5,924	\$22,894
2042	20	\$5,001	\$5,498	\$22,800
2043	21	\$5,001	\$5,024	\$22,665
2044	22	\$5,001	\$5,000	\$22,488
2045	23	\$5,001	\$5,000	\$22,266
2046	24	\$5,001	\$5,000	\$21,997
2047	25	\$5,001	\$5,000	\$21,680
2048	26	\$5,001	\$5,000	\$21,311
2049	27	\$5,001	\$5,000	\$20,889
2050	28	\$5,001	\$5,000	\$20,411
2051	29	\$5,001	\$5,000	\$19,874
2052	30	\$5,001	\$5,000	\$19,276
2053	31	\$5,001	\$5,000	\$18,614
2054	32	\$5,001	\$5,000	\$17,886
2055	33	\$5,001	\$5,000	\$17,087
2056	34	\$5,001	\$5,000	\$16,216
2057	35	\$5,001	\$5,000	\$15,269
2058	36	\$5,001	\$5,000	\$14,243
2059	37	\$5,001	\$5,000	\$13,135
2060	38	\$5,001	\$5,000	\$11,940
2061	39	\$5,001	\$5,000	\$10,656
2062	40	\$5,001	\$5,000	\$9,278
2063	41	\$5,001	\$26,993	\$43,893
2064	42	\$5,001	\$25,183	\$42,317
Total		\$225,045	\$359,524	\$947,113

H. Conclusion

As described above, the property needs to be substantially rehabilitated, and the proposed funding request is reasonable. The City should continue to work with BRIDGE/EAH and the County to obtain the additional \$1 million in funding, as well as to facilitate the renegotiation of the HCD loan. In total, the City's commitment to the development would be to amend and renegotiate the ground lease and to enter into the following loans with the future Limited Partnership:

- Existing Loan—Approximately \$260,000, which is the current remaining balance including accrued interest.
- New Loan— Approximately \$631,000, which is equivalent to the remaining unpaid amount from the ground lease.
- Potential Housing Trust Fund Loan— Between \$500,000 and \$1,000,000, which, if awarded, would be used to help pay for new community facilities.

These loans would be repaid out of the resyndicated project's residual cash flow in proportion to the City's contribution. The City's investment will leverage about \$21.8 million in private and public funding to meet the total development costs of about \$23.2 million net of the building acquisition value.

The City's ground lease modification and investment will result in the following:

- Enhanced living environment for approximately 180 of the City's lower income residents.
- Substantial health, life-safety, environmental and accessibility improvements.
- Continued preservation of 60 affordable apartments, with an extension of the affordability covenants for another 55 years.
- Recapitalization of the development, which will leverage sufficient funding to undertake much needed rehabilitation improvements that will enhance the City's long term interests in the property.

Appendix Table A-1
Summary of Existing and Proposed Loans
Centertown Apartments

	Original Principal	Outstanding Balance as of Dec. 31, 2019			Key Loan Terms	
		Principal	Accrued Interest	Total	Due Date	Rate
Existing Loans						
First Mortgage (Berkadia, Citi)	\$1,025,504	\$236,321	\$924	\$237,245	2023	4.69%
Affordable Housing Program (AHP, Citi)	\$390,000	\$390,000	\$0	\$390,000	2023	None
California HCD (RHCP)	\$2,647,711	\$1,722,662	\$1,495,167	\$3,217,829	2052	3.00%
City of San Rafael/Former SRRA*	\$303,000	\$219,982	\$39,594	\$259,576	June 2023	3.00%
City of San Rafael and Former SSRA*	\$616,000	\$0	\$0	\$0	N/A	N/A
County of Marin	<u>\$99,504</u>	<u>\$99,504</u>	<u>\$0</u>	<u>\$99,504</u>	May 2021	Specific Terms
Subtotal	\$5,081,719	\$2,668,469	\$1,535,685	\$4,204,154		

* The City and the former San Rafael Redevelopment Agency (SRRA) provided three loans to the development, two of which were repaid in the 1990s. The remaining \$303,000 promissory note was transferred to the City as a former housing asset of the SRRA.

Source: Centertown Associates, Ltd. Financial Statements and Independent Auditor's Report, December 31, 2019, BRIDGE Housing, EAH Housing, .

**Appendix Table A-2
Estimated Development Uses
Centertown Apartments**

Development Cost (Uses)	Project Estimates	
	Total	Per Unit
Property Related Costs		
Acquisition Cost (Upfront Ground Lease Payment)	\$83,000	\$1,383
Acquisition Cost or Value- Building	\$14,917,000	\$248,617
BRIDGE WC Interest	\$50,000	\$833
<u>Other Acquisition Costs</u>	<u>\$41,500</u>	<u>\$692</u>
Subtotal	\$15,091,500	\$251,525
Hard Construction Costs		
Rehabilitation Costs	\$6,937,344	\$115,622
General Conditions	\$416,241	\$6,937
General Requirements & Profit	\$554,988	\$9,250
Covid Related	\$300,000	\$5,000
GC Testing Allowance	\$40,000	\$667
Insurance & Bond	\$158,171	\$2,636
Design Contingency	\$840,674	\$14,011
<u>Hard Cost Contingency</u>	<u>\$924,742</u>	<u>\$15,412</u>
Subtotal	\$10,172,160	\$169,536
Project Related Soft Costs		
Architecture/Engineering	\$1,085,109	\$18,085
Legal	\$135,000	\$2,250
Marketing/Lease-up	\$123,800	\$2,063
Appraisal	\$7,500	\$125
Miscellaneous	\$549,450	\$9,158
Title & Recording	\$52,500	\$875
Furnishings and Equipment	\$49,000	\$817
Permits and Fees	\$60,000	\$1,000
Soft Cost Contingency and Reserves	\$682,602	\$11,377
<u>Insurance</u>	<u>\$79,218</u>	<u>\$1,320</u>
Subtotal	\$2,824,179	\$47,070
Project Financing		
Construction Interest & Fees	\$1,365,688	\$22,761
<u>Permanent Financing</u>	<u>\$327,500</u>	<u>\$5,458</u>
Subtotal	\$1,693,188	\$28,219
Syndication & Developer Fee		
Capitalized Developer Fee	\$2,010,264	\$33,504
GP Equity	\$2,010,264	\$33,504
<u>Construction Management and Other Consultants</u>	<u>\$170,600</u>	<u>\$2,843</u>
Subtotal	\$4,191,128	\$69,852
Total Development Cost	\$33,972,155	\$566,203

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

**Appendix Table A-3
Estimated Development Sources
Centertown Apartments**

Development Revenues (Sources)	Project Estimates	
	Total	Per Unit
Permanent Loan	\$5,406,942	\$90,116
Building Acquisition Value		
Seller Note	\$2,500,000	\$41,667
<u>Seller Carryback Loan</u>	<u>\$8,222,431</u>	<u>\$137,041</u>
Subtotal	\$10,722,431	\$178,707
Tax Credit Equity		
Federal	\$9,144,715	\$152,412
<u>State</u>	<u>\$0</u>	<u>\$0</u>
Subtotal	\$9,144,715	\$152,412
City of San Rafael Financial Assistance		
City- Existing Loan	\$259,576	\$4,326
City- New Loan (Former Ground Lease)	\$631,000	\$10,517
<u>City- Housing Trust Fund</u>	<u>\$524,927</u>	<u>\$8,749</u>
Subtotal	\$1,415,503	\$23,592
Other Public Funding Assistance		
HCD RHCP- Existing Loan	\$1,722,662	\$28,711
County of Marin- Existing Loan	\$99,504	\$1,658
<u>County of Marin- New Loan</u>	<u>\$1,013,732</u>	<u>\$16,896</u>
Subtotal	\$2,835,898	\$47,265
Other Revenues		
GP Equity	\$2,010,264	\$33,504
Accrued interest during construction	\$1,603,421	\$26,724
Income From Operations	\$152,725	\$2,545
<u>Contributed Reserves</u>	<u>\$680,257</u>	<u>\$11,338</u>
Subtotal	\$4,446,667	\$74,111
Deferred Developer Fee	\$0	\$0
Total	\$33,972,155	\$566,203

Source: City of San Rafael, BRIDGE Housing, EAH Housing.

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT GRANTING
TO CENTERTOWN II, LLC AN OPTION TO LEASE THE REAL PROPERTY LOCATED
AT 855 C STREET IN THE CITY OF SAN RAFAEL**

WHEREAS, the City of San Rafael, as successor housing agency to the former San Rafael Redevelopment Agency ("SRRA"), is the fee owner of that certain approximately 0.98-acre lot at 855 C Street in downtown San Rafael ("Centertown Land") on which the Centertown Apartments are located; and

WHEREAS, in 1989 Centertown Associates, Ltd. ("Centertown Associates") a limited partnership managed by BRIDGE Housing and EAH Housing ("BRIDGE/EAH"), entered into a 75-year ground lease with City's predecessor-in-interest, SRRA, which provided among other things for redevelopment of the Centertown Land, including an existing, partially completed foundation structure that was part of an earlier failed condominium development, as an affordable rental apartment project; and

WHEREAS, as contemplated by the ground lease, Centertown Associates completed development of the Centertown apartments ("Centertown Apartments") which include approximately 85,469 gross square feet of building area arranged around a central courtyard, with 60 affordable family apartments— 17 one-bedroom units, 27 two-bedroom units, 15 three-bedroom units, and an onsite two-bedroom property manager's unit; and

WHEREAS, all of the residents of Centertown Apartments are lower income households, with an average household income equal to approximately 32% of the Marin County Areawide Median Income (AMI); and

WHEREAS, the ground lease originally recorded on November 30, 1989, has been subsequently amended three times given evolving financial conditions over time; and

WHEREAS, Centertown Apartments has experienced numerous construction related issues, including significant problems related to water intrusion, aging building systems and deferred maintenance with a total estimated rehabilitation cost of approximately \$10 million, which includes an approximately 10 percent hard cost contingency that is typical for rehabilitation of older properties; and

WHEREAS, BRIDGE/EAH desire to fund the needed rehabilitation work by re-syndicating and refinancing the Centertown Apartments development using tax exempt bond proceeds and in connection therewith BRIDGE/EAH desire to extend the term of the ground lease and modify the existing City loans to extend their term and reduce their interest rates; and

WHEREAS, entering into an option to enter a new ground lease will enable BRIDGE/EAH to demonstrate sufficient site control to apply for an allocation of tax-exempt bond proceeds from the California Debt Limit Allocation Committee ("CDLAC");

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby approves and authorizes the City Manager to execute an Option to Lease Agreement with Centertown II, LLC for the real property located at 855 C Street in the City of San Rafael in the form attached to this Resolution as Exhibit A, subject to final approval as to form by the City Attorney.

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 held on the 17th day of August 2020, by the following vote to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

EXHIBIT A: OPTION TO LEASE

**OPTION TO LEASE
(CENTERTOWN PROJECT)**

This Option to Lease ("**Agreement**") is entered into as of August __, 2020 ("**Effective Date**"), by and between the City of San Rafael, a municipal corporation, in its capacity as successor in interest to the housing assets of the former Redevelopment Agency of the City of San Rafael ("**Owner**"), and Centertown II, LLC, a California limited liability company ("**Optionee**"). Owner and Optionee may individually be referred to as "**Party**" and collectively referred to as "**Parties**".

RECITALS

A. Owner, as successor housing agency to the former Redevelopment Agency of the City of San Rafael, owns that certain real property located at 855 C Street, in the City of San Rafael, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("**Property**").

B. Centertown Associates Ltd., a California limited partnership ("**Centertown Ltd.**") acquired a leasehold interest in the Property ("**Leasehold Estate**") from Owner's predecessor-in-interest, the former Redevelopment Agency of the City of San Rafael, pursuant to that certain Ground Lease Centertown Project dated November 6, 1989, as amended by that certain First Amended and Restated Ground Lease dated August 20, 1990, that certain Second Amendment to the First Amended and Restated Ground Lease dated May 6, 1991, and that certain Third Amendment to First Amended and Restated Ground Lease Centertown Project dated April 1, 1993, and as may be further amended (collectively, "**Existing Ground Lease**"). The term of the Existing Ground Lease is seventy-five (75) years, which term expires November 6th, 2064

C. Pursuant to the terms of the Existing Ground Lease, Centertown Ltd. developed, constructed, owns and operates a residential development consisting of sixty (60) units rented to and occupied by low income households and commonly known as Centertown Apartments ("**Project**") on the Property.

D. The Project is in need of rehabilitation. In order to finance the rehabilitation, a new allocation of low-income housing tax credits pursuant to Internal Revenue Code Section 42 ("**LIHTC**") will be obtained, which requires that (i) the Project be owned by a new, to be formed limited partnership (the "**Partnership**") and (ii) the term of the ground lease for the Property be ninety-nine (99) years. As such, (i) Optionee will enter into a purchase and sale agreement with Centertown Ltd. to purchase the Project (the "**PSA**") and (ii) the Existing Ground Lease will be terminated and Optionee will enter into a new ground lease with Owner to lease the Property pursuant to this Agreement. Both the PSA and this Agreement will be assigned to, and assumed by, the Partnership. Optionee will be the general partner of the Partnership.

E. The parties desire to enter into this Agreement to set forth the terms of the option from Owner to Optionee to lease the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into this Agreement by this reference, and the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood and agreed as follows:

Section 1. Grant of Option and Consideration. For consideration of One Hundred Dollars (\$100.00), Owner grants to Optionee an option ("**Option**") to ground lease the Property on the terms and conditions set forth in this Agreement.

Section 2. Term of Option. The term of the Option shall commence on the Effective Date of this Agreement and shall expire at 12:01 a.m. on the date that is three (3) years from the Effective Date, unless such date is extended by a written amendment to this Agreement executed by Owner and Optionee (as may be extended, the "**Option Term**"). If the expiration date of the Option Term falls on a Saturday, Sunday, or legal holiday in the State of California, then the Option may be exercised on, and shall expire at midnight on, the next following business day. Optionee may request an extension of the Option Term for an additional two (2) years by giving written notice to Owner no later than thirty (30) days prior to the expiration of the initial Option Term ("**Extension**"), which Extension shall be subject to approval by the City Council.

Section 3. Exercise of Option. Optionee may exercise the Option by delivering to Owner, during the Option Term, a written notice of the exercise of the Option ("**Option Notice**").

Section 4. Lease of the Property. Following execution and delivery of the Option Notice, the Parties shall negotiate in good faith a new ground lease for the Property ("**Ground Lease**"). The Parties agree to use the Existing Ground Lease as the model for the Ground Lease with the Material Lease Term changes set forth in Exhibit B hereto. Any new Ground Lease shall be subject to approval by Optionee's board and the City Council.

Section 5. Closing.

(a) Close of Escrow. The Parties' execution and delivery of a new Ground Lease as contemplated herein shall be effectuated through an escrow with an escrow holder mutually acceptable to the Parties. The escrow shall close within ninety (90) days after the Option is exercised ("**Close of Escrow**"), which date may be extended by Optionee in its reasonable discretion for up to an additional thirty (30) days upon notice to Owner of such intent by Optionee.

(b) Closing Expenses. If the Option is exercised, Optionee shall pay any documentary transfer tax, revenue tax or excise tax (and any surtax thereon) due in connection with the consummation of this transaction, the premium for Optionee's title policy, Owner's title policy premium and all other escrow and closing costs. Optionee shall be responsible for its own attorneys' fees and Optionee shall also reimburse Owner for Owner's attorneys' fees, not to exceed \$10,000. Owner shall be responsible for any of Owner's attorneys' fees in excess of \$10,000.

Section 6. Option Not to Be Recorded. This Agreement will not be recorded.

Section 7. Notice. Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if: (a) delivered personally or by courier, (b) sent by overnight express delivery, (c) mailed by registered or certified mail (return receipt requested), postage prepaid, or (d) sent by email in PDF format ("**Email Notification**") provided that (i) any Email Notification received after 5:00 p.m. on a business day shall be deemed received on the next business day and (ii) the sender also delivers the communication by one of the methods listed in (a)-(c) (the "**Secondary Notice**") provided that if the recipient of the Email Notification responds with an email acknowledgement of receipt (an automatic "read receipt" does not constitute acknowledgement), such Secondary Notice is not required, to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party):

If to Owner:

City of San Rafael
1400 Fifth Avenue, Room 203
San Rafael, CA 94901
Attn: Jim Schutz, City Manager
jim.schutz@cityofsanrafael.org

With a copy to:

City of San Rafael
1400 Fifth Avenue, Room 202
San Rafael, CA 94901
Attn: Robert Epstein, City Attorney
rob.epstein@cityofsanrafael.org

And:

Burke, Williams & Sorensen, LLP
1901 Harrison St., Suite 900
Oakland, CA 94612
Attn: Gerald J. Ramiza
jramiza@bwslaw.com

If to Optionee:

Centertown II, LLC
c/o BRIDGE Housing Corporation
600 California Street, Suite 600
San Francisco, CA 94108
Attn: Rebecca V. Hlebasko and Sarah White
rhlebasko@bridgehousing.com
swhite@bridgehousing.com

And:

Centertown II, LLC
c/o EAH, Inc.
22 Pelican Way
San Rafael, CA 94901
Attn: Welton Jordan
Welton.Jordan@eahhousing.org

With a copy to:

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
City Center Plaza
Oakland, CA 94612
Attn: Erica Williams Orcharton
ewilliams@goldfarbblipman.com

Any notice provided in accordance with this Section shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt.

Section 8. Miscellaneous.

(a) Captions. The captions used herein are for convenience of reference only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(b) Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.

(c) Time. Time is of the essence of each and all of the obligations, covenants and conditions of this Agreement.

(d) Further Documentation. Upon the reasonable request of the other party, each party will execute, acknowledge, and deliver or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement, including, but not limited to escrow instructions.

(e) Default. Failure by any party to perform its obligations as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured fifteen (15) days after receipt by the defaulting party of such notice, or for such longer period of time as may be reasonably necessary to effect cure (in no event to exceed sixty (60) days), so long as the defaulting party has commenced cure within such fifteen (15) day period and is diligently proceeding to completion, the non-defaulting party may exercise the remedies set forth below.

(f) Remedies; No Damages. In no event shall a Party be liable in damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement.

(g) Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of the State of California.

(h) Assignment by Optionee. Optionee may assign this Agreement to the Partnership without the need for consent from Owner. Any other assignment shall require the prior written consent of the Owner.

(i) Authorization; Binding Effect. The execution, delivery and performance by the Optionee of this Agreement and any related documents and actions have been duly authorized by all requisite action of the Optionee and create legally binding obligations for the Optionee. The rights and obligations of the Owner and Optionee under this Agreement shall inure to the benefit of, and bind, their respective successors and assigns.

(j) Commission. Each party to this Agreement represents to the other Party that is has not engaged or used the services of any person, firm, or corporation that may claim a broker's commission or finder's fee upon execution or exercise of the Option, and each Party to this Agreement agrees to hold the other Party harmless from any loss, damage, expense, or liability, including attorney's fees, resulting from any claim by any person, firm, or corporation based upon its having acted as broker or finder on behalf of said indemnifying Party.

(k) Entire Agreement. This Agreement constitutes the entire agreement between Owner and Optionee with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Owner and Optionee.

(l) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be a single document.

(m) No Joint Venture or Partnership. Owner and Optionee hereby renounce the existence of any form of agency relationship, joint venture, or partnership between Owner and Optionee and agree that nothing contained herein or in any new Ground Lease executed in connection herewith shall be construed as creating any such relationship between Owner and Optionee other than landlord and tenant.

[Signatures on Following Page]

IN WITNESS WHEREOF, Owner and Optionee have executed this Agreement as of the Effective Date.

OWNER:

CITY OF SAN RAFAEL, a municipal corporation

By: _____

Name: Jim Schutz

Title: City Manager

ATTEST:

Lindsay Lara, City Clerk

APPROVED AS TO FORM:

Robert Epstein, City Attorney

OPTIONEE:

CENTERTOWN II, LLC, a California limited liability company

By: BRIDGE HOUSING CORPORATION, a California nonprofit public benefit corporation, its managing member

By: _____

Name: _____

Its: _____

By: EAH, Inc., a California nonprofit public benefit corporation, its member

By: _____

Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LEGAL
DESCRIPTION

Parcel A

All that certain real property situated in the City of San Rafael, County of Marin, State of California, described as follows:

"Map of Centertown an Air-space Condominium. Also Being a reversion to acreage being the Lands of U.F. Service Corp., a California Corporation, as described by Deed recorded under Recorder's Serial No. 83-16358, Marin county Records and a portion of the lands described by the Record of survey filed in Book 18 of Surveys, at Page 47, Marin County Records"¹ filed for record December 13, 1983 in Volume 18 of Maps, at Page 98, Marin County Records.

Parcel B

All that certain real property situated in the City of San Rafael, county of Marin, State of California, described as follows:

BEGINNING at a point on the Westerly line of C Street distant thereon 109 feet 8 inches Northerly from the intersection of said Westerly line of C Street and the Northerly line of Second Street said point of beginning being the Southeast corner of that lot conveyed by Loretta Ceaser to John Mirata by Deed recorded in Book 165 of Deeds, page 269, running thence Westerly at a right angle to C street and along the Southerly line of the Lot so conveyed by Ceaser to Mireta 150 feet; thence Southerly at a right angle 42 feet; thence Easterly at a right angle 150 feet to the Westerly line of C Street thence Northerly along the said line of C Street 42 feet to the point of beginning.

BEING a portion of Block 15 of the Townsite of the Town of San Rafael.

EXCEPTING from Parcel A and Parcel B above described, all buildings, structures and improvements of every kind, now existing or to be constructed on or under the surface of the above described property, for a term of years equal to and to run concurrently with the term of the Ground Lease.

EXHIBIT B

MATERIAL LEASE TERMS

Term	99 years from the effective date of the new Ground Lease
Rent	\$83,000, paid at closing (when Ground Lease is executed) through a capitalized lease payment. (\$83,000 is the value of the land based on an appraisal.)
Use	Use same language from Section 2.4 of Existing Lease (60 units of housing; up to 28% affordable to low income households (80% AMI))
Taxes and Assessments	Optionee/Lessee shall pay taxes and assessments and will apply for property tax exemption.
Ownership of Improvements	Optionee/Lessee owns improvements until lease termination/end of term at which time the ownership of the improvements will vest in the Owner/Lessor
Construction Provisions	Ground Lease to contain language reflecting rehabilitation scope and schedule
As-Is	Use same language from Section 3.6 and 3.7 of the Existing Lease
Mortgagee Protection; Insurance, Casualty and Condemnation	Use language from Articles IV-VI of Existing Lease with agreed upon modifications to reflect reasonable current lender/investor requirements and current Owner/Lessor insurance standards.
Right of First Refusal	Optionee/Lessee shall have right of first refusal if Owner/Lessor sells land (Use same language from Section 7.4 of Existing Lease)
Transfer and Assignment	Use language from Section 10.16 of Existing Lease but add pre-approval of (a) Optionee's/Lessee's (or its members) (i) option to purchase the Project or limited partner's interest in the Partnership and (ii) Section 42 right of first refusal, (b) removal of general partner of the Partnership by the limited partner pursuant to the to be entered into partnership agreement of the Partnership.