



AGENDA

SAN RAFAEL CITY COUNCIL – MONDAY, OCTOBER 5, 2020

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.

SPECIAL STUDY SESSION MEETING AT 6:00 P.M.

Link: <https://tinyurl.com/study-session-2020-10-05>

Telephone: (669) 900-9128,

ID: 947-6310-7188#

1. Discussion Regarding Opportunity Zones and Eviction Assistance (CD)

REGULAR MEETING AT 7:00 P.M.

Telephone: (669) 900-9128,

ID: 817-3692-0337#

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, September 21, 2020 (CC)

Recommended Action – Approve minutes as submitted

b. **Downtown Precise Plan Consultant Agreement Amendment**

Resolution Authorizing the City Manager to Execute the First Amendment to the Agreement for Professional Planning Services with Opticos Design, Inc. for Preparation of the Downtown Precise Plan to Provide for Additional Services and Compensation Not to Exceed \$35,000 (CD)

Recommended Action – Adopt Resolution

c. **Information Technology Services Agreement Renewal**

Resolution Authorizing the City Manager to Execute a General Service Agreement with Addendum with Xantrion, Inc., for Information Technology Services from November 1, 2020 Through October 31, 2021 In an Amount Not to Exceed \$995,000 (DS)

Recommended Action – Adopt Resolution

d. **Proclamation Appreciating Josh Libresco**

Accept Proclamation of Appreciation to Josh Libresco for His Service to the Board of Library Trustees (LR)

Recommended Action – Receive and File Proclamation

e. **Essential Facilities Construction Project – Public Safety Center**

Accept Completion of the Essential Facilities Construction Project – Public Safety Center (City Project No. 11291), and Authorize the City Clerk to File the Notice of Completion (PW)

Recommended Action – Accept Completion and Authorize the City Clerk to File

SPECIAL PRESENTATION:

5. Special Presentation:

a. Presentation by Canal Policy Working Group

OTHER AGENDA ITEMS

6. Other Agenda Items:

a. **Affordable Housing Trust Fund Allocations**

Resolutions Approving the Use of Housing Trust Funds for Affordable Housing Developments in an Amount Not to Exceed \$1,550,000, and Authorizing the City Manager to Execute Appropriate Funding Agreements and Related Documents (CD)

- i. Resolution Approving a Housing Trust Grant to Homeward Bound of Marin for the Affordable Housing Development at 190 Mill Street in an Amount Not to Exceed \$750,000, and Authorizing the City Manager to Execute a Grant Agreement and All Related Documents that May Be Required By Other Sources of Financing for the Project

Recommended Action – Adopt Resolution

- ii. Resolution Approving a Housing Trust Loan to Eden Housing for the Affordable Housing Development at 999 Third Street in an Amount Not to Exceed \$800,000, and Authorizing the City Manager to Execute Loan Documents and All Related Documents that May Be Required by Other Sources of Financing for the Project

Recommended Action – Adopt Resolution

b. **Southern Heights Bridge Replacement**

Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Southern Heights Bridge Replacement Project, City Project No. 11282, to Disney Construction, Inc., In the Amount of \$2,733,333, and Authorizing Contingency Funds In the Amount of \$466,667, for a Total Appropriated Amount of \$3,200,000. Reimbursable Bridge-related Work will be Funded Utilizing \$3,110,000 of Caltrans Highway Bridge Program Grant Funds with \$90,000 of other Funds for the Remaining Balance (PW)

Recommended Action – Adopt Resolution

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:

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

7. Councilmember Reports:

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

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



MINUTES

SAN RAFAEL CITY COUNCIL – MONDAY, SEPTEMBER 21, 2020

REGULAR MEETING AT 7:00 P.M.

Telephone: (669) 900-9128,

ID: 850-6400-3042#

CORONAVIRUS (COVID-19) ADVISORY NOTICE

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Present: Mayor Pro Tem Colin
Councilmember Bushey
Councilmember Gamblin
Councilmember McCullough

Absent: Mayor Phillips

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

OPEN SESSION - (669) 900-9128 – ID: 833-6460-7513#- 6:00 PM

1. Mayor Pro Tem Colin announced Closed Session item.

CLOSED SESSION - (669) 900-9128 – ID: 833-6460-7513#- 6:00 PM

2. Closed Session:
 - a. Conference with Legal Counsel—Anticipated Litigation
Government Code §54956.9(d)(2) and (e)(5) Significant Exposure to Litigation (One Case)
**Documentation of Threat of Litigation Available Upon Request in the City Clerk's Office*

REGULAR MEETING AT 7:00 P.M.

Telephone: (669) 900-9128,

ID: 850-6400-3042#

Mayor Pro Tem Colin called the meeting to order at 7:01 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present, except for Mayor Phillips.

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 the Closed Session held prior to the meeting, nor at the Special Closed Session held on September 14, 2020.

CITY MANAGER'S REPORT:

3. City Manager's Report:

City Manager Jim Schutz provided updates on:

- San Rafael City Schools Board recent vote to end the School Resource Officer assignments
- COVID-19 and the City's response
- San Rafael Community Center Cooling/Clean Air Center
- Landlord & Renter assistance

City Attorney Rob Epstein offered some remarks on a traffic stop incident that has previously occurred involving the Police Department, which had resulted in a claim. He announced that the City had invited the individual and police officers to engage in a conversation and participate in a restorative justice process with the goals being an effort to gain mutual understanding, to hear one another and healing.

City Attorney Rob Epstein responded to comments and questions from councilmembers.

OPEN TIME FOR PUBLIC EXPRESSION – 7:00 PM

Mayor Pro Tem Colin invited public comment; however, there was none

CONSENT CALENDAR:

Mayor Pro Tem Colin invited public comment on the Consent Calendar; however, there was none

Councilmember McCullough moved and Councilmember Gamblin seconded to approve the Consent Calendar

4. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council / Successor Agency Regular Meeting of Tuesday, September 8, 2020 (CC)

Approved minutes as submitted

- b. **Conflict of Interest Code**
Resolution Repealing Resolution No. 14636, Re-Adopting the Fair Political Practices Commission Model Conflict of Interest Code As the City's Conflict of Interest Code, and Adopting a Revised List of Designated Employee Positions and Disclosure Categories, to be Incorporated Into the City's Conflict of Interest Code (CC)
Resolution 14855 - Resolution Repealing Resolution No. 14636, Re-Adopting the Fair Political Practices Commission Model Conflict of Interest Code As the City's Conflict of Interest Code, and Adopting a Revised List of Designated Employee Positions and Disclosure Categories, to be Incorporated Into the City's Conflict of Interest Code

- c. **Fiscal Year 2019-2020 City-wide Budget Amendments and Fiscal Year 2020-2021 Update**
 - i. **Resolution Adopting Amendments to the City of San Rafael Budget for Fiscal Year 2019-2020 for the Purpose of Confirming Authorized Appropriations and Transfers (Fin)**
Resolution 14856 - Resolution Adopting Amendments to the City of San Rafael Budget for Fiscal Year 2019-2020 for the Purpose of Confirming Authorized Appropriations and Transfers

 - ii. **Resolution Adopting Amendments for Fiscal Year 2020-2021 for the Purposes of San Rafael Sanitation District Personnel Changes (Fin)**
Resolution 14857 - Resolution Adopting Amendments for Fiscal Year 2020-2021 for the Purposes of San Rafael Sanitation District Personnel Changes

- d. **Police Department Copy/Print Hardware Lease and Services**
Resolution Authorizing the City Manager to Execute a Copy/Print Hardware Lease and Services Agreement with Ray Morgan Company, for a 39-Month Term at an Estimated Annual Cost of \$50,277 (PD)
Resolution 14858 - Resolution Authorizing the City Manager to Execute a Copy/Print Hardware Lease and Services Agreement with Ray Morgan Company, for a 39-Month Term at an Estimated Annual Cost of \$50,277

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

OTHER AGENDA ITEMS

5. Other Agenda Items:

- a. **[Measures to Facilitate Housing Development & Streamline Approvals](#)**
Summary Report on Potential Amendments to the San Rafael Municipal Code to Facilitate Housing Development and Streamline Approvals (CD)

Ethan Guy, Principal Analyst and Alicia Giudice, Principal Planner presented the staff report

Staff responded to comments and questions from Councilmembers

Mayor Pro Tem Colin invited public comment

Speakers: Bill Carney, Sustainable San Rafael, Victoria DeWitt, Chris Hart, Amy Likover, Joanne Webster, San Rafael Chamber of Commerce, Brad Sears, Kate Powers

Staff responded to public comment

Councilmembers provided comments

Councilmember McCullough moved and Councilmember Bushey seconded to accept the report and direct staff to proceed as indicated in the report, subject to the additional guidance to engage more closely with the Design Review Board going forward

Accepted report (including September 8, 2020 Informational Report by reference) and directed staff to proceed as indicated in the report, subject to the additional guidance to engage more closely with the Design Review Board going forward

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

b. **Homeless Report**

Informational Report on Status of Homelessness in San Rafael (CM)

Andrew Hening, Director of Homeless Planning and Outreach presented the staff report

Staff responded to questions from Councilmembers

Mayor Pro Tem Colin invited public comment

Speakers: Name withheld, Kate Powers

Staff responded to public comment

Staff responded to questions from Councilmembers

Councilmember Gamblin moved and Councilmember McCullough seconded to accept the report

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

Accepted Report

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

6. Councilmember Reports: - None.

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

Mayor Pro Tem Colin adjourned the meeting at 8:35 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2020

GARY O. PHILLIPS, Mayor

DRAFT

2040 for public review on October 2, 2020. The Draft Downtown Precise Plan and Draft EIR are scheduled to be released for public review on November 13, 2020.

Opticos is requesting an amendment to the not-to-exceed budget that is authorized under the PSA. An additional \$35,000 is being requested to cover the new, unbudgeted tasks to complete an additional “screen check” draft of the Downtown Precise Plan, and a subsequent public review draft Plan.

The amendment will also include an additional task to test the proposed “form-based code” on three Downtown development projects. This cost of \$5,000 will be offset by previously authorized funds for a task that was completed with a remaining unused balance of \$5,000.

ANALYSIS:

The amendment to the budget is reasonable and warranted for several reasons. First, the COVID-19 pandemic has caused delays in the completion of key tasks and work products for the Downtown Precise Plan. Second, given the complexity of the Downtown Precise Plan and the accompanying “form-based code,” a working group of the General Plan 2040 Steering Committee was formed to participate in a more detailed review of the draft Plan. This review has resulted in major changes and edits to the Plan, which requires a second round of draft Plan review by staff. Third, as the proposed “form-based code” is a new tool for zoning, staff determined that it would be prudent to test this code on three Downtown projects that were designed and developed under the City’s current zoning regulations. This test will disclose how or if the outcome of the design for these projects would differ under both scenarios. Lastly, when the General Plan 2040 and Downtown Precise Plan Work Program was initially presented to the City Council in 2018, a 10% contingency was built into the full budget. Therefore, it was anticipated that there would be minor amendments to the technical consultant budgets to address new issues that surfaced during the process.

FISCAL IMPACT:

The increased funding of \$35,000 would be appropriated from General Plan Special Revenue Fund (Fund # 218). The current fund balance of the General Plan Special Revenue Fund is approximately \$1.3 million. Therefore, there are adequate funds to cover the additional \$35,000 appropriation request.

OPTIONS:

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

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

RECOMMENDED ACTION:

Adopt a resolution authorizing the City Manager to execute the First Amendment to the PSA with Opticos.

ATTACHMENTS:

1. Resolution
2. Draft First Amendment to PSA with Opticos including Exhibit A (Scope of Work)

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE AGREEMENT WITH OPTICOS DESIGN, INC. TO SERVE AS GENERAL PLAN COMMUNITY DESIGN AND DOWNTOWN PRECISE PLAN TECHNICAL CONSULTANT FOR THE GENERAL PLAN 2040 TO PROVIDE FOR ADDITIONAL SERVICES AND COMPENSATION NOT TO EXCEED \$35,000

WHEREAS, on March 5, 2018, the City Council adopted Resolution No. 14478, which initiated the preparation of General Plan 2040 and accepted the Final Work Program; and

WHEREAS, the City Council adopted Resolution No. 14628 authorizing the City Manager to execute a contract with Opticos Design Inc. to serve as General Plan Community Design and Downtown Precise Plan Technical consultant for the General Plan 2040, for a maximum compensation of \$493,500; and

WHEREAS, due to factors set forth in the staff report supporting this resolution, additional services on the project are required from Opticos Design, Inc.; and

WHEREAS, the City has sufficient funds in the General Plan Special Revenue Fund #218 to increase the appropriations for FY20/21 to support increasing the contract amount by \$35,000.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby authorizes the City Manager to execute a First Amendment to the Professional Services Agreement with Opticos Design, Inc. in the form included with the staff report for this Resolution, subject to final approval as to form by the City Attorney, to extend the length of the Agreement, expand the scope of services to include additional work needed in connection with the General Plan 2040 and Downtown Precise Plan, and to provide for additional compensation payable in an amount not to exceed \$35,000.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, October 5, 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

**FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH
OPTICOS DESIGN, INC. TO SERVE AS GENERAL PLAN COMMUNITY DESIGN AND
DOWNTOWN PRECISE PLAN TECHNICAL CONSULTANT FOR THE GENERAL
PLAN 2040**

THIS FIRST AMENDMENT to the Professional Services Agreement by and between the **CITY OF SAN RAFAEL** (hereinafter “**CITY**”), and **OPTICOS DESIGN, INC.**, (hereinafter “**CONTRACTOR**”), is made and entered into as of the _____ day of _____, 2020.

RECITALS

WHEREAS, on January 25th, 2018, the City Council adopted Resolution No. 14628, authorizing the execution of an Agreement between the **CITY** and the **CONTRACTOR** to serve as General Plan Community Design and Downtown Precise Plan Technical Consultant for the General Plan 2040; and

WHEREAS, the **CITY** has not yet to exercise its option to extend this by one (1) year the contract with the **CONTRACTOR**; and

WHEREAS, due to the efforts of the **CONTRACTOR**, the **CITY** was awarded grant funding from the Metropolitan Transportation Commission to provide financial support for the creation of a Downtown Precise Plan as part of this contract; and

WHEREAS, the increase in work associate with the creation of a Downtown Precise Plan was not included in the **CITY’s** initial scope of work with the **CONTRACTOR**; and

WHEREAS, the **CITY** has sufficient funds in the General Plan Special Revenue Fund #218 to be appropriated for FY19/20 to support this amendment to this contract for the duration of the contract term; and;

AMENDMENT TO AGREEMENT

NOW, THEREFORE, the parties hereby agree to amend the Agreement as follows:

1. Paragraph 3 of the Agreement, entitled "DUTIES OF CONTRACTOR" is hereby amended to include the services described in Exhibit "A" to this First Amendment and incorporated herein by reference.
2. Paragraph 4 of the Agreement, entitled "COMPENSATION," is hereby amended to include additional compensation payable to **CONTRACTOR** for the services described in Exhibit "A" to this First Amendment, on a time and materials basis, in a not-to-exceed amount of \$35,000 by increasing the total contract amount to \$528,500.
3. Except as specifically amended herein, all other provisions, terms and obligations of the Agreement between the parties shall remain valid and shall be in full force.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the day, month, and year first above written.

CITY OF SAN RAFAEL

OPTICOS DESIGN, INC.

JIM SCHUTZ, City Manager

By:_____

ATTEST:

LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

EXHIBIT A
 FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
 OPTICOS DESIGN, INC.
 September 2020

	Task	Description	Budget Amendment
Item 1	Finish PSA Tasks 10.3 and 11.3 – Precise Plan and Code with a Screen-Check Draft (due end of October) and a Public Review Draft (due mid-November)	Edits will include responses to City staff comments received to date (PDF comments from City staff + additional comments from General Plan Steering Committee Working Group) Assumptions: Opticos to receive edited content from City-managed subs (F&P, BAE, PW) Opticos to receive feedback from the City on highlighted items on the list provided Plan graphics and the 3D illustrative view will be updated but minimal work on hand-drawn graphics Task 13 budget will remain intact as per original scope	\$35,000
Item 2	Public Review Draft Add-on Services	Code testing for 3 Downtown projects This will include testing the final program for each project with PRD Code standards to show the differences in built outcome. Deliverable will be a memo showing submitted plan/elevation (from Plan Set) with differences hand marked in red.	\$5,000
Total additional budget required			\$40,000
Credit from previously authorized funds for Transit Center Design Concepts			\$5,000
Total additional funds requested			\$35,000



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Digital Service & Open Government

Prepared by: Rebecca Woodbury,
Director

City Manager Approval: _____

TOPIC: INFORMATION TECHNOLOGY SERVICES AGREEMENT RENEWAL

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GENERAL SERVICE AGREEMENT WITH ADDENDUM WITH XANTRION, INC., FOR INFORMATION TECHNOLOGY SERVICES FROM NOVEMBER 1, 2020 THROUGH OCTOBER 31, 2021 IN AN AMOUNT NOT TO EXCEED \$995,000

RECOMMENDATION: Adopt a resolution authorizing the City Manager to execute an agreement with Xantrion, Inc for information technology services in an amount not to exceed \$995,000.

BACKGROUND: In October last year, the City Council [approved a one-year agreement with Xantrion](#), a managed service provider of information technology services. Xantrion began providing services on November 1, 2020. During this time, Xantrion has helped the City improve its security posture, streamline day-to-day tech support, improve customer service, and standardize user management and purchasing. Some of the accomplishments from the past year include:

- Standing up a remote desktop server that supports about 100 users working from home with the ability to access their network files and common applications and rolling out multifactor authentication to everyone with access to the City network
- Supporting the deployment of technology in the new Public Safety Center
- Deployment of a monitoring system now in place to detect early signs of identity compromise. Several instances of attempted compromise were remediated before any damage was done
- A rebuild of the RIMs server for the Police department, which has stabilized the application and significantly reduced the number of unplanned outages, as well as, providing incident responses with root cause analysis
- Standardized user on-boarding/off-boarding and implemented monthly user account audits
- Migrated analog Police support phone lines to more reliable VoIP phone lines
- Deployment of new applications for Police Department and City Clerk’s office
- Updated and replaced network devices to support enhanced security functionality

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

- Retired unsupported legacy servers that posed security risks
- Deployed new Advanced Traffic Management System infrastructure
- Deployment of new and improved antivirus, internet filtering, and email security measures, as well as, comprehensive security patching for both our systems and applications. Many Windows 7 devices have been upgraded to Windows 10 and security licenses have been purchased for the remainder
- Daily offsite backups, improving the City’s ability to recover from a potential security attack
- Increased mandatory cybersecurity training recently and continue to push out information about potential security threats
- Mobile device management to all public safety mobile devices

ANALYSIS: The cost of the original one-year agreement was \$977,000. This cost structure was developed based on our best estimate of the number of devices (computers, servers, firewalls/routers, switches, etc.) owned by the City at the time. Since then we have improved our inventory practices and we have better numbers now than we did back then. We have also added some devices to our inventory. Below shows our device estimate from October 2019 compared to the numbers we have now.

Device Type	Monthly cost	Oct 2019 Estimate	Aug 2020 Inventory
Desktops	\$100	300	333
Laptops	\$130	40	48
PC (thin clients)	\$35	40	40
Police MDT Laptops	\$135	20	20
Windows Servers	\$220	49	81
Firewalls & Routers	\$200	12	17
Switches	\$50	45	60
ESX Hosts	\$200	12	12
SAN	\$135	3	3
WAPs	\$20	54	100
Device Subtotal		\$61,615	\$75,995
Backups		\$4,000	\$4,000
Security		<u>\$15,750</u>	<u>\$15,750</u>
Monthly Cost		\$81,365	\$95,745
Annual Cost		\$976,380	\$1,148,940

Based on our current pricing model, the cost of the agreement would increase by \$172,560 to \$1,148,940. However, due to the City’s budgetary constraints, Xantrion is instead proposing a 2% CPI increase to the current contract cost, bringing the cost of the agreement to \$995,000.

Over the next year, we plan to work with Xantrion to reduce the number of devices. We believe we can reduce the number of computers by implementing a one device per user policy (an employee can have a laptop or a desktop, but not both) and reduce the number of servers.

The proposed renewal is for one year, beginning November 1, 2020 and ending October 31, 2021.

FISCAL IMPACT: The total amount of the proposed new agreement is \$995,000 and the estimated cost from November 1, 2020 to June 30, 2021 is \$664,000 in which the funds were appropriated through the FY 2020-21 budget. Funds are available in the Technology Fund (fund no. 601). The remaining \$331,000 is planned for inclusion in the FY 2021-22 budget.

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

1. Accept report and adopt resolution.
2. Direct staff to return with more information.
3. Take no action.

RECOMMENDED ACTION: Adopt resolution.

ATTACHMENTS:

1. Resolution
2. Xantrion General Service Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE CITY MANAGER TO EXECUTE A GENERAL SERVICE AGREEMENT WITH ADDENDUM WITH XANTRION, INC., FOR INFORMATION TECHNOLOGY SERVICES FROM NOVEMBER 1, 2020 THROUGH OCTOBER 31, 2021 IN AN AMOUNT NOT TO EXCEED \$995,000

WHEREAS, the City of San Rafael requires on-going technical assistance with the administration and support of its technology systems in order to maintain their operational effectiveness and respond to departments' requests for services ("information technology services"); and

WHEREAS, Xantrion, Inc. ("Xantrion") is an experienced provider of managed information technology services and is willing to provide information technology services to the City; and

WHEREAS, the City desires to enter into an agreement with Xantrion to provide information technology services to the City for a one-year term beginning November 1, 2020 and ending October 31, 2021; and

WHEREAS, City funds in the amount of \$664,000 are budgeted and available for expenditure in the FY 2020-21 Department of Digital Service & Open Government's operating budget as follows: Technology Fund (\$664,000); and

WHEREAS, City funds in the amount of \$331,000 are planned for inclusion in the FY 2021- 22 Department of Digital Service & Open Government's budget request as follows: Technology Fund (\$331,000);

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby authorizes the City Manager to execute a General Service Agreement with Addendum with Xantrion, Inc., for information technology services from November 1, 2020 through October 31, 2021 in an amount not to exceed \$995,000, in the form included with the Staff Report for the City Council's October 5, 2020 regular meeting, subject to final approval as to form by the City Attorney.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on Monday, the 5th day of October 2020, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

GENERAL SERVICE AGREEMENT

XANTRION INC.

AND

CITY OF SAN RAFAEL

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GENERAL SERVICE AGREEMENT

This General Service Agreement, including any attachments referenced herein and made a part hereof (this “Agreement”), is entered into as of November 1, 2020 (the “Effective Date”), by and between Xantrion, Inc., a California corporation (“Xantrion”), with offices at 651 20th Street, First Floor, Oakland, CA 94612, and City of San Rafael with offices at 1400 Fifth Avenue, San Rafael, CA 94901 (“Client”).

1 Services

1.1 Statement of Work

Xantrion shall provide the services (the “Services”) as described in the Addendum To The General Service Agreement Information Technology Services of even date herewith, attached as Exhibit A hereto and incorporated herein by reference (“Addendum”). The Services shall be performed and delivered in a workmanlike manner in accordance with generally recognized industry standards for computer consultants performing similar services.

1.2 Personnel

Xantrion, acting as an independent contractor, shall engage employees, consultants, or subcontractors (“Xantrion Personnel”) to provide the Services specifically outlined in the Addendum, and Xantrion shall be fully and directly responsible for all Xantrion Personnel. Xantrion shall (i) provide competent and qualified personnel to perform the Services; (ii) ensure that it complies with all laws, regulations, ordinances and licensing requirements; (iii) ensure Xantrion Personnel performing any Services on Client’s premises comply with any applicable Client guidelines as provided to Xantrion from time to time, including, but not limited to, any data security policies; and (iv) determine the method, detail, and means of performing the Services under this Agreement.

2 Terms of Payment

2.1 Services Fees; Equipment and Software Costs

Unless otherwise agreed to in writing by the parties, payment for Services by Xantrion (“Service Fees”) rendered and any equipment, software, licenses, 3rd party services, hardware, parts and supplies (“Supplies”) shall be due within forty-five (45) days from the date of the applicable invoice provided by Xantrion to Client. If Xantrion does not receive payment within such forty-five (45) day-period, Xantrion shall have the option to suspend the Services without any liability until payment is received.

2.2 Overdue Payments

Interest shall accrue on any delinquent amounts owed by Client to Xantrion at the rate of 0.8333% per month. In the event of a good faith dispute related to the invoices submitted by Xantrion, Client shall notify Xantrion in writing setting forth the reasons of such dispute, and the parties shall cooperate to resolve such dispute.

2.3 Taxes

Client shall be responsible for any applicable sales or use taxes on any amounts payable by Client hereunder.

3 Term, Termination

3.1 Term

Unless sooner terminated, the term of this Agreement, and the applicable Services requested as set forth in the accompanying Addendum shall be for one (1) year commencing on the Effective Date ("Term") and shall continue during the Term unless this Agreement is otherwise terminated sooner in accordance with Section 3.2 or Section 3.3. During this Term, Xantrion shall not increase its fee rates over and above the rates charged on Services provided as of the Effective Date. New Services added during the Term may be charged at Xantrion's then-current rates. The termination of any Service shall not modify any Term of this Agreement. The termination of this Agreement shall immediately terminate any and all Services executed hereunder.

3.2 Termination for Convenience

Either party may terminate this Agreement or any applicable Service at any time without cause upon at least ninety (90) days' prior written notice to the other party. In the event that either party elects to terminate this Agreement pursuant to this Section 3.2, Xantrion agrees to provide sufficient efforts and cooperation to ensure an orderly and efficient transition of Services to Client or another service provider, whichever Client elects, at Xantrion's then-current time and materials rates.

3.3 Termination for Cause

Either party may terminate this Agreement or any applicable Service for Cause (as defined below) immediately upon written notice to the other party.

For purposes of this Agreement, "Cause" means: (i) Client's failure to pay any amount due within thirty (30) days of the applicable due date; (ii) a party's conviction of, or plea of nolo contendere to, any felony, or any other crime involving fraud, embezzlement, or act of moral turpitude; (iii) a party's unauthorized use or disclosure of any Confidential Information or other proprietary information of the other party or any other

party to whom the offending party owes an obligation of nondisclosure as a result of the parties' relationship; (iv) a material breach of this Agreement by a party which is incapable of cure, or with respect to a material breach capable of cure, is not cured within thirty (30) days after receipt of written notice from the affected party of such breach; (v) a dissolution or liquidation of any party, or any corporate action taken by any party for such purpose; (vi) any party's insolvency or admission of its inability to pay its debts generally as they become due; or (vii) any party's voluntary filing of a bankruptcy petition or general assignment for the benefit of creditors.

3.4 Effect of Termination

Upon termination of this Agreement, Xantrion shall not be obligated to provide any further Services to Client and Xantrion shall have the right to remove any equipment or other Supplies belonging to Xantrion which has been installed or placed at Client's location for the performance of the Services hereunder. Client shall pay all outstanding invoices, as well as any invoices which may be submitted to Client following the date of termination for Services Fees or Supplies or costs incurred up to the date of termination, within ten (10) days of the date of termination or within thirty (30) days of the date of the invoice, whichever is later. Upon termination of this Agreement for any reason, each party shall (i) return to the other party or destroy all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information, (ii) permanently erase all of the other party's Confidential Information from its computer systems, and (iii) if requested by the other party, provide written confirmation within ten (10) days of receiving such request that it has complied with the requirements of this section.

3.5 Survival.

The terms of Sections 2, 3, 4, 5, 7, 8, 9, and 15 shall survive the termination of this Agreement.

4 Equipment, Software and Supplies

4.1 Equipment; Software; Supplies

Xantrion is not responsible for compatibility issues, project delays, or other problems with Supplies (i) provided by Client, (ii) purchased by Client through a third party, or (iii) manufactured by a third party and purchased by Client from Xantrion (collectively, "Third Party Products") except if expressly recommended by Xantrion.

Notwithstanding anything contained herein to the contrary, in the event Xantrion installs a Third Party Product and such Third Party Product fails within ninety (90) days of installation, Xantrion will provide the labor to re-install the product free of charge.

4.2 Limited Warranty

Xantrion represents and warrants to Client that the Supplies, processes, and procedures employed, used, and operated by Xantrion in providing the Services will be sufficient to provide the Services at the levels of reliability represented in the description and definition of the Services.

Third Party Products purchased through Xantrion are warrantied by their respective manufacturers and any applicable manufacturer's warranties will be passed through to the Client. Xantrion will only accept returns on such Third Party Products if they are defective and returned within thirty (30) days of Client's receipt of such Third Party Product.

5 Independent Contractor Status

Client and Xantrion acknowledge and agree that: (i) Xantrion is an independent Contractor, (ii) the parties are not engaged in a joint venture, partnership, employment, or fiduciary relationship; and (iii) neither party is authorized to act as agent or incur any obligation on behalf of the other.

6 Non-Solicitation

Client acknowledges that Xantrion will recruit and train personnel to provide Services for Client under this Agreement, and that this is a costly and time-consuming endeavor. Client therefore agrees not to directly, or indirectly through a third party, solicit, induce, recruit for employment, or attempt to solicit, induce, or recruit for employment, any Xantrion personnel who has performed Services for Client under this Agreement to provide the same or similar services. Client shall comply with this obligation during the term of this Agreement, and for a period of twelve (12) consecutive months after termination. Client shall be relieved of its obligations under this provision if Client first pays Xantrion the sum of the actual cost of retaining and training individual personnel. The Parties further agree that this amount shall be no less than \$60,000 per individual personnel, which Client agrees accurately reflects the minimum reasonable value of Xantrion's time and costs with respect to recruiting and training personnel to work for Client. Notwithstanding any other provisions in this Agreement, the parties retain all legal remedies, at law or equity, upon violation of this provision.

7 Unauthorized Access to Data or Use of the Services

Xantrion is not responsible to Client for unauthorized access to the electronic data of Client stored on Xantrion's servers ("Client Data") or the unauthorized use of the Services unless such unauthorized access or use results from Xantrion's failure to meet its obligations described in the Agreement. Client is responsible for the use of the Services by any employee or consultant of Client, other than Xantrion, any person to whom Client has given access to the Client Data, and any person who gains access to the Client Data or Services as a result of Client's failure to use reasonable security precautions, even if such use was not authorized by Client.

8 No Warranties; Limitations of Liability; Indemnification

8.1 No Warranties

EXCEPT AS PROVIDED IN SECTION 1.1 (SERVICES) AND SECTION 4.2 (LIMITED WARRANTY), XANTRION EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO THE SERVICES PROVIDED HEREUNDER, AND WITH REGARD TO ANY THIRD PARTY PRODUCTS, INCLUDING IN EACH CASE ANY WARRANTY OF NON-INFRINGEMENT, AND ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM THE COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE. THESE DISCLAIMERS OF WARRANTY AND LIMITATIONS OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT.

8.2 Limitation of Liability

IN NO EVENT WILL XANTRION, WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE, BE LIABLE FOR: (I) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY.); OR (II) COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, SUPPLIES, LOST PROFITS, LOSS OF DATA; OR (III) ANY DIRECT DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, TO THE EXTENT THAT THE AGGREGATE AMOUNT OF SUCH DAMAGES EXCEEDS THE AGGREGATE SERVICES FEES ACTUALLY PAID BY CLIENT HEREUNDER IN THE SIX (6) CALENDAR MONTHS BEFORE SUCH CLAIM AROSE; PROVIDED THAT SUCH LIMITATION OF LIABILITY SHALL NOT EXTEND TO DIRECT DAMAGES INCURRED AS A RESULT OF THE WILLFUL MISCONDUCT OF XANTRION OR ITS EMPLOYEES. THE PARTIES AGREE THAT THE LIMITATIONS IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF FEES CHARGED IN CONNECTION WITH THIS AGREEMENT AND THAT, WERE XANTRION TO ASSUME ANY FURTHER LIABILITY, SUCH FEES WOULD OF NECESSITY HAVE BEEN SUBSTANTIALLY HIGHER.

8.3 Indemnification

To the fullest extent permitted by law subject to the limitations set forth in this Agreement,, Xantrion shall indemnify and hold harmless, and defend the Client, its officers, agents, employees and volunteers (collectively, the "Client Indemnitees") from and against any and all suits, actions, legal proceedings, claims, demands, damages, losses and expenses which may be made by individuals or organizations, including, but not limited to attorneys' fees, expert fees and all other costs and fees of litigation (each a "Claim" and collectively the "Claims"), arising out of or resulting from the Xantrion's negligence or willful misconduct in the performance of the Services. The acceptance or approval of Xantrion's Services by Client or any of its directors, officers or employees shall not relieve or reduce Xantrion's indemnification obligations. However, to the extent that any Claim arises from, relates to, or is in connection with, the negligence or willful misconduct of the Client Indemnitees, or any of them, then Xantrion's indemnification obligation and liability hereunder for the Claim shall be reduced in proportion to the Client Indemnitees' total share of liability for the Claim as a result of the Client Indemnitees' negligence or willful misconduct.

9 Confidentiality

9.1 Definition

The term “Confidential Information” as used in this Agreement shall mean any information disclosed, directly or indirectly, by a party (the “Discloser”) to the other party (the “Recipient”) that may reasonably be considered proprietary or confidential including, without limitation, the Discloser’s operational and business methods and practices, economic and financial information, know-how, recommendations, instructional methods, Client Data (as defined below), software and information systems, technical processes, products, product designs, machinery, research and development, intellectual property, and any material embodiments thereof.

Notwithstanding the foregoing, the term “Confidential Information” shall not include any information that (i) is or becomes generally available to the public other than as a result of the Recipient’s breach of this agreement; (ii) is or becomes available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was in Recipient’s possession prior to the Discloser’s disclosure hereunder; or (iv) was or is independently developed by Recipient without using any Confidential Information.

9.2 Confidentiality

The Recipient agrees to (i) take reasonable measures to protect and safeguard the confidentiality of, and avoid disclosure and unauthorized use of, the Discloser’s Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Discloser’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except as required to assist the Recipient to exercise its rights or perform its obligations under this Agreement.

Disclosure of Confidential Information is not prohibited if such disclosure is compelled pursuant to a legal proceeding or is otherwise prescribed by law. If the Recipient receives a request to disclose any Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, the Recipient, prior to disclosing any Confidential Information, and, except as may be prohibited by law, will notify the Discloser of such requirements to afford the Discloser the opportunity to seek a protective order or other remedy.

9.3 Access to Systems

Xantrion representatives and contractors, shall only access Client systems and data as is necessary to perform the Services agreed to. Client understands that Xantrion representatives may share access with other vendors

to the limited extent required to perform the Services. Notwithstanding the foregoing, when access to criminal justice data or systems is necessary to perform the Services, Xantrion agrees that its designated representatives will comply with Client's requirements for access to such systems and information, including but not limited to fingerprinting and a satisfactory background check, as a precondition to being granted access to those systems or data.

10 Compliance

None of the Services or underlying information or technology may be downloaded, exported, or re-exported into any country to which the United States has embargoed goods, or to any individual or entity that has been denied export privileges by the U.S. Treasury Department or the U.S. Department of Commerce. By using the Services, Client is agreeing to the foregoing and Client is representing and warranting that Client is not a national resident of, or located in or under the control of, any country subject to such export controls.

10.1 Protection of Personally Identifiable Information

The parties agree to use commercially reasonable security precautions to protect Personally Identifiable Information, "PII", (as hereafter defined) transmitted to or from, or stored at, Xantrion's data centers. Client must comply with the laws applicable to Client's use of the Services and with Xantrion's policies and procedures, as may be amended. Client agrees to cooperate with Xantrion's reasonable investigation of Service outages, security problems, and any suspected breach. For purposes of this Agreement, "PII" means (i) any information that identifies an individual, such as name, social security number or other government issued number, date of birth, address, telephone number, biometric data, mother's maiden name, or other personally identifiable information; (ii) any "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4), and (iii) any "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

The parties agree to comply with the applicable provisions of HIPAA, the requirements of any regulations promulgated thereunder including, without limitation, the federal privacy regulations as contained in 45 CFR Parts 160 and 164 (the "Federal Privacy Standards"), the Electronic Transaction Standards (45 CFR Parts 160 and 162) the Security Standards (45 CFR Parts 160, 162 and 164), and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), Public Law 111-05 and regulations promulgated thereafter.

The parties further agree to comply with the applicable provisions of the PROTECT Our Children Act contained in 42 USC 13032 and 18 USC 2258A .

10.2 Compliance with Laws Applicable to Client

As it pertains to Client's Confidential Information and/or Data stored or managed by Xantrion, Xantrion will comply with any and all confidentiality, security, privacy and or compliance requirements, rules and/or regulations imposed on Client by local, state or federal authorities, agencies, regulatory agreements and or laws

to the extent Client has provided to Xantrion in writing the specific requirements to satisfy said confidentiality, security, privacy and or compliance requirements, rules and/or regulations.

10.3 Compliance with Software Manufacturer’s Licensing and Allowed Usage Requirements

Client acknowledges its obligation to comply with all provisions of software manufacturer’s licensing and allowed usage requirements. Client agrees to honor the provisions of the “[Microsoft Cloud Agreement](#)” incorporated herein by reference.

11 Security Incident Response

11.1 Obligations

Xantrion acknowledges its obligation to support Clients in the event of a Security Incident. Services we will perform and the basis on which they will be billed are described in the Addendum – Services.

11.2 Disclaimer

Xantrion does not represent that any service will prevent a security incident. Nor do we represent that we have legal expertise or expertise in forensic investigations. Clients are advised to consider purchasing cyber-liability policies to protect against the risk of a security incident. In the event of an incident, Client is advised to contact their own legal counsel to determine their obligations to report an incident, and to notify their insurance carrier of a potential claim and to permit the insurance company or its designated agents to conduct any investigation.

12 INSURANCE

During the term of this Agreement, Xantrion shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to:

Insurance Type	Description of Liability covered	Aggregate Limit
Cyber Liability, Privacy/Network Security, Cyber Crime & Cyber Deception Endorsement	Data breach of our systems or a Client system for which we are liable Including forensic costs, notification costs, credit or identity protection, extortion, regulatory action, fines and penalties. and business interruption.	\$10 mm
Third Party Crime	Third Party Crime	\$250 K

Commercial General Liability	Bodily injury, personal injury and property damage caused by the business' operations, products, or injury that occurs on the business' premises.	\$2 mm
Errors and Omissions Liability	Claims made by Clients for failure to provide products or services, inadequate work or negligent actions.	\$10 mm
Workers Compensation	On the job injury	\$1 mm
Employment Practices Liability	Claims made by employees alleging discrimination (based on sex, race, age or disability, for example), wrongful termination, harassment and other employment-related issues, this also extends to Third Party – Clients, Vendors, etc.	\$1 mm

13 Other Insurance Provisions

13.1 Except for professional liability insurance or worker’s compensation insurance, the insurance policies shall be specifically endorsed to include Client, its officers, agents, employees, and volunteers, as additional insureds under the policies.

13.2 The additional insured coverage under Xantrion’s insurance policies shall be “primary and noncontributory” with respect to any insurance or coverage maintained by Client and shall not call upon Client’s insurance or self-insurance coverage for any contribution. The “primary and noncontributory” coverage in Xantrion’s policies shall be at least as broad as ISO form CG20 01 04 13.

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

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

13.5 Xantrion’s worker’s compensation insurance shall be specifically endorsed to waive any right of subrogation against Client.

13.6 Xantrion shall cooperate with Client in providing Client with copies of all insurance provisions or endorsements required by this Agreement.

14 Harassment Free Workplace; Nondiscrimination

Xantrion and Client mutually commit to observing the highest standards of conduct in maintaining an environment that is free of discrimination, including harassment of any kind and on the basis of a legally protected status. Accordingly, Xantrion and Client will not tolerate any form of harassment against anyone, including employees, vendors, independent contractors, or guests. Xantrion and Client understand and acknowledge their legal obligation both, not to engage in, and to report any unwelcome conduct, whether verbal, physical, sexual, or visual, and that is based upon a person's protected status. Xantrion and Client shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of their duties and obligations under this Agreement.

15 Miscellaneous

15.1 Notices

All notices under this Agreement shall be sent to a party at the respective address indicated in the introductory paragraph hereof, or to such other address as such party shall have notified the other in writing. All such notices so addressed shall be deemed duly given (a) upon delivery, if delivered by courier or by hand (against receipt); or (b) three days after posting, if sent by certified or registered mail, return receipt requested.

15.2 Governing Law

This Agreement shall be construed and controlled by the laws of the State of California, without reference to conflicts of law principles. To the extent that any lawsuit is permitted under this Agreement, the parties hereby expressly consent to the personal and exclusive jurisdiction and venue of the state and federal courts located in Marin County, California.

15.3 Remedies

The parties agrees that remedies at law for a breach or threatened breach of any of the provisions of this Agreement, including any disclosure or use of the Confidential Information, may be inadequate and, in recognition of this fact, in addition to all other remedies available at law, the parties will be entitled to seek specific performance or injunctive relief to enforce the terms of this Agreement.

15.4 Dispute Resolution; Attorney's Fees

Xantrion and Client agree to each use its best efforts to mutually resolve any claim, controversy, liability or dispute arises between the parties relating to or in connection in any way with this Agreement or its interpretation, validity or enforcement (collectively, "Disputes" or, in the singular, "Dispute").

Failing that, and unless otherwise agreed by the parties in writing, such dispute shall be adjudicated by final, binding arbitration under the auspices, and in accordance with then-applicable commercial arbitration rules and procedures, of JAMS, Inc. ("JAMS") at JAMS' San Francisco offices. The arbitrator shall be mutually-agreed upon by the parties to the arbitration. If the parties cannot agree upon an arbitrator within ten (10) business days after the filing of any demand for arbitration or statement of claims with JAMS (or, if a party is asked to participate in the joint selection of an arbitrator, but is unresponsive or otherwise does not do so within the foregoing time period), then JAMS shall select as arbitrator a retired judge having at least ten (10) years' experience in industry-related disputes pursuant to its normal procedure for selecting an arbitrator when parties cannot agree upon an arbitrator.

The parties to the Dispute shall share equally in the costs of arbitration. If any party to the Dispute fails or refuses to pay its portion of JAMS arbitration-related administration fees or arbitrator's fees in a timely manner, the other party to the Dispute may, at its election, pay such fees and proceed with the arbitration without the participation of the party who fails or refuses to pay its share of such fees, and any final arbitration award shall require the non-paying party to reimburse the paying party for such fees and costs.

The arbitrator shall have the power to award only such damages, remedies, or relief that would be available in a court otherwise having jurisdiction of the matter, but no other damages, remedies or relief. The arbitrator shall render all rulings and make all adjudications based solely upon the law governing the claims, counterclaims and defenses pleaded and shall not invoke any basis (including, without limitation, notions of "just cause") other than such controlling law. The arbitrator shall have the authority to issue an award that provides for both legal and equitable relief, as applicable, including, without limitation, an order for issuance of a temporary or preliminary injunction. Notwithstanding the foregoing, the parties may avail themselves in the court of the rights and remedies provided by Section 1281.8 of the California Code of Civil Procedure. In any arbitration proceeding commenced under this section, the merits hearing (i.e., trial) shall begin by no later than ninety (90) calendar days after the filing of any demand for arbitration or statement of claim with JAMS. The arbitrator shall prepare a written statement of decision and award within five (5) business days following the conclusion of the arbitration merits hearing. Judgment on the decision, award or other order of the arbitrator may be confirmed and entered by the court.

The decision of the arbitrator shall be final and conclusive, and the parties hereby waive the right to trial de novo or appeal, excepting only for the purpose of confirming the arbitrator's decision, award or other order and entering judgment thereupon, for which purpose the court shall have sole and exclusive jurisdiction. Such confirmation and entry of judgment may be obtained by ex parte application. Additionally, any petition to compel arbitration and any other legal proceeding seeking to enforce or avoid arbitration under this Agreement shall be filed and litigated exclusively in the court.

The prevailing party in any arbitration of a Dispute shall be entitled to recover from the other party or parties the reasonable attorneys' fees and costs (including all costs of collection and recovery of any monies adjudicated to be due), experts' fees and costs, arbitration administrative fees, court filing and other fees, and arbitrator's fees that the prevailing party actually incurs in connection with that proceeding and any related-action or proceeding in the court; however, the parties agree that, in the event a party to the Dispute is adjudicated to be

a prevailing party, that party shall seek to recover attorneys' fees under this section for the services performed only by two (2) attorneys from the same law firm retained by that party. In the event this provision is adjudicated to be unenforceable or the parties to the Dispute jointly elect to seek an adjudication of their dispute in a judicial forum, the foregoing fees and costs recovery provision shall apply with equal force to that judicial adjudication of the Dispute.

15.5 Force Majeure

Neither party shall be deemed to have defaulted or breached hereunder, nor shall it hold the other party responsible for any cessation, interruption or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, hostile or warlike action including cyber or armed attacks in times of peace or war by a government or sovereign power, labor strike, lockout, boycott, or other similar events beyond the reasonable control of such party (collectively, "Force Majeure"), provided that the party relying upon this provision: (i) gives prompt written notice thereof, and (b) takes all steps reasonably necessary to mitigate the effects of the Force Majeure event.

15.6 Headings

Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

15.7 Severability

If any provision in this Agreement is found or held to be invalid or unenforceable by a court of competent jurisdiction, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

15.8 No Waiver

A waiver of a breach or default under this Agreement shall not be a waiver of any other breach or default. Failure of either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition unless accompanied by a dear written statement that such term or condition is waived.

15.9 No Assignment

Client shall not assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, except in the event of a merger, acquisition, or sale of substantially all of Client's assets. Subject to the foregoing, this Agreement shall inure to the benefit of the parties' permitted successors and assigns.

15.10 City Business License / Other Taxes.

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


15.11 Entire Agreement; Modification

This Agreement, and any attachments hereto, contains the entire understanding of the parties with respect to the matters contained herein. This Agreement shall supersede any prior understanding or agreement, written or oral between the parties. In the event of any conflict between the terms hereunder and any attachment, these terms shall govern unless such attachment expressly states that the terms and conditions of the attachment shall control. There are no promises, covenants or undertaking other than those expressly set forth herein, and any other terms and conditions are rejected regardless of content, timing or method of communication. Any deviations from or additions to the terms of this Agreement must be in writing and will not be valid unless confirmed in writing by duly authorized officers of Xantrion and Client.

16 Counterparts

This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned. This Agreement may be executed and delivered by facsimile transmission, by electronic mail in “.pdf,” or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Signed:  _____

Printed: Anne Bisagno _____

Title: President _____

Company Xantrion, Inc. _____

Date: November 1, 2020 _____

CITY OF SAN RAFAEL

By: _____
JIM SCHUTZ, City Manager

ATTEST:

LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

EXHIBIT A

Addendum To The General Service Agreement Information Technology Services

**ADDENDUM TO THE GENERAL SERVICE AGREEMENT
INFORMATION TECHNOLOGY SERVICES**

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1 Summary Service Scope and Costs

Service Name	Description	Included Services
Core IT	Comprehensive IT support for your staff, Systems Administration, Remediation, Management and Maintenance.	✓
Systems Monitoring	IT infrastructure monitoring designed to detect non-functioning systems or services, in addition to conditions which may lead to instability or down time.	✓
Managed Backups	Backup of systems and data to protect against loss. Includes “Best Effort” disaster recovery for data stored in our repository.	✓
Managed Security Essentials	Fundamental security provisions and practices recommended for every organization	✓
Managed Security	A comprehensive security offering designed to meet the needs of organizations subject to regulatory oversight and compliance requirements, or with a strong need to protect sensitive data.	Consider for Future Implementation
Hosting	“Private Cloud” services designed to host critical business systems in highly-available redundant secure Datacenters, with locations in Denver and Salt Lake City.	Consider for Future Implementation
TOTAL	Monthly Recurring Costs (Section 15)	\$81,365

2 CORE IT

2.1 Description of Services

CORE IT is a comprehensive offering that includes technology support, administration, design, remediation, and maintenance, designed to provide the Client with:

- A secure and stable Information Technology environment with exceptional up time.
- A high level of employee technology support satisfaction.
- A competitive advantage.
- The lowest sustainable total cost of ownership.

CORE IT is provided at a fixed monthly cost and includes unlimited desktop and systems support.

2.2 Systems Administration

- User & Resource Management
 - Employee Onboarding and Termination
 - Hardware and Business Resource provisioning
 - Identity management and access control
- Server, Network Infrastructure, and Endpoint Management
 - Deployment, Administration, Troubleshooting, and Remediation
 - Purchasing & Warranty Management
 - Replacement of systems “In Kind,” at end of life
 - Data Backup System management
- Application Management – Cloud or Server-Based
 - Deployment, Upgrades, Troubleshooting, & Remediation
 - License & Subscription Management
 - Vendor Coordination
- Cloud-Based Voice over IP Systems
 - Administration, including Moves, Adds, and Changes.
- Internet Connectivity
 - Vendor Management
 - Troubleshooting & Remediation
- Mobile Devices & Tablets
 - Business Email connectivity
 - Office 365 apps
 - Other business apps (e.g., iTrakIT, iRIMS, iAnnotate)

2.3 Endpoint Support

- Unlimited remote support services are provided to your staff, 24 x 7 x 365.
- On-site support, as required.

2.4 “Virtual Chief Information Officer” (vCIO) and Strategic Planning Services

The client will be assigned a Xantrion “vCIO,” whose core objective is to develop and maintain a business technology strategy that meets the business requirements and fosters growth.

Detailed Services include:

- Technology and Security Strategy and Advisement
- Quarterly Business Review meetings
- Business Continuity and Disaster Recovery Strategy
- Cyber Security Risk Assessment and Mitigation Strategy
- Budget Projections and Cost Management
- Service Delivery Oversight
 - Client Satisfaction Oversight & Reporting
 - Identification and Resolution of trends or systemic issues
 - Support Escalation
- Account Management, including agreement maintenance & resolution of billing matters
- Project Coordination and Management
- Incident Response Coordination

2.5 Limitations and Client Obligations

2.5.1 Services provided on a Time and Materials basis

- Physical relocation of Staff systems.

Ex: An employee wishes to move from one office location to another

- Support for custom software solutions, developed specifically for your firm, and not supported by a major vendor

Ex: Custom scripts, FileMaker Pro, and Access Databases are considered custom software solutions

- Office Moves and Rebuilds
- Business system or Infrastructure Projects that are being driven by new functionality or features

Ex: Cloud migrations, ERP, CRM, Accounting, or other Line of Business Application Implementation, Cloud VoIP phone migrations

- Audio/Visual Systems Setup

Ex: Deployment of a new videoconferencing solution, or assisting client guests with connectivity to projectors or displays

2.5.2 Warranties & Valid Support Agreements are Required

Except as otherwise agreed, supported equipment, including, but not limited to: servers, shared storage, firewalls, switches, wireless access points, desktop and laptops, must carry a valid warranty and support agreement for these devices to remain with Xantrion's support scope. All line of business applications must include a valid support agreement, and the appropriate licensing to ensure compliance.

2.5.3 Spare Equipment

We suggest maintaining spare staff systems to expedite setup and deployment in the event of an unexpected new hire or hardware failure. There is no additional monthly cost associated with the maintenance of spare endpoint systems.

2.5.4 Disaster Recovery

Recovery from outages caused by theft of systems or environmental events such as earthquakes, floods, fire or sprinkler system activation will be performed on a time and materials basis.

Clients wishing to reduce the risk of a disaster are encouraged to use cloud services or consider re-locating their systems to our secure data centers, as described in Section 7. For clients who maintain servers on-premise, we also offer Standby Server Hosting, described in Section 4.4, to reduce the time and cost associated with recovering from a disaster.

2.5.5 E-Discovery, Forensic and Breach Investigations

Clients are advised that services provided as part of a CORE IT agreement are not designed to capture information required to support a forensic investigation. See also the limitations described in Section 5.3.5.

2.5.6 Abuse / Sabotage

Notwithstanding other provisions, recovery from deliberate damage / sabotage to systems or data, either on-premise or in cloud, will be performed in accordance with the Time and Materials provisions of this agreement.

2.5.7 Support for Endpoints not Covered by this Agreement

Support for systems not covered by this agreement is limited to the configuration and troubleshooting of secure remote access to business systems.

Ex: Business email connectivity or Secure Remote Desktop.

Xantrion will not provide hardware support for these systems out of scope; any operating system-level or networking support required to establish secure remote connectivity to business resources will be provided on a Time & Materials basis.

2.5.8 Web Content Development

Xantrion does not manage web site content development or administration. We are happy to provide vendor recommendations for this purpose.

3 Systems Monitoring

3.1 Description of Services

Xantrion's Monitoring services are designed to improve the overall availability, stability, and performance of the Client's critical business systems.

Xantrion monitors key operating characteristics of the Client's designated systems and cloud solutions, in order to detect and address early signs of potential system instability or failure, and to quickly identify and remediate the points of failure, in the event that a system or service outage occurs. Xantrion maintains a history of operating data which can be used as a benchmark for "normal" operations and to aid in the troubleshooting process.

Note that while network breaches may be detected as a result of consequential anomalies in network operations, this service is not designed to provide intrusion detection or prevention and should not be relied upon for these purposes.

3.2 Monitoring systems

Xantrion's central monitoring systems are located in secure datacenters. Data is gathered from client operating environments, using a combination of probes and agents installed directly on servers and endpoints. Data is also gathered from additional sources external to the client environment to provide a comprehensive overview of system status. Examples of external monitoring include: round-trip email flow, RDS host availability, and Office 365 status.

3.3 Monitoring hours

Automated monitoring occurs 24 x 7 x 365. Engineers observe and remediate issues “live,” from 6 AM to 7 PM PST, Monday through Friday. On request, Xantrion can establish a limited number of alerts which will trigger a notification to our live After-Hours answering service. The answering service will then contact an available engineer off-hours, alerting them to the issue raised by the system.

3.4 Monitoring scope

The scope of Monitored Systems is dependent upon several factors, including client-specific requirements, capabilities of the monitoring services, and limitations of the systems being monitored. We recognize that client monitoring requirements are constantly changing as new systems are released and cloud services evolve. Our centralized monitoring systems are similarly evolving in terms of capacity and capabilities. Please discuss any specific monitoring needs with your vCIO, so that they may determine whether or not they can be met.

The list below provides a sample of services & systems we will attempt to monitor:

<ul style="list-style-type: none"> On Premises Systems Server hardware health Remote Server Management systems (DRAC / iLO) System resource utilization Disk utilization and I/O Warranty status Service availability Application level monitoring Active Directory SQL Exchange Internet Information Services UPS systems availability and battery health Networking devices System Resource Utilization Traffic Throughput 	<ul style="list-style-type: none"> Shared Storage RAID and Disk health LUN utilization SaaS, Websites & External Services Availability of Services Response times TLS/SSL certificate validity DNS resolution Expected page verification Synthetic email route trip testing Security Monitoring Antivirus health Windows patching health Privileged access groups changes Common account names monitoring Outboard firewall port blocking SFP monitoring
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3.5 Patch Management

Xantrion will manage patch deployment to systems, including servers, infrastructure devices, and endpoints, using our patch management solution.

Xantrion conducts a literature review of all critical and security operating system updates as they are released by Microsoft. Prior to general release, deployment is tested on Xantrion's systems and on systems that clients have asked to be included within our patching test group. Xantrion will identify and withhold any patches that are deemed problematic.

Approved patches are deployed monthly to workstations and laptop endpoints, and quarterly to servers.

3rd-party Application patching is provided for a select list of supported applications.

3.6 Thresholds & Monitoring Criteria

Xantrion leverages a set of alerting conditions and thresholds within the central monitoring solution that have been developed and tuned, through a combination of manufacturer's Best Practice recommendations, in addition to real-world conditions. These thresholds are designed with the stability, uptime and health of your systems in mind, and should not be customized.

3.7 Endpoint anti-virus and anti-malware management

Xantrion will manage the licenses, automated deployment, troubleshooting, and administration associated with the anti-virus and anti-malware solution, for all clients with a Core IT agreement, and for clients who have elected to bundle this offering with systems monitoring.

3.8 Client notification of monitoring alerts

If requested, Xantrion will copy any recipients that you designate on automated alert notifications. For urgent and impactful issues, an Engineer will attempt to reach you by phone. For all other issues, we will reach out via e-mail.

3.9 Alert remediation

Xantrion Engineers will attempt to contact Client for authorization before performing any remediation work outside of the standard Core IT agreement. If we are unable to contact you, we will use our best judgement in determining whether or to proceed without authorization. Examples of situations where we may act if we are unable to reach you could include:

- The affected system is covered under a CORE IT contract and therefore remediation work is included.
- E-mail system is completely down.
- Internet connectivity outage.
- Remediation of issues that are determined to be the direct result of managed patching.

3.10 Limitations and client obligations

The provisions listed in this section apply only to clients whose systems are not covered under a CORE IT agreement, or those with a “Monitoring-Only” Agreement.

3.10.1 Identification of Systems to be monitored

You will provide us with a list of systems and/or cloud services that you want us to monitor. For hardware systems on-premise, we require the following information:

- Device name
- IP address
- Hardware information (type, model, serial number)
- Administrative Login Credentials
- Physical location

3.10.2 Changes to monitoring

Requests to add or remove systems or devices from the monitored scope should be sent in writing to support@xantrion.com.

3.10.3 Advance notification of systems maintenance

We ask that you notify us in advance of planned maintenance that will impact services and system uptime, so that we can suspend monitoring and avoid “false alarms.”

3.10.4 Remediation of issues resulting from patching

Client acknowledges that Xantrion’s strategy for repairing an unstable system after patching may be, at our discretion, restoring from backup. Systems not covered by a CORE IT or Managed Backup agreement will be repaired on a time and materials basis.

4 Managed Backups

4.1 Description of Services

Xantrion will work with the Client to design a managed backup strategy that meets the business' Disaster Recovery and Data Retention requirements.

Services will include:

- Automated monitoring to ensure backups are completing successfully.
- Engineer review of backup-related alerts during the business day.
- Data retention as required by the Client (e.g. 30 days, 1 year, 7 years)
- Quarterly auditing of the backup selection lists and file restore testing.
- Annual test restores of a database or server critical to business operations.
- Remediation of any issues related to the managed backup solution.
- Restoration of files and servers as requested, subject to the limitations described in Sections 4.3 and 4.4
- Encryption of backup data "in transit" and "at rest" when replicating to Xantrion datacenters.
- Optional "cloud-to-cloud" backups for supported cloud services: e.g. Office 365
- An optional on-premises "backup appliance."

4.2 Recovery Point Objective

Servers are backed up nightly, by default.

4.3 Recovery Time Objective

Data recovery requests will be handled in a timely manner, with restore times being subject to a number of factors (ex: internet bandwidth, etc.) File recovery, dependent upon data size, can generally be performed immediately upon notification. Recovery of an entire server may take 24 hours or longer.

4.4 Standby Server Hosting

For clients storing backups in our datacenter, Xantrion maintains spare hosting capacity to allow for recovery in the event of a local disaster impacting client systems (ie: theft, earthquake, fire, flood)

- This operation can take 24 to 72 hours and is subject to the availability of resources.
- This agreement includes the cost of 1 month of hosting in our datacenters, should long-term failover be required.
- Xantrion has a client concentration in the San Francisco Bay Area. Resource availability is *not* sufficient to permit the immediate recovery of all clients in the event of a regional disaster.

- Xantrion offers secure server hosting (described in Section 7) for clients who wish to ensure business continuity in the event of local disaster.

4.5 System requirements

- Client systems must be compatible with Veeam, the backup software on which our platform is built.
- Client internet services must be sufficient to permit the nightly replication of critical business systems.
 - As a conservative rule of thumb, assume at a minimum that data will change 5% per day and that 5 GB of data can be moved off-site per day for every 1 Mb/s of available internet upload bandwidth capacity.

4.6 Effect of Termination

- Upon termination of the service agreement, unless otherwise requested, Xantrion will delete all copies of your data from our datacenter infrastructure.
- In the event of termination, requests to export backup archives (ie: removable storage media) will be fulfilled on a time and materials basis.

4.7 Estimating data backup costs

The client’s estimated monthly recurring costs associated with managed backups, calculated on a per-GB basis, are listed in Section 15.

The amount of data being held in aggregate by our hosted infrastructure is dependent upon several factors, including:

- The amount of data being protected
- Daily data change rate
- The degree to which original data can be compressed and deduplicated in the backups
- Retention periods

The table below provides a guideline to estimate the total amount of data you will store in our hosted backup infrastructure, based on the amount of data on your servers that we protect and your retention period.

Your actual costs may vary from these.

Retention period	GB of compressed data in the backups per GB of original data being protected		Off-site Storage Schema
	Typical case	High case	

30 days	1 : 1	2 : 1	Daily incremental backups for the first 30 days + 1 Full backup
90 days	2 : 1	3 : 1	Daily incremental backups for the first 30 days + 3 x Monthly full backups
1 year	5 : 1	8 : 1	Daily incremental backups for the first 30 days + 3 x Monthly full backups 3 x Quarterly full backups 1 x Annual full Backup
7 Years	8 : 1	10 : 1	Daily incremental backups for the first 30 days + 3 x Monthly full backups 3 x Quarterly full backups 7 x Annual full backups

Example:

- Data stored on your systems: 1,000 GB
- Retention Period: 1 Year
- Estimated Data stored on our systems: 5,000 to 8,000 GB
- Cost per Stored GB Given in Section 15
- Total Monthly Cost Actual Data stored * Cost per stored GB

4.8 Limitations and client obligations

Clients must define data retention requirements and notify us of any changes to these requirements. Clients with systems not covered by a CORE IT agreement must identify which systems should be included in the scope of the backups.

Searches of electronic data, restoration of historical data for the purpose of legal investigations will be performed under the time and materials provisions of this agreement.

It is not feasible to ensure the backup of laptop and desktop systems with a high degree of confidence. Backups of laptop and desktop endpoints, if requested, are performed on a “Best Effort” basis. As a Best Practice, all sensitive data should be stored on server hardware or in a secure cloud environment.

5 Managed Security Essentials

5.1 Description of Services

Xantrion's Managed Security Essentials service helps clients achieve an enhanced cybersecurity posture and implement appropriate defensive safeguards to address common cybersecurity threats.

5.2 List of Services

The following services are included in Managed Security Essentials:

5.2.1 Security Awareness Training

End users may subscribe to Xantrion's standard security awareness training program. This program will consist of periodic email security testing and optional online video-based training.

5.2.2 Multi-Factor Authentication

Xantrion will supply and manage an approved multi-factor authentication system.

5.2.3 Mobile Application Management

Xantrion will supply and manage an approved mobile application management system.

5.2.4 Advanced Internet Filtering

Xantrion will deploy advanced internet filtering technology to laptops, extending internet filtering to these devices when they are outside the corporate network. Internet filtering includes the detection of malware and blocking of malicious domains.

5.3 Security Incident Response

5.3.1 Overview

Xantrion will assist our clients in responding to Security Incidents affecting their information systems within the limitations of existing agreements. Client Security Incidents are handled according to Xantrion's pre-defined Security Incident Response Policy.

Please see Section 6.3 regarding limitations on services provided pursuant to this provision.

5.3.2 Definitions

Security Event: Any observable change or occurrence in a system. Certain correlated events may become Security Alerts through automated analysis.

Security Alert: Notifications that a certain event or series of events have occurred. Alerts can be generated from automated systems or received in the form of user request to our service desk. Security Alerts may be escalated to become Security Incidents.

Security Incident: A single or series of security events that, as assessed by Xantrion, have a significant likelihood of threatening information security and impacting business operations.

Containment: Containment of a Security Incident are tasks performed by incident responders to limit the scope and impact of an ongoing Security Incident.

Recovery: Recovery from a Security Incident is the process of returning impacted systems to normal operation and removing artifacts of the incident from the system. (For example; removing malware and recovering data from backup). Recovery steps may include remediation of security vulnerabilities to prevent future incidents.

5.3.3 Classification and Prioritization

Xantrion classifies Security Alerts into 4 categories:

Category	Description
Insufficient Information	Xantrion does not have the required information to properly classify this alert. Additional information is required from the client to continue processing this alert.
Harmful	The alert is identified as an attack or attempted attack that may result in damage or unauthorized access to information systems. The cause of the alert has rendered the Client's infrastructure vulnerable or compromised. Harmful alerts are escalated as Security Incidents.
Harmless	The alert is identified as a known attack, attempted known attack or reconnaissance effort. The client's systems are not considered vulnerable or compromised.
False Positive	The alert may be falsely triggered, is informational, or has been determined to be benign.

Xantrion prioritizes Security Incidents, based on their functional, informational, and recoverability impact:

Priority	Description
High	The incident impacts critical business functions. Represents a high likelihood of impacting information availability or confidentiality or requires a significant recovery effort.
Medium	The incident impacts multiple users. Represents a medium likelihood of impacting information availability or confidentiality. Recoverability effort is expected to be less than 24 hours.
Low	The incident is limited in scope and does not significantly impact business operations. There is a low likelihood of impacting information availability or confidentiality the recovery effort is minimal.

5.3.4 Detection

Security Incidents are declared solely by Xantrion based a variety of sources including automated analysis and reports from end users. Xantrion will assess incoming Security Alerts to determine if a Security Incident is occurring or has occurred.

5.3.5 Notification

Xantrion will notify our clients within 24 hours after a High or Medium priority Security Incident has been declared within the environment.

5.3.6 Containment and recovery

For systems covered by CORE IT, Xantrion will perform all reasonable tasks to contain a Security Incident and once contained, recover systems to normal operation.

5.3.7 Post-Incident activity

An Incident Report will be produced by Xantrion for all High and Medium priority Security Incidents. The report will be limited to Xantrion’s involvement in the incident including: a summary of the incident, timeline of events, impact analysis, containment and recovery steps, root-cause analysis, and any additional recommended actions.

5.4 Limitations and Client Obligations

5.4.1 Disclaimer of Warranty

Information security and compliance is a wide-ranging discipline which requires the involvement from all parts of a business. Xantrion's expertise and this service are limited specifically to the technical cybersecurity aspects of a comprehensive information security program. It is important to understand that subscribing to this service alone does not guarantee compliance with any law or regulation nor guarantee the absolute security of your systems.

5.4.2 Data Security Responsibility

Client acknowledges and agrees that Xantrion does not provide legal services or warrant that the services or products provided or obtained on client's behalf will ensure client's compliance with any law, including but not limited to any law relating to safety, security or privacy.

5.4.3 Missing information

Client is responsible for providing missing information for alerts classified as "Insufficient Information". If client fails to supply such information Xantrion may send a reminder or close the alert.

5.4.4 Incident Response

It is the responsibility of the client to direct Xantrion's response to an incident according to their own policies and procedures, especially if evidence must be preserved, or a forensic investigation is expected. Clients are advised to maintain their own incident response plan including their own reporting requirements.

The primary goal of Xantrion's incident response service is to contain and recover from Security Incidents. Client is aware that Xantrion may take immediate action without notification to contain and recover from a detected incident. Certain containment and recovery actions may hinder future forensic investigations.

Xantrion's capabilities to assist with containment and recovery are limited for systems not covered by a CORE IT agreement. Containment of, and recovery from Security Incidents for these systems will be performed in coordination with the client on a best effort, time and materials basis.

5.4.5 Investigations

Clients are advised that services provided under Managed Security Essentials are not designed to capture information required to support a forensic investigation.

Investigation including root cause analysis, preservation of evidence, attempts to determine if information was accessed or exfiltrated by unauthorized actors, or to identify unauthorized actors will be performed on a best efforts, time and materials basis.

6 Managed Security

6.1 Description of Services

Xantrion's Managed Security service delivers a multi-layered cybersecurity solution tailored for small and medium businesses. The service is designed to aid clients in meeting regulatory compliance requirements and operating a secure computing environment.

Managed Security requires a Systems Monitoring agreement for all covered systems.

6.2 List of Services

The following services are included as part of the full Managed Security offering.

6.2.1 Cybersecurity Roadmap

Xantrion will provide access to our internally developed cybersecurity standards based on industry leading control frameworks. A gap analysis will be performed, at least annually, between our developed standards and current state including recommendations for improving the client's security posture.

6.2.2 Automated Security Analysis and Alert Management

Automated analysis will be performed on logs, system configurations, and other data points using metrics developed by Xantrion and its partners. Alerts will be triggered on specific pre-defined conditions and will generate a support ticket to be handled by Xantrion's Network Operations Center (NOC) or Service Desk.

6.2.3 Customized Security Awareness Training

Xantrion will customize a security awareness training program using the included training platform including phishing email exercises and video-based training.

6.2.4 Log Aggregation and Management

Xantrion will install a system to collect specific security logs from capable servers and network security devices. These logs will be stored for 30 days in a resilient and secure hosted location. Xantrion will provide and install necessary log collectors and configure supported systems to send logs. At the end of the retention period, log data will be permanently deleted on a first-in-first-out

(FIFO) basis. If this agreement is terminated for any reason, Xantrion will be relieved of its obligation to store client's log data. Retention beyond 30 days is available at additional cost.

6.2.5 Vulnerability Scanning and Management

Xantrion will scan Client's internal and internet facing hosts on a quarterly basis for devices covered by this agreement. The scan data will be used to identify known vulnerabilities and results summarized and delivered to client for review.

For systems covered by a CORE IT agreement, critical vulnerabilities will be scheduled for remediation. For systems not covered by a CORE IT agreement remediation can be performed on a time and materials basis.

6.2.6 Sensitive Data Discovery

Xantrion will scan client's network annually, or more often as mutually agreed, to discover locations where sensitive data, such as Personally Identifiable Information (PII), is stored. Results will be summarized and delivered to client for review.

6.2.7 Account Authentication Analytics

Xantrion will manage an approved authentication analytics system. The system is designed to detect abnormal account behavior which may indicate compromise.

6.2.8 Identity Access Management

Xantrion will manage an approved identity management system used to provide single-sign on capabilities between the client's identity provider and other systems.

6.2.9 Self-Assessment Support

Xantrion will provide support If client initiates or is requested to perform a self-assessment or complete a security questionnaire by a regulating agency, or partner. Included support is limited to responding to pre-formed questionnaires.

6.2.10 Quarterly Reporting

On a quarterly basis Xantrion will deliver a report describing the performance of services included in this agreement.

6.2.11 Annual Security Review

Xantrion will meet with the client on an annual basis to review their cybersecurity program. Topics for review during this meeting can include:

- Security Incidents
- Existing cybersecurity policies
- Latest security reports
- Exceptions to standards or recommendations

6.3 Limitations and client obligations

The following services can be performed according to the time and materials provisions of the General Service Agreement.

- New functionality added to existing systems, including new single-sign-on integrations.
- Vendor Assessments

7 Hosting

7.1 Description of Services

Xantrion will host your systems on Xantrion-owned assets, configured to provide a fault-tolerant operating environment for your critical systems.

7.2 Data location

Data is stored in secure DataCenter locations in the continental United States.

7.3 Service Level Agreement

See Section 13.2 of this document.

7.4 Effect of Termination

Unless otherwise agreed upon, all client data will be deleted from our hosting environment upon termination of this service.

Prior to termination, in order to ensure continuity of service, at no cost, we will make server images and / or data available to Client or Client's new service provider for migration to their systems.

We can perform a migration from our service to an alternate provider or provide copies of images on portable media on a time and materials basis.

8 Limitations applicable to all services

8.1 Support for End Users not covered by a CORE IT agreement

Support requests for end users not covered by a CORE IT agreement must be escalated to us by the client's internal IT team. Xantrion cannot take support requests directly from end users, themselves.

8.2 Policy Authoring, Audit, and Questionnaire Support

Assistance with the creation of Client's internal compliance and security policies, responses to third party audit requests for a detailed description of client's cybersecurity, business continuity and / or disaster recovery practices will be provided on a time and materials basis. E.G. regulatory examinations, ISO certification, SSAE audits, investor, insurance, or other due diligence requests.

9 Authorized Contacts

The Client will provide Xantrion with a list of individuals, including e-mail addresses and mobile phone numbers, who are authorized to approve access control requests, as defined in the "Support FAQs for Liaisons" document.

10 Phone and Email Support hours of operation

Our phones are answered live 24 x 7 x 365. Details of coverage as follows:

10.1 Phone Answer

- Phones are answered live by our Client Service Representatives from 6:00 AM to 7:00 PM PST, Monday through Friday, excluding normal holidays. Our CSRs will make every effort to connect you to an Engineer who can assist you immediately.
- If all Engineers are busy when you call, we can arrange for a scheduled call-back
- Calls received outside of the defined business hours will be taken by a third-party answering service who will then patch the call to an On-Call Engineer, for resolution.

10.2 E-mail processing

- For non-urgent issues and change requests, email support@xantrion.com
- Expect a response within 1 business day
- Do not e-mail if you need help immediately; please call

- E-mail requests are monitored during business hours, 9AM to 5PM PST weekdays, excluding holidays. Messages received after hours are converted into a ticket that is assigned to an Engineer at the start of the next business day

11 Rates for Services Outside of Scope

	Base Hourly rate
C Level	\$245/hr.
Engineer IV	\$210/hr
Engineer III	\$180/hr.
Engineer II	\$150/hr.
Engineer I	\$120/hr.

- Business hours are 6:00 AM to 7:00 PM PST (M-F,) excluding traditional holidays.
- Work outside of business hours, or scheduled less than 1 day in advance, is charged at 1.5 times the applicable base hourly rate.
- Work is charged in fifteen (15) minute increments.
- The minimum site visit charge is four (4) hours of service.

12 Travel Expenses

- There is no charge for travel within our normal service area, defined as the 9 counties that make up the “Bay Area.”
- Client will be notified in advance of any travel or work outside of the Bay Area that will incur added costs.
- Travel Expenses associated with work outside of the Bay Area (including transportation, hotel stays, per diem food expenses) will be billed to the client at cost.
- Time associated with travel outside of the Bay Area will be billed at ½ of the applicable Base Hourly Rate.

13 Service Level Agreement

13.1 Response Time

13.1.1 Business-Critical issues

- For “business-critical” issues, or those that prevent a group of individuals from doing their work, Xantrion will make every effort to respond immediately. Your vCIO, if available, or a Xantrion manager, will coordinate the appropriate resources on the Xantrion side and provide you with a summary of impacted systems, a remediation plan and regular updates on progress.
- Xantrion will work the issue continuously until resolved, engaging Sr-level Engineering resources, subject matter experts, and vendors, as required.

13.1.2 Non-Urgent Issues and Change Requests

- For non-urgent issues and change requests, email support@xantrion.com
- Expect a response within 1 business day
- E-mail requests are monitored during business hours, 9AM to 5PM PST weekdays, excluding holidays. Messages received after hours are converted into a ticket that is assigned to an Engineer at the start of the next business day

13.2 Service Level Credits

For each thirty (30) minutes of downtime from the time we are notified (excluding scheduled maintenance,) Xantrion will issue a credit of five percent (5%) of the total Hosted Services, Systems Monitoring or Managed Backup Fees due to Xantrion for the month in which such Critical event occurred, not to exceed the total Hosted Services, Systems Monitoring or Data Backup Fees for such month.

Client is not entitled to a credit for downtime or outages resulting from circumstances beyond our control including, but not limited to, ransomware, denial of service attacks, virus attacks, or hacking attempts.

14 Client-Specific Provisions

None.

15 Costs and Service Detail

Type	Qty	Each	Total
Desktop	300	\$112.20	\$33,660
Laptop	40	\$132.60	\$5,304
Pc's used as Thin Clients	40	\$35.70	\$1,428
Police MDT Laptops	20	\$137.70	\$2,754
Windows Server	49	\$224.40	\$10,996
Firewalls and Routers	12	\$204.00	\$2,448
Switches	45	\$51.00	\$2,295
Managed Security Essentials	450	\$35.70	\$16,065
ESX hosts	12	\$204.00	\$2,448
SAN	3	\$137.70	\$413
WAPs	54	\$20.40	\$1,102
Backups	40	\$100.00	\$4,000
Monthly Total			\$82,912
Annual Total			\$994,947.60

The price and equipment counts will stay constant through the first year unless there are significant changes to the environment; significant defined as 10% or more of the monthly cost.

16 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written below.

Signed:



Printed: Anne Bisagno

Title: President

Company Xantrion, Inc.

Date: November 1, 2020

CITY OF SAN RAFAEL

By: _____
JIM SCHUTZ, City Manager

ATTEST:

LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

**City of San Rafael
Proclamation Presented to
Josh Libresco**

- WHEREAS,** Josh Libresco has served on Board of Library Trustees for the City of San Rafael for over 4 years from 2016 – 2020; and
- WHEREAS,** Josh served in an advisory capacity as a member of the New Library Facilities Planning Process Expanded Subcommittee from 2018 through 2019 and took great pride in representing the City of San Rafael; and
- WHEREAS,** Josh served under the City Council and provided advice to two Directors, Director Andrade-Wax and Director Houghton, during his tenure; and
- WHEREAS,** Josh provided advice and insight in relation to a variety of projects and initiatives that included major improvements to the Library Rules of Behavior Policy, the Library Fines Policy, and the Library Teen Area Policy; and
- WHEREAS,** Josh was a tireless promoter of the Library’s presence at the Downtown San Rafael Market, appearing on multiple occasions to personally help give away books and promote the library’s resources to the public; and
- WHEREAS,** Josh served the City of San Rafael with tenacity that comes from great love of libraries; making certain to thoughtfully advocate for library facilities in the City of San Rafael.

NOW, THEREFORE, I, Gary O. Phillips, Mayor of San Rafael, do Council hereby expresses my heartfelt appreciation to

Josh Libresco

for serving as a Board of Library Trustee Member and for his important contributions and community service to the City of San Rafael.



A handwritten signature in black ink, appearing to read "Gary Phillips".

Gary Phillips
Mayor



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

**Prepared by: Bill Guerin,
Director of Public Works**

City Manager Approval: _____ 

TOPIC: ESSENTIAL FACILITIES CONSTRUCTION PROJECT – PUBLIC SAFETY CENTER

SUBJECT: ACCEPT COMPLETION OF THE ESSENTIAL FACILITIES CONSTRUCTION PROJECT – PUBLIC SAFETY CENTER (CITY PROJECT NO. 11291), AND AUTHORIZE THE CITY CLERK TO FILE THE NOTICE OF COMPLETION

RECOMMENDATION: Accept completion of the project and authorize the City Clerk to file the Notice of Completion.

BACKGROUND: In 2014, a thorough and operationally forward-thinking Essential Facilities Strategic Plan was developed for the City of San Rafael. The Plan presented guidance for the replacement, modernization and/or seismic upgrade of the City’s essential services buildings, herein referred to as “essential facilities,” to ensure that the City’s essential facilities are capable of serving the community in the event of a major earthquake and other potential disasters.

The Essential Facilities Strategic Plan recommended a new Public Safety Center Building that would consolidate Police Operations, Fire Station 51, the Emergency Operating Center, as well as Fire Administrative Operations. A contract for this construction project was awarded to Alten Construction, Inc. (“Alten”) by City Council [Resolution No. 14446](#) adopted on December 8, 2017.

On February 5, 2018, the City issued Notice to Proceed to Alten Construction, Inc. On August 26, 2020, Alten achieved final completion of the project.

ANALYSIS:

Pursuant to Civil Code Section 3093, the City is required to record a Notice of Completion upon City acceptance of the construction. This acceptance initiates a time period during which project subcontractors may file stop notices seeking payment from the City from the funds owed to the Contractor for the project work.

Due to the COVID-19 pandemic, the City does not have current plans to host a dedication or grand opening ceremony to celebrate the new Public Safety Center. However, staff is collaborating with the Community Media Center of Marin to create a video commemorating the successful completion of Phase 1 of the Essential Facilities program, which includes the Public

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SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

Safety Center, Fire Station 52 & 57. The video will be available to the public on the City of San Rafael website soon and is planned to be shown at an upcoming City Council meeting.

<https://www.cityofsanrafael.org/facilities-video-updates/>

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

ACTION REQUIRED: Staff recommends that the City Council accept completion of the project and authorize the City Clerk to file the Notice of Completion.

ATTACHMENTS:

1. Notice of Completion

Recording Requested By:
The City of San Rafael
When Recorded Mail To:

Lindsay Lara, City Clerk
1400 Fifth Avenue, Rm. 209
San Rafael, CA 94901

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION
Civil Code §§ 8182, 8184, 9204, and 9208

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the agent of the owner of the Project described below.
2. Owner's full name is City of San Rafael ("City")
3. City's address is 1400 Fifth Ave., San Rafael, CA 94901
4. The nature of City's interest in the Project is:
 Fee Ownership Lessee Other
5. Construction work on the Project performed on City's behalf is generally described as follows: City of San Rafael Essential Facilities Construction Project – Public Safety Center (Project Number 11291)
6. The name of the original Contractor for the Project is: Alten Construction, Inc.
7. The Project was accepted as complete on: August 26, 2020
8. The Project is located at: 1375 Fifth Ave, San Rafael, CA 94901

Verification: In signing this document, I, the undersigned, declare under penalty of perjury under the laws of the State of California that I have read this notice, and I know and understand the contents of this notice, and that the facts stated in this notice are true and correct.

Date and Place

Signature

Bill Guerin, Director of Public Works

*EXEMPT FROM NOTARY ACKNOWLEDGMENT REQUIREMENTS PER
GOVERNMENT CODE § 27287 AND CIVIL CODE § 9208*



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Paul Jensen (EG)
Director

City Manager Approval: 

TOPIC: AFFORDABLE HOUSING TRUST FUND ALLOCATIONS

SUBJECT: RESOLUTIONS APPROVING THE USE OF HOUSING TRUST FUNDS FOR AFFORDABLE HOUSING DEVELOPMENTS IN AN AMOUNT NOT TO EXCEED \$1,550,000, AND AUTHORIZING THE CITY MANAGER TO EXECUTE APPROPRIATE FUNDING AGREEMENTS AND RELATED DOCUMENTS

RECOMMENDATION:

Adopt the following resolutions authorizing the City Manager to execute housing trust loan agreements for two (2) affordable housing development projects:

- 1) Resolution approving a housing trust grant to Homeward Bound of Marin for the affordable housing development at 190 Mill Street in an amount not to exceed \$750,000, and authorizing the City Manager to execute a grant agreement and all related documents that may be required by other sources of financing for the project.
- 2) Resolution approving a housing trust loan to Eden Housing for the affordable housing development at 999 Third Street in an amount not to exceed \$800,000, and authorizing the City Manager to execute loan documents and all related documents that may be required by other sources of financing for the project.

BACKGROUND:

The City's Affordable Housing Trust Fund, or Housing Trust Fund, was created to increase the stock of permanently affordable housing units in the City of San Rafael. The Housing Trust Fund provides a local funding source for financial and technical assistance to help affordable housing developers produce and preserve affordable housing.

On January 21, 2020, the City Council adopted [Resolution 14760](#) establishing Guidelines for the Administration of the Affordable Housing Trust Fund. These Guidelines lay out the administrative policies

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and procedures for the use of the Affordable Housing In-Lieu Fee Fund as San Rafael's primary Housing Trust Fund.

On February 6, 2020, the City conducted a pre-application process to solicit affordable housing proposals from stakeholders that would be interested in requesting funding from the City's Affordable Housing Trust Fund. The pre-application process was intended to inform stakeholders of an upcoming Notice of Funding Availability (NOFA) announcement, and to get a better understanding of the range of potential affordable housing projects that are planned in the San Rafael community that are potentially eligible for trust funds.

During this pre-application phase, the City received six (6) submissions totaling approximately \$6.5 million in potential funding requests. These submissions included:

- One (1) submission for an indivial ADU Loan,
- Two (2) submissions supplement bond re-syndications for existing affordable housing developments,
- Two (2) submissions for new construction projects,
- One (1) submission for acquisition of an existing market rate housing project to make permanently affordable.

On June 5, 2020, [the City issued a Notice of Funding Availability](#) (NOFA) for one million six-hundred thousand dollars (\$1,600,000) of initial funding to spur the creation of affordable family rental housing. The City reserved the right to award funds above or below this amount. The application deadline for this NOFA was June 19, 2020 by 5:00pm. Staff received four applications totaling \$3.25 million in funding requests (Table 1):

Table 1. NOFA Applications

Project Name	Applicant	Type	Units	Total Project Costs	Financing Gap	NOFA Request
190 Mill St.	Homeward Bound of Marin	New Construction	32	\$32,866,387	\$2,000,000	\$750,000
Whistlestop	EDEN Housing	New Construction	67	\$48,460,816	\$4,828,452	\$1,000,000
5 F Street	San Francisco Community Land Trust	Acquisition	8	\$2,756,374	\$500,000	\$500,000
Centertown	BRIDGE Housing	Rehabilitation	60	\$32,846,481	\$1,000,000	\$1,000,000
Total			167	\$116,930,058	\$8,328,452	\$3,250,000

*Note: At the time of the application, the "Whistlestop" project at 999 Third Street was a partnership between Eden Housing and the service provider Whistlestop. Since the application was submitted, the service provider has changed their name from Whistlestop to Vivalon. Staff continues to refer to the project as "Whistlestop."

Loch Lomond Marina Buyout Update

Staff issued the NOFA for \$1.6 million to correspond to the Affordable Housing Trust Fund balance at the time of issuance. In the time since the NOFA was issued, Marina Village Associate, LLC (MVA) has made one of two \$1.8 million payments into the housing trust fund as part of the [BMR buyout agreement for Loch Lomond Marina](#).

At the time this buyout agreement was developed and executed, statewide COVID-19 restrictions had just gone into place creating significant uncertainty. As such, the BMR Buyout agreement included a clause setting the effective date of the agreement for 45 days after the statewide COVID-19 emergency order is lifted.

While these orders are still in place, statewide direction on reopening has provided enough certainty for work on Loch Lomond Marina project to continue. As such, Staff and MVA have mutually agreed to a payment timeline and terms & conditions within the scope of the original approved BMR buyout

agreement. These terms and conditions have been outlined in a Memorandum of Understanding (Attachment 3). MVA's willingness to provide a partial payment and agree to an MOU provides a significant benefit to the City.

Under this MOU, MVA has agreed to make a 50% partial payment of \$1,843,200 of the Buyout Amount to the City by September 30, 2020. The remaining 50% balance, \$1,843,200, would be made no later than the end of first quarter of 2021 or by March 31, 2021, irrespective of any future, State of California Executive Orders from the pandemic.

MVA understands and acknowledges that the partial payment does not meet the full requirements of the BMR buyout agreement, and their partial payment will not be paid back by the City to MVA under any circumstance. Recordation of the BMR agreement amendment will only occur once the full BMR Buyout Amount of \$3,686,400 is received by the City.

Project Homekey

At the beginning of the COVID-19 crisis, the State of California announced Project Roomkey, which was funding to help communities address the public health crisis by leasing hotel and motel rooms to house homeless individuals and families who were particularly vulnerable to the virus (e.g. seniors, people with chronic health issues). In Marin we used the Project Roomkey funding to increase shelter capacity by nearly 60%.

In July, the State announced another program called Project Homekey, which provides an additional round of funding to make these units (or other similar units) available for permanent housing. As discussed at the [September 21, 2020 City Council Meeting](#), The County of Marin, and partners including Opening Doors Marin, the City of San Rafael, and Homeward Bound of Marin, applied for funding for three different sites, but the Board of Supervisors has only authorized further investigation on two sites – 3301 Kerner and a motel in Corte Madera.

Currently, only the Corte Madera project has received a funding reservation. The 3301 Kerner project is on the State's waitlist for Homekey program funds. Staff will continue requesting updates from the State on a weekly basis regarding this funding and will report back to the City Council when a funding determination has been made.

ANALYSIS:

Applications received during the NOFA process were reviewed using the evaluation criteria listed in Section 5 of the *Guidelines for the Administration of the Affordable Housing Trust Fund*. Based upon this evaluation criteria, staff recommends moving forward with the following projects at the listed funding levels:

- 190 Mill Street: Funding Recommendation- \$750,000
- Whistlestop: Funding Recommendation- \$800,000

These two projects are recommended for funding because they are both new construction projects-- which was indicated as a funding priority by City Council. Additionally, both projects are affordable for very low and extremely low-income households and both provide substantial services—190 Mill Street provides permanent support housing and Whistlestop provides senior housing.

Due to upcoming state funding applications being leveraged by both 190 Mill Street and Whistlestop, Staff provided a Conditional Offer letters to the applicants to increase their competitiveness. These offer letters explicitly stated that funding was conditional on City Council approval.

While staff did not recommend funding for the 5 F Street project, their application was considered competitive. Acquisition of these units would immediately increase the City's affordable housing stock, by protecting existing units and their tenants. Additionally, as part of their application for 5 F Street, the San Francisco Community Land Trust indicated they would use this property to establish a Community Land Trust (CLT) serving San Rafael. CLTs are non-profit organizations which create permanently affordable, resident-controlled housing through community ownership of land. Currently, no CLT serves the San Rafael community and 5 F Street would provide an opportunity to build this organizational capacity.

Staff's decision to not recommend funding for this project was due to insufficient Trust Fund funding available after allocations being made to the 190 Mill Street and Whistlestop projects. If additional funding is made available, staff recommends revisiting potential funding for this project.

Staff did not recommend moving forward with funding for the Centertown project as this project does not provide new affordable units, rather the application is funding rehabilitation of existing affordable units. Additionally, staff is currently working with the applicant on restructuring existing redevelopment loans on this property to increase the project's competitiveness for bond financing.

COMMUNITY OUTREACH:

Staff conducted broad outreach during both the pre-application and NOFA phases of the housing trust fund allocation process. Several announcements of both phases were emailed to an extensive list of housing developers, housing advocacy groups, neighborhood and homeowners associations, and other interested parties. Additionally, announcements of both phases were published in the City's social media pages included Snapshot, Nextdoor, Twitter, and Facebook.

FISCAL IMPACT:

Currently, the City's Affordable Housing Trust Fund (Fund #243) balance is \$3,573,960. City Council approval of these resolutions will result in a remaining Trust Fund balance of \$2,023,960.

Housing Trust Funds would be provided to the 190 Mill Street project as a grant. As a grant, Housing Trust Funds provided to the project would not be paid back.

Housing Trust Funds would be provided to Whistlestop as a residual receipts loan. As a residual receipts loan, payments would be made to the City's Housing Trust Fund only if there is revenue available for the project to make a payment each year. Generally, these loans are provided at a rate of 1%-3% simple interest over 55 years. Upon maturity, these loans are often forgiven or restructured into a new loan agreement. Staff will work with Eden Housing to agree to terms that meet the needs of the project, availability of financing, financing method, development configuration and organizational capacity of the applicant.

OPTIONS:

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

1. Adopt resolutions
2. Adopt resolutions with modifications
3. Direct staff to return with more information

4. Take no action

RECOMMENDED ACTION:

Adopt the following resolutions authorizing the City Manager to execute housing trust agreements for two (2) affordable housing development projects:

- 1) A Resolution Approving a Housing Trust Grant to Homeward Bound of Marin for the Affordable Housing Development at 190 Mill Street in an Amount Not to Exceed \$750,000, and Authorizing the City Manager to Execute a Grant Agreement and All Related Documents That May Be Required by Other Sources of Financing for the Project
- 2) A Resolution Approving a Housing Trust Loan to Eden Housing for the Affordable Housing Development at 999 Third Street in an Amount Not to Exceed \$800,000, and Authorizing the City Manager to Execute Loan Documents and All Related Documents That May Be Required by Other Sources of Financing for the Project

ATTACHMENTS:

- 1) Resolution Approving a Housing Trust Grant to Homeward Bound of Marin for the Affordable Housing Development at 190 Mill Street in an Amount Not to Exceed \$750,000, and Authorizing the City Manager to Execute a Grant Agreement and All Related Documents That May Be Required by Other Sources of Financing for the Project
- 2) Resolution Approving a Housing Trust Loan to Eden Housing for the Affordable Housing Development at 999 Third Street in an Amount Not to Exceed \$800,000, and Authorizing the City Manager to Execute Loan Documents and All Related Documents That May Be Required by Other Sources of Financing for the Project
- 3) Village at Loch Lomond, Below Market Rate (BMR) Memorandum of Understanding Buyout Partial Payment

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING A HOUSING TRUST GRANT TO HOMEWARD BOUND OF MARIN FOR THE AFFORDABLE HOUSING DEVELOPMENT AT 190 MILL STREET IN AN AMOUNT NOT TO EXCEED \$750,000, AND AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT AND ALL RELATED DOCUMENTS THAT MAY BE REQUIRED BY OTHER SOURCES OF FINANCING FOR THE PROJECT

WHEREAS, on January 21, 2020, the City Council adopted Resolution No. 14760, establishing Guidelines for the Administration of the Affordable Housing Trust Fund; and

WHEREAS, on February 6, 2020, the City conducted a pre-application process to solicit affordable housing proposals from stakeholders that would be interested in requesting funding from the City's Affordable Housing Trust Fund with the intention to inform stakeholders of an upcoming Notice of Funding Availability (NOFA) announcement, and to get a better understanding of the range of potential affordable housing projects that are planned in the San Rafael community that are potentially eligible for trust funds; and

WHEREAS, during this pre-application phase, the City received six (6) submissions totaling approximately \$6.5 million in potential funding requests; and

WHEREAS, on June 5, 2020, the City issued a NOFA for one million six-hundred thousand dollars (\$1,600,000) of initial funding to spur the creation of affordable family rental housing with an application deadline of June 19, 2020 by 5:00pm; and

WHEREAS, during this NOFA the City received four applications totaling \$3.25 million in funding requests, including an application from Homeward Bound of Marin for the affordable housing development at 190 Mill Street in San Rafael ("190 Mill Street"); and

WHEREAS, applications were reviewed using the evaluation criteria listed in Section 5 of the *Guidelines for the Administration of the Affordable Housing Trust Fund*; and

WHEREAS, based upon this evaluation criteria, the 190 Mill Street project was recommended for funding as a grant in an amount up to \$750,000 as result of being a new construction project and providing housing for very low and extremely low-income households and substantial supportive services; and

WHEREAS, the City has sufficient funds in the Affordable Housing Trust Fund #243 to be appropriated for FY20/21 to support this grant;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby approves a housing trust grant to Homeward Bound of Marin for the affordable housing development at 190 Mill Street in an amount not to exceed \$750,000, and authorizes the City Manager to execute a grant agreement and all related documents that may be required in connection with other sources of financing for the project, in a form to be approved by the City Attorney.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday the 5th day of October 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING A HOUSING TRUST LOAN TO EDEN HOUSING FOR THE AFFORDABLE HOUSING DEVELOPMENT AT 999 THIRD STREET IN AN AMOUNT NOT TO EXCEED \$800,000, AND AUTHORIZING THE CITY MANAGER TO EXECUTE LOAN DOCUMENTS AND ALL RELATED DOCUMENTS THAT MAY BE REQUIRED BY OTHER SOURCES OF FINANCING FOR THE PROJECT

WHEREAS, on January 21, 2020, the City Council adopted Resolution No. 14760, establishing Guidelines for the Administration of the Affordable Housing Trust Fund; and

WHEREAS, on February 6, 2020, the City conducted a pre-application process to solicit affordable housing proposals from stakeholders that would be interested in requesting funding from the City's Affordable Housing Trust Fund with the intention to inform stakeholders of an upcoming Notice of Funding Availability (NOFA) announcement, and to get a better understanding of the range of potential affordable housing projects that are planned in the San Rafael community that are potentially eligible for trust funds; and

WHEREAS, during this pre-application phase, the City received six (6) submissions totaling approximately \$6.5 million in potential funding requests; and

WHEREAS, on June 5, 2020, the City issued a NOFA for one million six-hundred thousand dollars (\$1,600,000) of initial funding to spur the creation of affordable family rental housing with an application deadline of June 19, 2020 by 5:00pm; and

WHEREAS, during this NOFA the City received four applications totaling \$3.25 million in funding requests, including an application from Eden Housing for the affordable housing development at 999 Third Street in San Rafael ("Whistlestop"); and

WHEREAS, applications were reviewed using the evaluation criteria listed in Section 5 of the *Guidelines for the Administration of the Affordable Housing Trust Fund*; and

WHEREAS, based upon this evaluation criteria, the Whistlestop project was recommended for funding as a loan in an amount up to \$850,000 as result of being a new construction project and providing housing for very low and extremely low-income households and substantial supportive services; and

WHEREAS, the City has sufficient funds in the Affordable Housing Trust Fund #243 to be appropriated for FY20/21 to support this loan;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby approves a housing trust loan to Eden Housing for the affordable housing development at 999 Third Street in an amount not to exceed \$800,000, and authorizes the City Manager to execute loan documents and all related documents that may be required in connection with other sources of financing for the project, in a form to be approved by the City Attorney.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday the 5th day of October 2020, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

Marina Village Associates, LLC
1999 Avenue of the Stars, Suite 2850
Los Angeles, CA 90067
(310) 824-7093

VIA E-MAIL

August 14, 2020

Mr. Paul Jensen
Community Development Director
Ethan Guy Principal Analyst
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

Re: Village at Loch Lomond, Below Market Rate (BMR) Memorandum Of Understanding Buyout Partial Payment

Dear Paul and Ethan,

As discussed with Mr. DiPrima from our organization, the payment language in the Memorandum of Understanding (MOU), Article I, Section 1. c. and Section 3 discuss the financial challenges due to the pandemic and COVID-19, which unfortunately **MARINA VILLAGE ASSOCIATES, LLC (MVA)** is currently still feeling those effects. The aforementioned language speaks to timing of the payment as being due 45 days after the lifting of the Stay at Home Order, but does not address a partial or a full lifting of the Executive Order.

MVA also understand the importance of the City being able to start some of their proposed supplemental affordable housing projects and potentially obtaining matching funding for these projects, so as agreed, MVA is agreeing to the following clarification for Article 1, Section 3:

3. The Developer will make a 50% partial payment of \$1,843,200.00 ("First Instalment") of the Buyout Amount to the City within forty-five (45) days following execution by all the Parties of the First Amendment and or by September 30, 2020 The remaining 50% balance and or Final Payment of \$1,843,200.00 would be made no later than the end of first quarter of 2021 or by March 31, 2021, irrespective of any future, State of California Executive Orders from the pandemic.

Along with this agreement, MVA has executed and is enclosing all three documents approved by City Council:

- Final Amendment to BMR Agreement.
- Final MOU Loch Lomond BMR Buyout (with modified Article I, Section 3 language).
- Final Consolidated Subdivision Improvement Agreement.

MVA understands and acknowledges that the Partial payment does not meet the full requirements of the BMR buyout agreement, and their ("First Instalment") partial payment will not be paid back by the City to MVA under any circumstance.

1 Re: **Village at Loch Lomond, Below Market Rate (BMR) Memorandum Of Understanding Buyout Partial Payment**

Marina Village Associates, LLC

1999 Avenue of the Stars, Suite 2850

Los Angeles, CA 90067

(310) 824-7093

Additionally, MVA understand Recordation of the BMR agreement amendment will only occur once the full BMR "Buyout Amount" of \$3,686,400.00 is received by the City.

These revised terms and clarifications for Article 1, Section 3 are acknowledged and accepted by both the City and MVA as executed below.

IN WITNESS WHEREOF, the parties have executed this **Village at Loch Lomond, Below Market Rate (BMR) Memorandum of Understanding Buyout Partial Payment Revised MOU** as of the day, month and year first above written.

CITY OF SAN RAFAEL

MARINA VILLAGE ASSOCIATES, LLC

A Delaware limited liability company

By: _____


JIM SCHUTZ, City Manager

By: _____


Name: Michael Rosenfeld

Title: Manager

ATTEST:


for LINDSAY LARA, City Clerk

APPROVED AS TO FORM:


ROBERT F. EPSTEIN, City Attorney



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin,
Director of Public Works

City Manager Approval: 

TOPIC: SOUTHERN HEIGHTS BRIDGE REPLACEMENT

SUBJECT: A RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE SOUTHERN HEIGHTS BRIDGE REPLACEMENT PROJECT, CITY PROJECT NO. 11282, TO DISNEY CONSTRUCTION, INC., IN THE AMOUNT OF \$2,733,333, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$466,667, FOR A TOTAL APPROPRIATED AMOUNT OF \$3,200,000. REIMBURSABLE BRIDGE-RELATED WORK WILL BE FUNDED UTILIZING \$3,110,000 OF CALTRANS HIGHWAY BRIDGE PROGRAM GRANT FUNDS WITH \$90,000 OF OTHER FUNDS FOR THE REMAINING BALANCE.

RECOMMENDATION: Adopt the resolution awarding and authorizing the City Manager to execute a construction agreement with Disney Construction, Inc. in the amount of \$2,733,333, and authorizing contingency funds in the amount of \$466,667 for a total appropriated amount of \$3,200,000.

BACKGROUND: The California Department of Transportation (Caltrans) routinely inspects bridges across the state to ensure the public's safety. Through this process, the Southern Heights Bridge was identified as needing to be reconstructed to meet current design, structural, and safety standards. In [June 2016](#), the City retained Mark Thomas to begin preliminary design and public outreach. In [February 2017](#), with City Council and community input, a preferred design alternative was selected. On December 28, 2017, Caltrans inspectors made a regularly scheduled site visit to the bridge and determined that the bridge should be immediately closed to all vehicle and pedestrian traffic due to safety concerns.

Since that time, the City has diligently worked to perform bridge design, obtain environmental clearance ([February 2019](#)), ascertain legal rights to utilize private property through temporary construction easements, and obtain a right of way certification in January 2020 approving the City's coordination efforts with utility companies and private property owners. In July 2020, PG&E, Comcast, and AT&T completed the relocation of overhead utility lines away from the bridge to provide the City's bridge contractor working space without having heavy equipment interfere with the utility lines.

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ANALYSIS: On August 4, 2020, the project was advertised in accordance with San Rafael's Municipal Code. On September 25, 2020, the following bids were received and read aloud:

NAME OF BIDDER	Amount
Disney Construction, Inc.	\$2,733,333.00
Thompson Builders Corporation	\$2,905,088.00
Granite Construction Company	\$3,205,863.00
Gordon N. Ball, Inc.	\$3,238,311.00
Bridgeway Civil Constructors, Inc.	\$3,900,315.00
Valentine Corporation	\$4,649,369.00

The construction bids have been reviewed by Public Works staff and our construction management consultant. The low bid of \$2,733,333 from Disney Construction, Inc., was found to be responsive, responsible, and within available funding. The recommended Resolution awards the construction contract to Disney Construction, Inc.

PUBLIC OUTREACH: If the City Council approves this project to proceed, Public Works will perform outreach using various social media channels, the City website, and changeable message signs located at various intersections near the jobsite.

Over the past four years, City staff have gone to great efforts to keep residents informed of the progress of this project either through public meetings, such as the ten prior City Council meetings related to this project, or through messages spread via residents, homeowner's association, or Nextdoor.

Most recently, the City's construction management firm, Substrate, Inc., hosted a small meet-and-greet session with property owners closest to the bridge. Over the next several weeks, additional opportunities will be given to the community to attend a virtual public meeting to discuss the project and learn of its impacts and construction schedule before the contractor begins work. Staff plans to send out mailers to residents on Southern Heights Blvd and Meyer Rd.

FISCAL IMPACT: In addition to the \$2,733,333 contract amount, staff recommends the City Council approve a contingency amount of \$466,667 for a total of project budget of \$3,200,000. This \$3,200,000 budget consists of \$3,110,000 funded by a Caltrans Highway Bridge Program grant with the balance of \$90,000 from the City's Gas Tax Fund (Fund #206) as further set forth below.

As part of the City's project, a small portion of Meyer Rd near the intersection of Southern Heights Blvd will be resurfaced. This pavement rehabilitation will be performed at the same time as pavement rehabilitation on the approaches to the bridge, however, the Caltrans grant will not reimburse the City for this additional paving as it is unrelated to the bridge itself. Staff proposes to fund this pavement rehabilitation utilizing \$70,000 of the City's Gas Tax fund.

Lastly, following installation of the new bridge, the Marin Municipal Water District (MMWD) will install a new main and attach it to the bridge. To facilitate this work, the City's bridge contractor will install support brackets to the bridge at the time the bridge is constructed. MMWD will reimburse the City for this expense, which is approximately \$20,000, per our reimbursement agreement approved by the City Council on [April 16, 2018](#). Staff proposes to temporarily fund this MMWD work utilizing \$20,000 of the City's Gas Tax fund until reimbursement is received.

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

1. Adopt the resolution as presented.

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2. Do not award the contract and direct staff to rebid the project. If this option is chosen, rebidding will delay construction until winter/spring 2021 without jeopardizing the availability of grant funds.
3. Do not award the contract and provide direction to staff.

ATTACHMENT:

1. Resolution Awarding Construction Agreement to Disney Construction, Inc.
2. Draft Construction Agreement with Disney Construction, Inc.

RESOLUTION NO.

RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE SOUTHERN HEIGHTS BRIDGE REPLACEMENT PROJECT, CITY PROJECT NO. 11282, TO DISNEY CONSTRUCTION, INC., IN THE AMOUNT OF \$2,733,333, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$466,667, FOR A TOTAL APPROPRIATED AMOUNT OF \$3,200,000. REIMBURSABLE BRIDGE-RELATED WORK WILL BE FUNDED UTILIZING \$3,110,000 OF CALTRANS HIGHWAY BRIDGE PROGRAM GRANT FUNDS WITH \$90,000 OF OTHER FUNDS FOR THE REMAINING BALANCE.

WHEREAS, the State Department of Transportation (Caltrans) determined that the Southern Heights Bridge needed to be reconstructed to meet current design, structural, and safety standards, and since that time, the City has diligently worked on the project to reconstruct the bridge, including preparing bridge design, obtaining environmental clearance, and other tasks preliminary to construction of the new bridge; and

WHEREAS, on May 27, 2020, City staff obtained its approval from Caltrans to solicit contractor bids and commence construction; and

WHEREAS, having advertised and solicited construction bids in accordance with the City's Municipal Code, sealed bids were received on the 25th day of September, 2020 for the following project entitled "SOUTHERN HEIGHTS BLVD BRIDGE REPLACEMENT PROJECT" City Project Number 11282 in accordance with the plans and specifications therefore on file in the office of the Department of Public Works; and

WHEREAS, the bid of \$2,733,333 from Disney Construction, Inc. at the unit prices stated in its bid, was and is the lowest bid for said work and said bidder is the lowest responsible bidder; and

WHEREAS, City staff has apportioned an additional 17% of the bid price for contingencies in the amount of \$466,667;

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

1. The bid of Disney Construction, Inc. is hereby accepted at the unit prices stated in its bid, and the contract for said work and improvements is hereby awarded to Disney Construction, Inc., at the stated unit prices.

2. The City Manager is authorized and directed to execute the contract for the project with Disney Construction, Inc. at 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 \$3,110,000 will be appropriated for Project 11282 from the Caltrans Highway Bridge Program.
4. Funds totaling \$90,000 from Gas Tax Fund 206 will be appropriated for Project 11282 for non-bridge-related work that is not eligible for federal reimbursement.
5. The Public Works Director is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on the 5th day of October 2020, by the following vote, to wit:

AYES: **COUNCILMEMBERS:**

NOES: **COUNCILMEMBERS:**

ABSENT: **COUNCILMEMBERS:**

LINDSAY LARA, City Clerk

File No.: 16.01.266

Contract

This public works contract ("Contract") is entered into by and between the City of San Rafael ("City") and _____ ("Contractor"), for work on the Southern Heights Boulevard Bridge Replacement 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 _____, 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:
 - Appendix A – Federal Bidding Requirements
 - Appendix B – Federal Contract Requirements
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 \$_____ ("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 190 calendar 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 \$2,500 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: _____
Address: _____
City/State/Zip: _____
Phone: _____
Attn: _____
Email: _____
Copy to: _____

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
Name, Title

Rob Epstein, City Attorney
Name, Title

Date: _____

Date: _____

Attest:

s/ _____

Lindsay Lara, City Clerk
Name, Title

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