

**CITY OF PETALUMA, CALIFORNIA
REGULAR MEETING OF THE CITY COUNCIL/
PETALUMA COMMUNITY DEVELOPMENT SUCCESSOR AGENCY (PCDSA)**

AGENDA

MAYOR
Teresa Barrett

COUNCIL MEMBERS
Brian Barnacle
D'Lynda Fischer
Mike Healy
Dave King
Kevin McDonnell
Dennis Pocekay, Vice Mayor

CITY MANAGER
Peggy Flynn

CITY CLERK
Kendall Rose, CMC

CITY ATTORNEY
Eric W. Danly

COUNCIL MEETINGS
1st and 3rd Mondays of each month
City Hall Council Chambers
11 English Street
Petaluma, CA 94952



CONTACT INFORMATION
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**Monday, August 8, 2022
Regular Session 6:00 p.m.
SDAT WORKSHOP**

COVID-19 ADVISORY NOTICE

Pursuant to the provisions of Assembly Bill 361, meetings are currently being held by virtual teleconference as well as in-person. Teleconference login information and instructions on how to participate and provide public comment for virtual meetings are available in each specific meeting agenda.

While attending this meeting, consistent with CDC guidelines, participants are encouraged to practice hand hygiene, "social distancing" and wear face coverings to reduce the risks of exposure to COVID-19. The City cannot guarantee that its participants, volunteers, partners, or others in attendance will not become infected with COVID-19.

How to Observe and/or Participate and Provide Public Comment at a Meeting

Attend In-Person: Petaluma City Council Chambers located at 11 English Street, Petaluma, CA. Please fill out a speaker card for each item you wish to speak on, and place in the speaker card box next to the Zoom moderator.

Attend Virtually via Zoom: <https://us06web.zoom.us/j/86516756538> (Use raise hand feature to speak)

Call- In via Telephone: +1 (346) 248-7799 Meeting ID: 865 1675 6538 (dial *9 to raise hand to speak)

Watch on TV: Comcast channel 28, U-Verse channel 099

Submit written public comment: e-mail comments to cityclerk@cityofpetaluma.org. Comments that are received before 4:00 p.m. on August 8, 2022, will be distributed to the Mayor and City Councilmembers and placed on the City's website as part of the agenda packet for the meeting. Comments received after 4:00 p.m. will be distributed and posted online following the meeting.

Tips for Attending a Virtual Meeting: <https://cityofpetaluma.org/tips-for-attending-a-virtual-meeting/>

Closed Captioning/Live Transcription

This meeting will be transcribed live via the Zoom platform. In-person attendees will be able to see the transcription at the bottom of the screens in the Council Chamber and City Hall. Zoom attendees with a Zoom version 5.0.2 or higher will be able to see the transcription at the bottom of their personal zoom screen. Learn more at <https://support.zoom.us/>.

Decorum

The Mayor has the authority to rule any speaker out of order, including speakers during the General Public Comment period, if the subject raised is not within the subject matter jurisdiction of the City Council, or during a public hearing or a general business item if the speaker is not presenting testimony or evidence relevant to the matter or if the speaker becomes disruptive to the proceedings and conduct of the meeting. The Mayor also has the authority to order any person who willfully interrupts the meeting to be removed. All persons are expected to conduct themselves with civility and courtesy at all times. All persons giving comments shall speak directly to the Council and address issues, not individuals. Personal attacks, cursing and outbursts from the audience in support or opposition to a speaker are not tolerated in order to foster an environment where everyone feels welcome to speak.

REGULAR SESSION – 6:00 p.m.

CALL TO ORDER

- **ROLL CALL**
- **PLEDGE OF ALLEGIANCE**
- **MOMENT OF SILENCE**

AGENDA CHANGES AND DELETIONS (TO CURRENT AGENDA ONLY)

GENERAL PUBLIC COMMENT

*During **General Public Comment**, the public is invited to make comments on items of public interest that are within the City Council's subject matter jurisdiction and that are not listed on the current agenda. Public comments are limited up to three minutes per person. Depending on the number of persons wishing to address the Council, time will be allocated in equal shares totaling no more than twenty minutes, subject to the Council's discretion (Cal. Gov't. Code §54954.3(a), Petaluma City Council Rules, Policies and Procedures, III).*

COUNCIL COMMENT

CITY MANAGER COMMENT

CONSENT CALENDAR

1. Resolution Authorizing Response to the Sonoma County Civil Grand Jury Investigation Reports Entitled "Affordable Housing: Past, Present and Future" and "Affordable Housing: Monitoring and Compliance" (Cochran/Hines/Shimizu)
2. Resolution Making Required Findings and Authorizing the City Manager to Implement Teleconferenced Public Meetings for the City Council and All City Subordinate Bodies Pursuant to Assembly Bill 361 (Danly/Brady)
3. Resolution Certifying Water Recycling Facility and River Access Improvements Environmental Impact Report Outfall Relocation Addendum, Approving the Project, and Adopting a Mitigation Monitoring Plan; and a Resolution Authorizing Award of Contractor for the Ellis Creek Water Recycling Facility Outfall Relocation Project to NBC Engineering & Construction Inc.(Minshall/Bolt)
4. Resolution Accepting Completion of the Biomass to Biofuel Project at the Ellis Creek Water Recycling Facility Contract with Myers and Sons Construction, Approving a Final Contract Change Order and Authorizing the City Manager to Sign on Behalf of the City a Settlement Agreement with Myers and Sons Construction Resolving the Claims of the Parties (Minshall/Petnic/Bolt)
5. Resolution Authorizing the City Manager to Exercise the First Year Option to Extend the Petaluma Transit and Operations Agreement with MV Public Transportation and Execute Amendment No. 1 (Hall/Bolt)

WORKSHOP

6. Sustainable Design Assessment Team Program Visit and Presentation (Alverde/Hines)

ADJOURN

American with Disabilities Act Accommodations

Any member of the public who needs accommodations should email the City Clerk at cityclerk@cityofpetaluma.org or by calling 707-778-4360. The City Clerk 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.





DATE: August 8, 2022

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Brian Cochran, Assistant City Manager
Heather Hines, Interim Community Development Director
Karen Shimizu, Housing Manager

SUBJECT: Resolution Authorizing Response to the Sonoma County Civil Grand Jury Investigation Reports Entitled “Affordable Housing: Past, Present and Future” and “Affordable Housing: Monitoring and Compliance”

RECOMMENDATION

It is recommended that the City Council approve a Resolution Authorizing Response to the Sonoma County Civil Grand Jury Investigation Reports Entitled “Affordable Housing: Past, Present and Future” and “Affordable Housing: Monitoring and Compliance.”

BACKGROUND

The Sonoma County Civil Jury (CGJ) is an independent institution with the principal function of overseeing all aspects of county, special district, and city governments in Sonoma County to ensure that the best interests of its citizens are being served. The 19 Grand Jury members are selected annually from applications submitted by County residents to serve a one-year term. The CGJ conducts investigations based on citizen complaints and on its own initiative. The CGJ has the authority to inspect and audit the financial expenditures of county and city departments and special districts to ensure the public funds are properly accounted for and legally spent, inquire into the performance of any county, city, or special district public official or employee.

The CGJ issued the [Final Report](#) for 2021-2022 on June 19, 2022. Topics listed in the report include Affordable Housing: Past, Present and Future; Affordable Housing: Monitoring and Compliance; Department of Health Services; Rohnert Park Department of Public Safety; SMART Decision Making; and What Happens When the Grand Jury Makes Recommendations.

The CGJ notified the City on June 14, 2022 of its obligation to respond to the “Affordable Housing: Past, Present and Future” and “Affordable Housing: Monitoring and Compliance” investigation reports. The City Council has 90 days, or until September 12, 2022, to provide a response.

DISCUSSION

The “Affordable Housing: Past, Present and Future” investigation resulted in 24 findings and 8 recommendations.

The City of Petaluma, as well as all the other Sonoma County cities are required to respond to the following CGJ recommendations:

- R1. By December 31, 2022, Permit Sonoma and the nine Cities should begin to streamline their procedures, from preliminary review through the permitting process, related to the development of Affordable Housing.
- R2. By December 31, 2022, Permit Sonoma and the nine Cities should meet to consider standardizing their procedures related to the development of Affordable Housing.
- R3. By December 31, 2022, Permit Sonoma and the nine Cities should meet to discuss the coordination of fee reduction standards for Affordable Housing throughout the County.
- R4. By December 31, 2022, Permit Sonoma and the nine Cities should identify properties within their jurisdictions and Spheres of Influence that could support the construction of infill housing and accessory dwelling units.
- R5. By December 31, 2022, Permit Sonoma and the nine Cities should identify properties within their jurisdictions and Spheres of Influence that are likely opportunities for rehabilitation or repurposing to increase the availability of Affordable Housing.
- R6. By June 1, 2023, Permit Sonoma and the nine Cities should develop permit ready accessory dwelling unit and junior accessory dwelling unit plans.
- R7. By December 31, 2022, Permit Sonoma and the nine Cities should discuss integration of preliminary design review committees with their planning commissions to help expedite the construction of Affordable Housing.
- R8. By December 31, 2022, Permit Sonoma and the nine Cities should review their permitting requirements to allow nontraditional options such as manufactured homes, factory-built homes, and tiny houses to increase housing supply.

The “Affordable Housing: Monitoring and Compliance” investigation resulted in 11 findings and 8 recommendations.

The City of Petaluma, along with the other Sonoma County cities are required to respond to the following CGJ recommendations:

- R1. By December 31, 2022, the Sonoma County Community Development Commission and the nine Cities meet and develop agreed-upon standards and procedures for the monitoring of Affordable Housing
- R2. The Sonoma County Community Development Commission and the nine Cities resume on-site monitoring by October 1, 2022.
- R3. By January 1, 2023, the Sonoma County Community Development Commission and the nine Cities review and ensure that they have sufficient personnel to conduct on-site monitoring and process self-reported monitoring data to meet future Regional Housing Needs Allocations

- R5. By January 1, 2023, the nine Cities develop informational documents and policies to provide both upfront and ongoing training in the monitoring and compliance procedures for developers and managers of Affordable Housing projects.
- R6. By November 1, 2022, the nine Cities meet and discuss to jointly or individually utilize Affordable Housing monitoring software.
- R7. By November 1, 2022, the nine Cities meet and discuss pooling resources to fulfill their monitoring responsibilities, through either a consultant or designated employees.
- R8. By December 31, 2022, the Sonoma County Community Development Commission and the nine Cities should update and maintain their inventory of Affordable houses within their jurisdictions and verify that all their property titles are flagged for restricted sale.

Attachment 1 is a resolution authorizing staff to submit the required responses to the CGJ. Attachments 2 and 3 contain responses and explanations of the City's response to the CGJ recommendations listed above and in the CGJ report for the Affordable Housing: Past, Present and Future investigation, while attachments 4 and 5 contain responses and explanation for the Affordable Housing: Monitoring and Compliance investigation.

For the Affordable Housing: Past, Present and Future investigation, the City agrees with findings F1, F2, F5, F6, F8, F9, F11, F13, F14, F16, F18, F20, F21, F23 and disagrees wholly or partially with findings F3, F4, F7, F10, F12, F15, F17, F19, F22, F24. The City has implemented recommendations R1, R4, R6, and has not yet implemented, but will be implementing in the future, the recommendations R2, R3, R5, R8. R7 will not be implemented because it is not warranted/not reasonable. As noted and summarized in Attachments 2 and 3.

For the Affordable Housing: Monitoring and Compliance investigation, the City agrees with findings F3, F4, F5, F6, F9 and disagrees wholly or partially with findings F1, F2, F7, F8, F10, F11. The City has implemented recommendations R2, R3, R6, and has not yet implemented, but will be implementing in the future, the recommendation R5 and R8. Recommendations R1 and R7 require some further analysis. As noted and summarized in Attachments 4 and 5.

PUBLIC OUTREACH

This agenda item was publicly noticed in compliance of the California Brown Act.

ENVIRONMENTAL COMPLIANCE

Adoption of the Resolution approving a Resolution Authorizing Response to the Sonoma County Civil Grand Jury Report Regarding "Affordable Housing: Monitoring and Compliance" and "Affordable Housing: Past, Present and Future" is considered a discretionary action that could therefore be a "project" under the California Environmental Quality Act (CEQA). Nonetheless, adoption of this Resolution is exempt under the "common sense" exception in CEQA Guidelines Section 15061 (b)(3), which establishes the general rule for projects concerning which can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Such activities are not subject to CEQA.

FINANCIAL IMPACTS

There are no financial impacts resulting for approval of the attached resolution. Grand Jury recommendations have either already been implemented or are in the process of being implemented under existing budget appropriations.

ATTACHMENTS

1. Resolution Responding to the Sonoma County Civil Grand Jury Investigation Reports entitled “Affordable Housing: Past, Present and Future” and “Affordable Housing: Monitoring and Compliance”
2. “Affordable Housing: Past, Present and Future” Response Form
3. “Affordable Housing: Past, Present and Future” Summary of Responses
4. “Affordable Housing: Affordable Housing: Monitoring and Compliance” Response Form
5. “Affordable Housing: Affordable Housing: Monitoring and Compliance” Summary of Responses
6. Sonoma County Civil Grand Jury Investigation Report Entitled “Affordable Housing: Past, Present and Future”
7. Sonoma County Civil Grand Jury Investigation Report Entitled “Affordable Housing: Monitoring and Compliance”

Resolution No. 2022-XXX N.C.S.
of the City of Petaluma, California

**AUTHORIZING RESPONSE TO THE SONOMA COUNTY CIVIL GRAND JURY REPORT
REGARDING “AFFORDABLE HOUSING: PAST, PRESENT AND FUTURE” AND “AFFORDABLE
HOUSING: MONITORING AND COMPLIANCE”**

WHEREAS, the Sonoma County Civil Grand Jury (CGJ) is an independent institution with the principal function of overseeing all aspects of county, special district, and city governments in Sonoma County to ensure that the best interests of its citizens are being served; and

WHEREAS, the CGJ has the authority to inspect and audit the financial expenditures of county and city departments and special districts to ensure that public funds are properly accounted for and legally spent, inquire into conditions of jails and the treatment of inmates, and inquire into the performance of any county, city, or special district public official or employee; and

WHEREAS, the CGJ issued the Final Report for 2021-2022 on June 19, 2022; and

WHEREAS, the CGJ notified the City on June 14, 2022 of its obligation to respond to the “Affordable Housing: Past, Present and Future” and “Affordable Housing: Monitoring and Compliance” investigations; and

WHEREAS, adoption of this Resolution is exempt from the California Environmental Quality Act (CEQA) under the “common sense” exemption in CEQA Guidelines Section 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

WHEREAS, the City of Petaluma has connectivity gaps for bicyclists and pedestrians to safely cross Highway 101, which bisects the City into east and west communities.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Petaluma as follows:

1. Find the above recitals to be true and correct and are incorporated herein as findings of this Resolution.
2. Authorizes staff to submit all required documentation to the Sonoma County Civil Grand Jury in relation to the CGJ report regarding “Affordable Housing: Past, Present and Future” and “Affordable Housing: Monitoring and Compliance.”

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 8th day of August 2022, by the following vote:

Approved as to
form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor

Response to Grand Jury Report Form

Report Title: Affordable Housing: Past, Present and Future

Report Date: June 14, 2022

Response by: Teresa Barrett Title: Mayor

Agency/Department Name: City of Petaluma

FINDINGS: F1, F2, F3, F4, F5, F7, F10, F11, F12, F13, F14, F16, F17, F19, F20, F21, F22

I (we) agree with the findings numbered: F1, F2, F5, F6, F8, F9, F11, F13, F14, F16, F18, F20, F21, F23

I (we) disagree wholly or partially with the findings numbered: F3, F4, F7, F10, F12, F15, F17, F19, F22, F24

(Attach a statement specifying any portions of the findings that are disputed with an explanation of the reasons.)

RECOMMENDATIONS: R1, R2, R3, R4, R5, R6, R7, R8

- Recommendations numbered: R1, R4, R6 have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered: R2, R3, R5, R8 have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered: _____ require(s) further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. ***This timeframe shall not exceed six months from the date of publication of the Grand Jury report.***)
- Recommendations numbered: R7 will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: _____ Signed: _____

Number of pages attached: _____

(See attached Civil Grand Jury Response Requirements)

SONOMA COUNTY GRAND JURY REPORT 2022
Affordable Housing: Past, Present and Future

City of Petaluma Responses to Findings

F1. Increased Affordable Housing has been mandated by the State of California and officially accepted by Sonoma County and its nine Cities.

The City of Petaluma agrees with the finding that the State of California has passed increased legislation to mandate the planning for, production of, and preservation of affordable housing to meet the needs of California residents. These mandates have increasingly been pushed to the local jurisdictions to implement proactively and reactively as applicable. The City Council has supported increased strategies to implement affordable housing in Petaluma in an effort to meet state requirements, as well as supported the implementation of state mandates such as SB 35 and AB 2162 to facilitate the production of much-needed affordable housing units, particularly to lower income households and special needs housing.

F2. Housing jurisdictions must show sufficient progress in meeting 6th cycle Regional Housing Needs Allocation mandates or they risk being fined or losing local authority over their housing programs.

The City of Petaluma agrees that there are state requirements to demonstrate progress toward meeting each cycle's Regional Housing Needs Allocation (RHNA). Typically this reporting is through the preparation and submission of an Annual Progress Report demonstrating both production of housing units toward meeting RHNA but also implementation of key programs adopted to facilitate compliance with state mandates RHNA. The City of Petaluma has a good track record of submitting the annual reporting requirements to maintain the certification of its Housing Elements. Petaluma has seen consequences of not adequately producing housing units at the lower income level during the 5th cycle, resulting in the mandated ministerial processing of housing projects under SB 35 and is aware that similar consequences are outlined by the State of California for jurisdictions failing to demonstrate sufficient progress in meeting local RHNA during the upcoming 6th cycle.

F3. Sonoma County and its nine Cities have officially recognized the need for Affordable Housing but not all have fully endorsed the Regional Housing Needs Allocation or met earlier goals.

The City of Petaluma disagrees partially with the finding. The City of Petaluma and other jurisdictions in Sonoma County have recognized the need for affordable housing and taken strides to facilitate affordable housing to meet the needs of Sonoma County residents and implement state mandated RHNA across all income categories. While the City of Petaluma and other Sonoma County jurisdictions have been actively promoting needed resources and tools to facilitate the planning for, production of, and preservation of housing, not all jurisdictions have been successful in meeting the 5th cycle RHNA. The failure to produce housing units across all income categories to meet 5th cycle RHNA does not represent an unwillingness to “fully endorse” the RHNA.

F4. Some cities hinder the development of Affordable Housing through designation of new historic districts, increased landscaping requirements, highly restrictive zoning, and exploitation of environmental concerns.

The City of Petaluma disagrees wholly with the finding as it relates to Petaluma. The City of Petaluma has consistently supported affordable housing development and sought new strategies and innovative approaches to increase and facilitate affordable housing. While unable to respond for all cities within the State of California, the City of Petaluma has unequivocally not sought to hinder the production of affordable housing through adoption of new zoning regulations.

F5. Public acceptance of the need for Affordable Housing is not universal; NIMBYism and misinformation can negatively impact the planning and development process.

The City of Petaluma agrees with the finding. The term “universal” is general and there have been publicized reporting of examples of public objection to affordable housing in California cities. That said, the City of Petaluma generally has a record of strong public acceptance of the need for affordable housing to meet the housing needs of Petalumans. While NIMBYism has been an obstacle in the entitlement process for some housing development in Petaluma the issue has rarely been rooted in the affordability of the proposed housing.

F6. In Sonoma County, costs and availability of land, building supplies, and labor impede development and construction of Affordable Housing.

The City of Petaluma agrees with the finding. Sonoma County has a strong commitment to urban growth boundaries and community separators to ensure preservation of open spaces and avoid urban sprawl. One result of that commitment is a defined and limited boundary for development. Additionally, the cost of building supplies and limited availability of labor has significantly increased cost to the construction of affordable housing in the region.

F7. There is great variability in the planning and approval processes and procedures for developing Affordable Housing in the County and its Cities, thus complicating and slowing development.

The City of Petaluma disagrees partially with the finding. While acknowledging that there is variability in the planning and approval processes in each Sonoma County jurisdiction, that does not necessarily complicate or slow down development of housing. Each jurisdiction is responsible for ensuring that the development within its local boundaries is responsive to the community’s housing needs balanced with the community’s vision. One size does not fit all communities and it is vital that local jurisdictions retain local discretion to ensure that the uniqueness and individuality of their community is preserved, enhanced, and evolves consistent with the community’s vision. The local discretion should not intentionally complicate or obstruct the production of needed affordable housing in each jurisdiction and it is up to the individual city/county to develop tools to facilitate much needed housing while respecting community character, desired engagement, etc.

F8. Financing of Affordable Housing projects is unusually complex, slow, and uncertain.

The City of Petaluma agrees with the finding. The City of Petaluma has a strong history of working in partnership with our affordable housing providers to gain funding to finance affordable housing projects. The City of Petaluma has a good track record of awarding local funding to help make other funding applications more competitive for our affordable housing providers. When appropriate the City of Petaluma has partnered with affordable housing providers for funding awards to cover ancillary aspects such pedestrian network improvements, enhanced transit opportunities, and infrastructure investment. City staff regularly prioritizes production of necessary local reporting, letters of support, and other documents for grant applications as requested by affordable housing providers.

F9. Funding of Affordable Housing is often directed to specific groups such as seniors, veterans, or agricultural workers.

The City of Petaluma agrees with the finding. However, the use of the term “often” is general and not defined. Therefore, the City does not have a way, other than via anecdotal observation, to confirm that funding is “often” directed to specific groups. The city funding is generally targeted based on Area Median Income (AMI) levels, and additional project funding is usually obtained with targeted funding/grant opportunities.

F10. Design review and project approval are often slow and very complex, and hinder the development of Affordable Housing.

The City of Petaluma disagrees partially with the finding. While an onerous design review can hinder development, the City of Petaluma has worked closely with affordable housing providers to expedite processing of applications for affordable housing projects. Both through the use of state ministerial review to reduce processing times and through the use of applicable environmental exemptions staff has looked for ways to efficiently reduce the complexity and increase the efficiency in order to permit affordable housing projects. However, the terms “slow” and “very complex” are un-defined and subjective, so it is unclear at what point the Grand Jury would consider this issue to have been solved.

F11. The permitting regulations, processes, and fees differ by jurisdiction.

The City of Petaluma agrees with the finding. There are nuanced differences in entitlement review, internal processes, and adopted fees structures between nine Sonoma County cities. However, it is common to consult with our neighboring jurisdictions when looking to update fees or consider process revisions to learn from what other cities are doing and whether adopting something similar would be beneficial to the City of Petaluma.

F12. Mitigation fees vary by individual projects and jurisdictions, complicating the building of Affordable Housing.

The City of Petaluma disagrees partially with the finding. It is true that mitigation fees vary by individual projects and jurisdictions. The City is unclear what the nexus is between that fact and the “complicating the building of Affordable Housing” that is referenced in the finding.

F13. The speed of issuing permits has improved in some jurisdictions, but greater efficiency would help meet the building needs of Sonoma County.

The City of Petaluma agrees with the finding. The City of Petaluma recognizes that increased efficiency in review and issuance of permits is vital to projects moving forward. This is especially true with affordable housing projects often with tight timelines related to grant funding or limited resources to go through multiple rounds of review. While there is recognition and steps have been taken to increase processing times, faster more streamlined review is always the objective and assumed to always assist in furthering construction of housing in Sonoma County.

F14. Payment of in-lieu fees to the housing jurisdiction results in fewer inclusionary Affordable Housing units and houses being built.

The City of Petaluma agrees with this finding. The cost of residential development continues to increase with minimal if any discount for an affordable versus market rate unit. Despite local increases in in-lieu fees by individual jurisdictions, the fees do not recoup the increasing construction costs. For this reason, in 2018 the City of Petaluma updated their local inclusionary housing ordinance to eliminate the option of payment of housing in-lieu fees and requiring onsite inclusionary housing equal to 15% of market rate units. Under the current ordinance, a 100-unit market rate apartment development is required to include 15 affordable units at the low and moderate income categories. Based on the average per unit construction cost of \$700,000 the City would need to charge \$10,500,000 in in lieu fees to construct 15 units of affordable housing.

However, the City of Petaluma recognizes that in lieu fees play an important role in a holistic local housing program in that the City needs housing funds to award to affordable housing providers to demonstrate local match and help affordable housing projects be more competitive for outside funding. It is thought that a local match can be leveraged to multiply each dollar by four.

F15. Development of commercial projects such as hotels and big box stores is often favored over housing due to lesser demand on public services and increased sales or occupancy tax revenue.

The City of Petaluma disagrees with the finding. While it is true that hotel and retail projects can generate significant tax revenues for cities, there is not a track record of commercial projects being favored through the development review process in Petaluma. As previously stated, the City of Petaluma is not averse to affordable housing development at the community level nor at the political level.

F16. Recent legislation encourages construction of transit-oriented infill housing but has yet to show a large effect.

The City of Petaluma agrees with the finding. Sonoma County has not historically had a particularly dense development pattern which has made creation of a transit system more difficult. The commencement of SMART service along the Highway 101 corridor along with various bus service in the County has begun to provide transit options for Sonoma County residents. However,

there is great room to expand and augment existing service to make transit a more viable option for residents.

Additionally, much of the funding opportunities from the State to facilitate the development of TOD infill housing has been structured in such a way that Sonoma County often does score competitively. For instance, there are often locational requirements that a development must be located near “high quality transit” to qualify for funding, but the design of SMART on the single rail corridor does not provide the option of service with 15 minute headways.

F17. Changes to city boundaries by annexation of land within their Spheres of Influence could allow the development of more Affordable Housing but is resisted due to the high costs of additional infrastructure.

The City of Petaluma disagrees partially with the finding. The City acknowledges that there are parcels that lie outside of Petaluma City Limits but within the Urban Growth Boundary that could be developed for housing. However, many if not all of these parcels present site-specific challenges to development of affordable housing. Most of the parcels available for annexation are not proximate to transit or services and are often within areas of high VMT (“vehicle miles travelled”). Additionally, many of the available parcels have environmental challenges such as steep topography or within flood prone areas that further challenge development of affordable housing. The cost of infrastructure may be an added challenge for development of these parcels, but it is not clear that is the primary reason for postponing annexation requests.

F18. The time periods for which new Affordable Housing units cannot convert to market- rate prices have been lengthened to preserve the units as Affordable.

The City of Petaluma agrees with the finding. There have not been significant changes to the City of Petaluma’s required affordability term for deed restricted affordable housing. However, it is relatively common for the City of Petaluma to partner with the Sonoma County Housing Land Trust for oversight and management of inclusionary housing units as part of market rate housing development. The standard term of the SCHLT model is 99-year ground lease which is significantly longer than the City’s required affordability term of 45 years for rental and 55 years for ownership. Obviously a longer affordability term ensures that the units are kept affordable for a longer period of time which is a plus for ensuring available units to those in need.

F19. Rehabilitation and the repurposing of existing properties both preserve and increase the supply of Affordable Housing.

The City of Petaluma agrees with the finding. The city has an active program that is focused on rehabilitation of existing properties. The city works in partnership with Rebuilding Together Petaluma. An organization focused on providing health, safety and accessibility improvements for low-income homeowners. A second example is the city recently partnered with Burbank Housing and provided funding for a substantial rehab of the 89-unit low-income rental community, Old Elm Village. The city is currently working on a project that will repurpose an existing 60-unit hotel to 60 units of permanent supportive housing for chronically homeless members of the community.

F20. Inclusive Affordable Housing must be equivalent to market rate units and be dispersed throughout a project making it harder to identify and stigmatize them.

The City of Petaluma agrees with the finding. The City of Petaluma's inclusionary ordinance (Implementing Zoning Ordinance Section 3.040) specifies that inclusionary units must be: Constructed and occupied concurrently with or prior to the construction and occupancy of the market rate residential units in the project, unless an alternative schedule based on extenuating circumstances is adopted as part of the project approval. In phased projects inclusionary units shall be constructed and occupied in proportion to the number of units in each phase of the project; distributed throughout the residential project site, to the fullest extent practicable; and have comparable and compatible design, appearance and general quality to the design of the market rate units as determined through the Site Plan and Architectural Review process, provided that all other [zoning](#) and [building](#) codes are met.

F21. Manufactured and factory-built home construction provide less expensive routes to Affordable Housing without necessarily reducing its quality.

The City of Petaluma agrees with the finding. There have been great strides in the design and quality of pre-fabricated construction in the last decade. Additionally, there is often an economic efficiency in their production which could make them attractive for affordable housing production. However, given the constraints on available land and indisputable climate crisis that all Sonoma County jurisdictions are faced, with the focus has been on denser multi-family development in proximity to transit and services. This housing product does not readily lend itself to prefabricated housing units.

F22. Design modifications can help make Affordable Housing projects economically viable.

The City of Petaluma disagrees with the finding. The City does not understand to what this finding is referring.

F23. Contrary to commonly expressed fears, Affordable Housing does not usually affect local property values.

The City of Petaluma agrees with the finding. The City of Petaluma is not aware of any reduction in property values near any existing affordable housing development in the City. Additionally, consistent with the City's inclusionary housing ordinance, outside of 100% affordable housing project, the affordable housing units are scattered in market rate housing development and are indistinguishable from market rate units.

F24. Vacation homes, time shares, Airbnb, Pacaso houses, and vacant houses reduce the number of units available to permanent residents and, by reducing supply, increase the cost of housing.

The City of Petaluma agrees with the finding. A proliferation of conversions can reduce housing supply which in turn can increase the cost of housing. The City of Petaluma has limited the ability

of accessory dwelling units to be used for short term rentals to ensure that new ADUs developed under newer regulations are in fact added to the City's housing supply and not built to facilitate vacation rentals. The City of Petaluma has not seen an undue concentration of vacation rentals to believe that they have caused an acute reduction in housing supply in the City.

City of Petaluma Responses to Recommendations

R1. By December 31, 2022, Permit Sonoma and the nine Cities should begin to streamline their procedures, from preliminary review through the permitting process, related to the development of Affordable Housing. (F7, F10, F11, F13)

The recommendation has been implemented. The City of Petaluma has done a number of things to streamline procedures to facilitate the development of affordable housing over the last couple of years and in collaboration with local affordable housing providers. The City has utilized several of the recent state bills to encourage and facilitate the review and approval of affordable housing projects, including two projects under the provisions of SB 35 and one additional project under AB 2162. Those three projects streamlined the approval of over 230 lower income units, including 30 permanent supportive housing units. Additionally, the City of Petaluma adopted a shelter crisis resolution in 2021 and relied on the flexibility that declaration provided through state regulation to develop a 25 non-congregate units to expand the City's existing homeless shelter to quickly respond to the acute need as a result of covid impacts to the City's unsheltered population.

The City of Petaluma is currently streamlining the review and permitting process for a 60 unit motel conversion to permanent supportive housing funded through the City's HomeKey award and in partnership with Burbank Housing. Use of the City's weekly Development Review Committee to collaborate as a cohesive City team along side Burbank Housing has allowed real time identification and resolution of issues to keep the project moving forward on an aggressive timeline.

The City of Petaluma is currently working on a significant effort to increase transparency and education related to the ADU permitting process to respond to community feedback and to facilitate ADU construction as a component of a holistic affordable housing program. This includes partnership and funding for the Sonoma Napa ADU Accelerator program as well as public facing information about resources and the local permitting process.

While the City of Petaluma has been focused on improving our internal processes specifically to facilitate affordable housing production, the City is committed to continuing to find ways to improve efficiency. The City is currently in the process of developing our 6th cycle Housing Element which in part identifies governmental constraints and develops programs to address those constraints. Once adopted the City is committed to implementing those programs and providing annual reporting of the status and resulting affordable housing production toward the increased 6th cycle Regional Housing Needs Allocation.

R2. By December 31, 2022, Permit Sonoma and the nine Cities should meet to consider standardizing their procedures related to the development of Affordable Housing. (F7, F10, F11, F13)

The recommendation has not yet been implemented, but will be implemented in the future, within the recommended timeframe to the extent possible with the regional partners. The City of Petaluma has an ongoing practice of meeting with our Sonoma County partners to discuss issues of regional importance and to keep apprised of the challenges and policy initiatives that all jurisdictions are facing. This communication and collaboration happens at a variety of level and on a regular schedule, including monthly City Manager meetings, monthly Planning Advisory Committee meetings, quarterly City Attorney meetings, and similar across a variety of departments. Of relevance, the Sonoma County jurisdictions have established a housing ad hoc that meets regularly to discuss specific housing issues and share approaches among jurisdictions. The City of Petaluma remains committed to the collaboration and partnership with our regional partners as it assists in creating efficiencies and learning from the relevant experiences of other Sonoma County jurisdictions. The City of Petaluma will participate in any subsequent meeting with Permit Sonoma and the nine Sonoma County cities to discuss the findings and recommendations of the Grand Jury Report. However, the level or appropriateness of standardizing procedures related to the development of affordable housing remains unknown given the localized needs of each jurisdiction.

R3. By December 31, 2022, Permit Sonoma and the nine Cities should meet to discuss the coordination of fee reduction standards for Affordable Housing throughout the County. (F11, F12, F14)

The recommendation has not yet been implemented, but will be implemented in the future, within the recommended timeframe to the extent possible with the regional partners. The City of Petaluma has an ongoing practice of meeting with our Sonoma County partners to discuss issues of regional importance and to keep apprised of the challenges and policy initiatives that all jurisdictions are facing. This communication and collaboration happens at a variety of level and on a regular schedule, including monthly City Manager meetings, monthly Planning Advisory Committee meetings, quarterly City Attorney meetings, and similar across a variety of departments. Of relevance, the Sonoma County jurisdictions have established a housing ad hoc that meets regularly to discuss specific housing issues and share approaches among jurisdictions. The City of Petaluma remains committed to the collaboration and partnership with our regional partners as it assists in creating efficiencies and learning from the relevant experiences of other Sonoma County jurisdictions. The City of Petaluma will participate in any subsequent meeting with Permit Sonoma and the nine Sonoma County cities to discuss the findings and recommendations of the Grand Jury Report. However, the level or appropriateness of coordinating fee reduction standards for affordable housing remains unknown given the localized needs of each jurisdiction and the parameters of the City of Petaluma's existing impact fee programs.

As part of the City of Petaluma's current Housing Element update the City has included a program in the draft Housing Element to reevaluate the City's development impact fee schedule to look for ways to incentivize housing and particularly affordable housing. Following adoption of the

Housing Element and updated General Plan the City will initiate a fee study to identify efficiencies as applicable.

R4. By December 31, 2022, Permit Sonoma and the nine Cities should identify properties within their jurisdictions and Spheres of Influence that could support the construction of infill housing and accessory dwelling units. (F1, F2, F3, F4, F16, F17)

The recommendation has been implemented. The City of Petaluma and all of the nine Sonoma County cities have General Plans that include land use designations for all properties within each cities' Urban Growth Boundaries. A residential land use designation indicates that the City of Petaluma has previously analyzed and identified the property as appropriate to support the construction of residential development. Additionally, the City of Petaluma has adopted ADU regulations consistent with mandates from the State of California that allow ministerial review and permitting of ADUs on all single family and multi-family parcels. The City's ADU ordinance minimizes setbacks and doesn't require any parking for the new ADU or replacement parking for garage conversions for the main dwelling. Additionally, the City of Petaluma's impact fee structure is set up as a sliding scale based on the size of the main dwelling for ADUs greater than 750 square feet. No impact fees are collected for ADUs that are 750 square feet or less in size.

R5. By December 31, 2022, Permit Sonoma and the nine Cities should identify properties within their jurisdictions and Spheres of Influence that are likely opportunities for rehabilitation or repurposing to increase the availability of Affordable Housing. (F16, F19, F22)

This recommendation has been partially implemented. The city does not have an active program or dedicated funding source currently, but as state and federal funding for this type of program becomes available, the city works with community partners to secure funding and pursue opportunities. An example is the current HCD Homekey Program. The City is working in partnership with Burbank Housing and has secured \$15 million in grant funding to purchase and rehab an existing underutilized hotel, and convert the property in to 60 units of permanent supportive housing for chronically homeless members of our community,

R6. By June 1, 2023, Permit Sonoma and the nine Cities should develop permit ready accessory dwelling unit and junior accessory dwelling unit plans. (F1, F2, F3, F4, F5, F7, F10, F11, F13, F21, F22)

This recommendation has been implemented. The Napa Sonoma ADU Accelerator Program has collaborated with all nine Sonoma County cities and Permit Sonoma to compile each jurisdiction's ADU regulations, fee structure, and permitting process. Additionally, the organization has compiled a wide range of ADU plans that are offered for a reduced cost through licensing with the architect in order to facilitate ADU development in the County. The City of Petaluma is contributing financially through SB 2 grant funds, as many Sonoma County cities also contributed, to the ongoing operation of the organization. The City of Petaluma is currently updating its website to more fully provide educational information and resources for residents to assist in exploring the possibility of building ADUs as a integral part to Petaluma's overall housing program.

R7. By December 31, 2022, Permit Sonoma and the nine Cities should discuss integration of preliminary design review committees with their planning commissions to help expedite the construction of Affordable Housing. (F1, F2, F3, F4, F5, F7, F10, F11, F13, F19, F20, F21, F22)

The recommendation will not be implemented because it is not reasonable. As previously stated in response to other recommendations, the City of Petaluma is willing to meet with other Sonoma County jurisdictions to discuss all of the findings and recommendations in the 2022 Grand Jury Report and consider county wide efficiencies. Additionally, the City of Petaluma is committed to continuing to meet with our regional partners to collaborate and share resources. However, the City of Petaluma has concerns with the concept of a regional design review committee to review affordable housing projects across jurisdictional boundaries. Each jurisdiction has a unique character and has adopted standards to ensure that the character and community vision is integrated into all development that occurs. The City is committed to continuing to look for innovation and creativity to streamline affordable housing production, including objective design standards, fee reductions, zoning code updates, etc. However, the City is skeptical of the overall benefit of a joint design review committee due to the concern that it dilutes the individuality and character of the individual cities across the County.

R8. By December 31, 2022, Permit Sonoma and the nine Cities should review their permitting requirements to allow nontraditional options such as manufactured homes, factory built homes, and tiny houses to increase housing supply. (F1, F2, F3, F4, F5, F10, F11, F13, F21, F22)

The recommendation has not yet been implemented but will be implemented as part of the City of Petaluma's updated Housing Element, General Plan, and concurrent Zoning Code Update. While the City of Petaluma's current planning regulations do not prohibit manufactured homes, factory built homes, or tiny homes, staff recognizes that ancillary regulations may create obstacles to the use of these housing products, such as parking regulations and setbacks. The City of Petaluma is currently in the process of a comprehensive update to its General Plan and the subsequent/concurrent step of updating the Zoning Code to implement new General Plan policy. As part of this effort the City will look at regulations and associated permitting processes to ensure that there are not unnecessary obstacles to use of nontraditional housing options.

Response to Grand Jury Report FormReport Title: Affordable Housing: Monitoring and ComplianceReport Date: June 14, 2022Response by: Teresa Barrett Title: MayorAgency/Department Name: City of Petaluma**FINDINGS:** F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11

I (we) agree with the findings numbered: F3, F4, F5, F6, F9

I (we) disagree wholly or partially with the findings numbered: F1, F2, F7, F8, F10, F11

(Attach a statement specifying any portions of the findings that are disputed with an explanation of the reasons.)

RECOMMENDATIONS: R1, R2, R3, R5, R6, R7, R8

- Recommendations numbered: R2, R3, R6 have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered: R5, R8 have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered: R1, R7 require(s) further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. ***This timeframe shall not exceed six months from the date of publication of the Grand Jury report.***)
- Recommendations numbered: _____ will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

Date: _____ Signed: _____

Number of pages attached: _____

(See attached Civil Grand Jury Response Requirements)

SONOMA COUNTY GRAND JURY REPORT 2022
Affordable Housing: Monitoring and Compliance

City of Petaluma Responses to Findings

F1. Monitoring of compliance with Affordable Housing regulations has been inconsistent and often inadequate.

Disagree with this finding – The City has an established compliance program and conducts annual compliance reporting for all deed-restricted affordable housing projects. This includes review of annual audits, tenant rent roll to ensure rent and income level of units, and annual operations budgets. Per the City of Petaluma Regulatory Agreement, the property owner, an annual audit is required to be completed by a third party, independent Certified Public Accountant.

F2. The use of self-reported data in monitoring is the accepted norm.

Disagree with this finding – As part of the ongoing compliance program, the City conducts site visits. Site visits include a physical site inspection, unit inspection, and resident file review. City staff reviews to ensure tenant income is documented via third-party verification, annual unit inspections are conducted, and all maintenance requests are tracked and completed. An independent third-party licensed Certified Public Accountant prepares an annual audit regarding property operations and conducts sampling of tenant files, funding agreements, and unit mix to ensure compliance with regulatory agreements.

F3. On-site (in-person) monitoring beyond that required by law is rare due to insufficient personnel, budgetary limitations, and relatively low incentives.

Agree with this finding – At this time, the City does not have the resources to conduct annual on-site inspections for all properties. The City is in the process of adding additional staff to the department and will implement bi-annual site inspections for all deed-restricted rental units.

F4. COVID-19 further reduced in-person, on-site monitoring due to public health restrictions.

Agree with this finding – On-site monitoring was reduced and/or waived by federal funders to ensure the safety of the community and staff.

F5. Surprise or unscheduled monitoring of individual units is not done, for reasons of privacy, availability, efficiency, and practicality.

Agree with this finding – For privacy and due process concerns, prior notice for site visits is scheduled to accommodate on-site staff and residents. The lease agreements between the residents and the ownership of the property include a clause that requires the tenant to receive 24-hour written notice prior to any inspections or entry of the unit.

F6. Unscheduled monitoring of properties and management, in order to review tenant files, grounds, and the amenities is not done.

Agree with this finding – Prior notice is provided to accommodate on-site staff and resident schedules.

F7. The Community Development Commission has informational documents and policies to provide upfront training in the monitoring process.

Partially agree with this finding – There have been recent improvements in the documents and policies to support programs and training in the monitoring process, specifically in the area of Homeless Services.

F8. There is limited or no standardized training in Affordable Housing compliance regulations for developers and managers of inclusionary housing within the nine Cities.

Partially agree with this finding – While the City has a program focused on specific funding sources (CDBG and HOME) and works closely with affordable housing Managers, there is no ongoing standardized training countywide.

F9. The cities of Petaluma and Rohnert Park use computerized compliance monitoring programs to facilitate and improve the quality of their work.

Agree with this finding – The City implemented an online database system in the spring of 2019 and continues to build out the online system.

F10. The property titles of Affordable single-family houses have not always been flagged as deed restricted.

Partially agree with this finding – Prior to the release of any new funding, resale, or financial restructuring of existing rental developments and homeowner program properties, city staff works in partnership with the legal team to review regulatory agreements, title reports, deal documents, and escrow instructions to ensure all transactions including recorded documents and deed restriction are in place, and recorded in the proper order. The City is in the process of reviewing the homeowner program to ensure the deed restrictions are accurate. As this work is completed, the program will be built into the online database to ensure ongoing compliance.

F11. The majority of the housing representatives the Grand Jury interviewed felt that there is not enough staff within their departments to make anyone a full-time compliance monitor.

Partially disagree with this finding – The report does not accurately reflect the staffing capacity listed within the report. It should be modified to 50% of 1 FTE.

City of Petaluma Responses to Recommendations

R1. By December 31, 2022, the Sonoma County Community Development Commission and the nine Cities meet and develop agreed-upon standards and procedures for the monitoring of Affordable Housing. (F7, F8)

The recommendation requires more analysis. The City is happy to meet with the County and other cities to collaborate on standards and procedures, where standardizing those is possible and makes sense. However, different rules, agreements and standards may apply in different jurisdictions, limiting the extent to which procedures can be standardized. The City has a monitoring handbook established for federal and state-funded programs, which require extensive monitoring. Information is gathered for city financed projects, but not to the same level of detail as state and federal projects.

R2. The Sonoma County Community Development Commission and the nine Cities resume on-site monitoring by October 1, 2022. (F3, F4)

The recommendation has been implemented. The City has resumed on-site monitoring of sites. Starting with HOME-funded properties, on-site inspections of all properties will be scheduled when a housing specialist is hired. Properties will be inspected on a bi-annual basis.

R3. By January 1, 2023, the Sonoma County Community Development Commission and the nine Cities review and ensure that they have sufficient personnel to conduct on-site monitoring and process self-reported monitoring data to meet future Regional Housing Needs Allocations. (F1, F2, F3, F5, F6, F11)

The recommendation has been implemented. The City contracted with a consultant to provide compliance monitoring services. The City is in the process of hiring a full-time staff member, and about 50% of that time will be used for compliance monitoring, with a consultant available for backup as needed.

R4. The Sonoma County Community Development Commission use informational documents and policies to provide ongoing training in the monitoring process for developers and managers of Affordable Housing projects by January 1, 2023. (F7)

Not Applicable

R5. By January 1, 2023, the nine Cities develop informational documents and policies to provide both upfront and ongoing training in the monitoring and compliance procedures for developers and managers of Affordable Housing projects. (F8)

The recommendation will be implemented in the future. The City already has a training program for HOME and CDBG program operations and monitoring. That program can be expanded to meet the requirements for all funding sources.

R6. By November 1, 2022, the nine Cities meet and discuss to jointly or individually utilize Affordable Housing monitoring software. (F9)

The recommendation has been implemented. The County has already scheduled these meetings. The City has built out City Data Systems, and it is fully implemented. The County will be using another database system. We could consider switching the database if needed, but much time went into building our existing system.

R7. By November 1, 2022, the nine Cities meet and discuss pooling resources to fulfill their monitoring responsibilities, through either a consultant or designated employees. (F11)

The recommendation requires further analysis. The City is willing to collaborate on any regional solutions that make sense. The County may be the best entity to build the regional system. With existing staff and on-call consultants at this time, the City feels we have the resources to properly implement our monitoring responsibilities.

R8. By December 31, 2022, the Sonoma County Community Development Commission and the nine Cities should update and maintain their inventory of Affordable houses within their jurisdictions and verify that all their property titles are flagged for restricted sale. (F10)

The recommendation will be implemented in the future. Petaluma will be working with the Housing Land Trust on this recommendation.

Affordable Housing: Past, Present and Future

“Do It, or the State Will Do It For You”

SUMMARY

Housing in Sonoma County is widely considered to be in short supply and very expensive. The State of California, working through the Association of Bay Area Governments, has mandated that in the next few years 14,562 new houses and apartments should be built in the County. Specific allocations give approximately one-third of the units to Santa Rosa, one third to the other eight Cities, and one-third to the unincorporated areas of the County. This housing expansion is expected to occur between 2023 and 2031 as part of the State’s larger strategic plan; it is referred to as the 6th cycle housing element, following a much less ambitious 5th cycle covering 2015 to 2023. The 5th cycle plan was essentially aspirational and advisory. The 6th cycle plan is mandatory; jurisdictions that do not meet expectations can be fined or even lose local control of housing to the State.

Of the almost 15,000 new homes and apartments in the allocation, more than half are designated as Affordable Housing for very low, low, and moderate-income families. These income categories are defined by the U.S. Department of Housing and Urban Development (HUD) in relation to the Area Median Income (AMI), which is determined annually by HUD. For Sonoma County, the 2022 AMI for a family of four is \$103,300. HUD then defines very low income as 30-50% of AMI, low income as 50-80% of AMI, and moderate income as 80-120% of AMI. (Some programs define low-income as below 60% of AMI.) The 6th cycle allocations for Sonoma County include 3,999 very-low-income units, 2,302 low-income units, and 2,302 moderate income housing units.

Affordable Housing costs cannot exceed 30% of a family’s gross income. This means that rent and utilities for a family of four earning \$50,000 cannot exceed \$15,000 per year or \$1,250 per month, regardless of the much higher market price of equivalent housing. To be economically viable, Affordable Housing development employs a variety of subsidies, inducements, and demands. This report examines factors that affect the development of Affordable Housing, both positive and inhibitory. A companion report, *“Affordable Housing: Monitoring and Compliance,”* looks at governmental oversight of existing Affordable Housing.

Some housing developments are 100% Affordable; every apartment in the complex is rented at a rate determined by family gross income. Affordable Houses are sold on the same basis. These developments are usually created by non-profit, mission-oriented organizations, and they rely heavily on grants, subsidies, and concessions. A second type of development, referred to as inclusionary housing, requires Affordable Housing units to be included within a market rate development. Different inclusionary housing ordinances govern Sonoma County and each of its Cities. They specify that 5% to 20% of apartments or houses, in projects of five to ten or more units, must be dedicated in one or more of the Affordable Housing categories.

Many programs exist to support construction of Affordable Housing. Financing is usually a central concern. Federal tax credits, which can be sold to investors to provide cash for planning and construction, are the most common. Low interest long term loans and HUD loan guarantees

also provide financing. Grants are sometimes available, often to support Affordable Housing directed to specific groups such as farm workers, veterans, or seniors. Builders of Affordable Housing may be eligible for specific concessions such as reduced or waived costs for fees, expedited review, modification of housing density limitations, or reduction of requirements for amenities such as off-street parking or landscaping.

Recent changes in the State law also encourage the production of Affordable Housing. California Senate Bill 9 allows, with specific limitations, construction of a second rentable house on an existing lot. Senate Bill 10 encourages zoning changes that allow the development of smaller projects as infill, within existing neighborhoods and especially near public transit centers such as SMART stations or bus hubs. Senate Bill 35 allows qualifying projects with at least 50% Affordable Housing units to move more easily through the approval process and restricts the ability of local governments to reject qualifying projects. Other laws simplify construction of rentable Accessory Dwelling Units (sometimes called in-law units) on a lot with an existing house.

There are also many impediments to the creation of Affordable Housing. Land costs in Sonoma County are high and typically constitute about 20% of the cost of a project. The availability of financing is highly competitive and very complex. Proposals are subjected to careful scrutiny and analysis before consideration, and the process is very slow. For example, federal loan guarantees may take seven months to a year for approval. Projects normally need several different forms of financing, each of which has its own application procedures, regulations, and timetable.

Inclusionary housing ordinances differ for each jurisdiction in the County. The same is true of various mitigation fees, designed to offset the costs to the jurisdiction of additional demand for parkland, fire and police services, sewage, traffic, and separately to school districts. There are also different fees and procedures for building permits in the Cities and County. The complexity generated by different fees and rules, each subject to interpretation, increases the cost and difficulty of building Affordable Housing. The cost of permits and mitigation fees is significant; a range of 11-20% of building costs is cited by several interviewees.

A major problem in the development of Affordable Housing is public opposition, often summarized by the phrase “Not In My Backyard” or the acronym NIMBY. Opposition takes many forms: anti-development or environmental concerns, traffic worries, potential property value losses, and more, including both open and unspoken racial and ethnic prejudices. It is vital that local opinions are heard and that accommodations be made whenever reasonable. Several interviewees indicated that no Affordable Housing will be built if a small number of opponents cannot compromise.

This is a self-initiated report by the 2021-2022 Sonoma County Civil Grand Jury (Grand Jury). The Grand Jury makes several recommendations that could simplify and accelerate the development of Affordable Housing and help the County and its Cities reach their Regional Housing Needs Allocation mandates.

GLOSSARY

- ABAG Association of Bay Area Governments
- ADU Accessory Dwelling Unit
- AMI Area Median Income
- CDC Sonoma County Community Development Commission

- CEQA California Environmental Quality Act
- HAP Housing Assistance Payments
- HLT Housing Land Trust of Sonoma County
- HUD U.S. Department of Housing and Urban Development
- JADU Junior Accessory Dwelling Unit
- LIHTC Low Income Housing Tax Credits
- NIMBY Not In My Backyard
- RHNA Regional Housing Needs Allocation
- SCHA Sonoma County Housing Authority
- YIMBY Yes In My Back Yard

BACKGROUND

In 2021, The Press Democrat published a series of articles detailing the rental of Affordable Housing units to unqualified individuals at an apartment development near Santa Rosa. The Grand Jury also received citizen complaints about this particular situation. A companion report, *Affordable Housing: Compliance and Monitoring*, details the Grand Jury’s investigation of the general problem of oversight of existing Affordable Housing in Sonoma County. Further questions arose during the investigation, leading the Grand Jury to an expanded look into Affordable Housing in the County and its cities.

The term ‘affordable housing’ can have different meanings depending on context:

“**AH**” = In this report and more generally in the housing industry, we use capital letters to identify Affordable Housing as apartments or houses that are potentially available to rent or are deeded as Affordable for those who earn a specified percentage of the median income.

“**ah**” = Lower case letters are used to differentiate between the two meanings of affordable housing; “ah” is a more general term. An apartment that rents for \$3,500/month might be affordable to a company executive but may not be affordable to a junior employee, a retiree, or a person with disabilities.

Affordable Housing in the context of this report refers to housing that is priced on the basis of ability to pay, and not on the market rate of a rental apartment or of a house to buy or rent. Affordability is defined relative to the Area Median Income (AMI), the income at which an equal number of families earn more and an equal number of families earn less. The AMI value is determined annually by the [U. S. Department of Housing and Urban Development](#) (HUD) and is specific to an area.

The AMI for a family of four is derived from selected census data. As of January 1, 2022, this value for Sonoma County is \$103,300. This number is updated annually. AMI values for other sized families are determined mathematically using this number as a basis. Four-person family income limits that define eligibility for Affordable Housing are then defined in several categories as shown below.

Category	Percent of AMI	Maximum Annual Income
Acutely Low Income	15%	\$15,500
Extremely Low Income	30%	\$34,900
Very Low Income	50%	\$58,150
AMI*	60%	\$69,780
Low Income **	80%	\$93,050
Median Income	100%	\$103,300
Moderate Income	120%	\$123,950

Table 1. Income Limits to Qualify for Affordable Housing

Source: CDC

*60% of AMI is used as a data point for other programs using the local region’s “Housing Affordability Index” (HAI)

**HUD defines Low income as 50-80% of AMI and Very Low Income as 30-50% of AMI to qualify for Section 8 housing vouchers.

Annual costs for Affordable Housing are then determined as a maximum of 30% of gross income. As an example, a family of four with a gross income of \$45,000 would be classified as Very Low-Income. Their maximum housing costs would be 30% of \$45,000 or \$13,500 per year / \$1,125 per month. Utilities are included within the 30% limit, as are property taxes and insurance for owner-occupied housing. The calculations above are only relevant if an Affordable Housing unit is available. Housing officials, builders, and advocates have all told this Grand Jury that Affordable Housing units are in very short supply with long wait lists.

The Association of Bay Area Governments (ABAG)

The [Association of Bay Area Governments](#) (ABAG) periodically evaluates the housing situation in the region, including Sonoma County, and makes recommendations for specific housing goals. The County is currently involved in planning its [6th Cycle Housing Element](#), a part of the County’s general plan. The housing element includes:

- A housing needs assessment.
- Evaluation of past performance—in this case 5th cycle success or failure.
- An inventory of potential housing sites.
- Community outreach.
- Analysis of constraints and barriers to housing development.
- Establishment of policies and programs to meet the goals.

The 6th Cycle Housing Element covers the period of 2023 to 2031. [Regional Housing Needs Allocation](#) (RHNA) from ABAG demands a large increase in all areas of the County, including significant numbers of new Affordable Housing units. For example, unincorporated Sonoma County is mandated to create 3,881 new housing units—apartments or single-family homes—during this period, and 1,632 of these should be Affordable in the low and very-low income categories. This is a sharp increase over the total of 515 units allocated to unincorporated Sonoma County in the 5th cycle. The nine cities of the County also have specific 6th cycle allocations as shown in Table 2.

Jurisdiction	VERY LOW INCOME (<50% of Area Median Income)	LOW INCOME (50-80% of Area Median Income)	MODERATE INCOME (80-120% of Area Median Income)	ABOVE MODERATE INCOME (>120% of Area Median Income)	TOTAL
SONOMA COUNTY					
Cloverdale	74	43	45	116	278
Cotati	60	34	39	101	234
Healdsburg	190	109	49	128	476
Petaluma	499	288	313	810	1,910
Rohnert Park	399	230	265	686	1,580
Santa Rosa	1,218	701	771	1,995	4,685
Sebastopol	55	31	35	92	213
Sonoma	83	48	50	130	311
Unincorporated Sonoma	1,036	596	627	1,622	3,881
Windsor	385	222	108	279	994
TOTAL	3,999	2,302	2,302	5,959	14,562

Table 2: The Final RHNA Allocation

Source: [ABAG Regional Housing Needs Allocation \(RHNA\) Plan 2023-2031](#)

RHNA allocations in the past have been strong recommendations and housing goals for Sonoma County and its nine cities. These recommendations and goals have not always been met. Recent legislative changes make the 6th cycle allocations more of a mandate, with the threat that if counties or cities do not fulfill their obligations, they can be fined and even lose authority to the State over their housing programs. The chart in Appendix A outlines this process.

In this report the Grand Jury examines the larger questions surrounding the need for additional housing in Sonoma County, and in particular its shortage of Affordable Housing. What is planned? What progress is being made? What are the incentives? What are the obstacles to meeting housing goals? This is a self-initiated investigation of a topic of wide concern and activity.

METHODOLOGY

For this investigation, the Grand Jury conducted 21 interviews including:

- Housing representatives from Sonoma County and its nine cities
- Individuals involved in planning, construction, and management of Affordable Housing
- Housing advocates and advisors

The Grand Jury also examined multiple websites and documents dealing with aspects of Affordable Housing policy, programs, and regulations. In addition, Grand Jury members attended public meetings on this topic.

DISCUSSION

California is infamous for its housing costs and shortages, and Sonoma County is no exception. Based on house sales data, The Press Democrat reported median resale house prices in January 2022 exceeded three quarters of a million dollars in the County; median prices in Healdsburg or along the coastline were twice as high. Houses that were too expensive a year ago are more expensive now. The State of California recognizes that we have a housing crisis, and in

particular a significant shortage of Affordable Housing. Sonoma County has become a place where people with ordinary incomes cannot afford to live.



Factors that Favor the Development of Affordable Housing

Governmental Policies and Commitment

The State of California has mandated the creation of new housing, including significant amounts of Affordable Housing. This mandate is quantified through the Association of Bay Area Governments (ABAG) determination of needs in the San Francisco Bay Area. ABAG allocates housing units through its Regional Housing Needs Assessment (RHNA) for the 6th Cycle Housing Element. Sonoma County and each of the nine Cities officially favor increasing the supply of housing, although not always with full acceptance of RHNA allocations. Results from the 5th Cycle Housing Element are also informative. Although the 5th cycle continues through the end of 2022, and all housing jurisdictions reported progress, though not all their goals, such as those for low-income and very low-income units, will be attained. Fifth cycle allocations were recommendations, and they were small compared to the 6th cycle requirements. The jurisdictions will need to increase their efforts to avoid the possibility of State sanctions or State assumption of local control over housing: *“Do It, or the State Will Do It For You”*

Changes in Law

The State of California has passed several new laws to encourage housing development in general, and Affordable Housing in particular.

- [SB 9 Housing Development: Approvals](#), which took effect January 1, 2022, allows construction of a second full unit on a lot that already has a single-family home or duplex. Because cities and counties maintain local control under SB9, and can impose limitations on lot size, etc., it is unclear how often it will be used. It allows larger structures than the existing [Accessory Dwelling Unit](#) (ADU) or ‘in-law’ unit, and can be available for rent. This law also allows for the modification to an existing dwelling unit to include rentable space as a Junior Additional Dwelling Unit (JADU). However, in most jurisdictions, there is no guarantee that the ADU or JADU will be affordable housing.
- [SB 10 Planning and Zoning: Housing Development: Density](#), which took effect January 1, 2022, eases the development of small housing complexes (10 or fewer units) as infill within cities or near transit hubs such as SMART stations or bus hubs. Infill can be described as building on unused and underutilized lands within existing development

patterns. The Governor's Office of Planning and Research states that infill is critical to accommodating growth and redesigning our cities to be environmentally and socially sustainable. While maintaining local control, SB 10 allows pro-housing governments to re-zone appropriate land parcels with fewer potential roadblocks. It does not change the approval process for the building(s).

- [SB 35 Planning and Zoning: Affordable Housing: Streamlined Approval Process](#), has been in effect since 2018. It allows qualifying projects with at least 50% Affordable Housing units to move more quickly through the approval process. It also restricts the ability of local governments to reject qualifying projects, and in some cases removes requirements for [California Environmental Quality Act](#) (CEQA) review of the project.
- [SB 330 Housing Crisis Act of 2019](#), modifies planning and zoning law. It prohibits local jurisdictions from enacting new laws or raising administrative barriers that would reduce or delay housing construction. This law was set to expire in 2025, but [SB-8](#) (2021) extends parts of the legislation to 2030 and 2034.
- [AB 491 Housing: Affordable and Market Rate Units](#), enacted in 2021, requires that Affordable Housing apartments in multifamily developments be integrated within the complex and have the same access to common areas and amenities. [AB 1043](#) (2021) adds "Acutely Low Income", defined as below 15% of AMI, as a category of lower income households that can be targeted for Affordable Housing.

Local housing ordinances have also been passed or modified to increase the percentage of Affordable units in a project and to lengthen the time period that the units must be rented as Affordable Housing. Many earlier projects had 30-year timespans for required affordability while current restrictions usually range from 50 to 99 years.

Paths to Affordable Housing

The two major paths to the creation of Affordable Housing are:

- *100% Affordable Housing complexes*: In this type of project, every apartment or house is intended to be available under the umbrella of Affordable within one or more of the categories of Table 1. These developments are most often apartment complexes, built and managed by not-for-profit organizations such as Burbank Housing and Mid Pen Housing. These organizations are mission-oriented; they exist to provide Affordable Housing.

Projects are often opportunistic in that they depend heavily on the availability of land, often publicly owned. In addition, funding may be directed toward a specific need such as senior housing. Commercial builders may also construct 100% affordable projects.

- *Inclusionary Housing*: Sonoma County and its cities have adopted ordinances that mandate that a percentage of apartments or houses in a development must be Affordable. The mandate usually applies only when a development includes at least some specific number of units, typically 5 to 10. The percentage of Affordable units varies with the jurisdiction, usually 10-20%, often divided between low-income and very low-income. The inclusionary units must remain Affordable for a defined time period, typically 50 years or more. Inclusionary housing ordinances guarantee that the supply of Affordable Housing will grow in conjunction with market-rate housing. They also foster integration

of Affordable units within market-rate developments, leading to greater economic diversity.

Less common routes include:

- *Rehabilitation and Repurposing*: A variation on the theme of new building is rehabilitation and re-direction of an existing complex. For example, an apartment building could be purchased, then updated or rehabilitated, and re-occupied as Affordable Housing. Likewise, a motel can be remodeled and repurposed as transitional housing.
- *Housing Land Trusts*: A less common avenue to Affordable Home ownership is exemplified by a Housing Land Trust. The Housing Land Trust maintains ownership of the land on which a house is built; the house is sold in accordance with Affordable Housing income limits.
- *Accessory Dwelling Units*: ADUs are additional housing units that are legally added to a residential property. Sometimes referred to as in-law units, they can be attached to or separated from the existing residence. ADUs may be new construction or converted from existing space. A Junior ADU (JADU) is a smaller version of an ADU. It is an independent, legally rentable unit that must exist within the existing dwelling unit or an attached accessory structure such as a garage. They can contain a very simple kitchen with small appliances and share a bathroom with the original dwelling. Consequently, development costs for JADUs are lower. Both ADUs and JADUs can be rented.



Who Builds Affordable Housing?

Non-Profit/Mission-Oriented Builders

Mission-oriented non-profit organizations such as Burbank Housing and MidPen Housing construct and manage developments in which every unit is Affordable. These organizations exist for the sole purpose of providing high-quality housing for those who cannot afford to rent or buy market-rate accommodations. They are widely respected and supported within Sonoma County.

Builders of Inclusionary Housing

Most housing developments within Sonoma County are required to include some percentage of Affordable units. They fall under inclusionary housing ordinances, which are in effect in Sonoma County and all of its nine Cities. Requirements vary, but most include provisions for both low-income and very low-income units. The ordinances typically specify that inclusionary units must be comparable to the market-rate units with respect to appearance, appliances, access to amenities, etc. Units cannot be concentrated in one building or area, but should be integrated throughout the development. The intent is to make the inclusionary houses or apartments difficult to identify as Affordable Housing and thus to avoid stigmatization.

A developer may decide that the mandated number of inclusionary units is inappropriate for the project. Most ordinances have provisions that allow payment of an in-lieu fee to either reduce or eliminate the inclusionary requirement. If 'feeing out' is approved by the jurisdiction, the fees

go into a housing fund to support construction of Affordable Housing. Unfortunately, these fees rarely provide enough funding to actually build an affordable unit.

While a few jurisdictions support feeing out as a way of providing more flexibility to support future Affordable projects, other governing bodies oppose or have eliminated the payment of in-lieu fees as counter to the desire for more Affordable Housing.

Housing Land Trust of Sonoma County

The [Housing Land Trust of Sonoma County](#) (HLT) is a non-profit organization supporting low- or moderate income housing. In the housing land trust model, the land on which a house (or possibly a condominium) is built, is owned by the HLT while the house itself belongs to the purchaser. The family income of the buyer, usually with zero down payment, determines the purchase price of the house. The owner is then responsible for the mortgage and taxes plus a small monthly lease payment on the land. The house deed is restricted; any resale must be in the category (low or moderate income) of the original purchase. Thus the house remains Affordable through the period of the land lease, usually 99 years. HLT houses can be inclusionary units in a development or one-off opportunities. The land title can be deeded to the HLT by the developer, donated by an owner or government agency, or purchased by the HLT.

Manufactured and Factory Built Housing

Both manufactured and factory-built housing have cost advantages over conventional construction methods and thus can increase the supply of Affordable Housing.

- Manufactured housing generally refers to homes that are built totally in a construction facility and transported intact to a site such as a mobile home park. The cost of manufactured homes is typically less than that of custom-built homes. They are also more limited in size and design. Often the land on which a home sits is not owned by the homeowner, and rent must be paid. Although construction standards have improved, manufactured homes may still carry the stigma of being flimsy and unlikely to increase in value.
- Factory built housing refers to housing that is often modular, constructed in a facility and transported and assembled on a building site. It can be considerably less expensive than traditional on-site building. Modules can be more easily adapted to meet local building codes, and its design can be much more flexible than manufactured housing. However, many of the cost advantages of factory-built housing can be negated by long transportation distances and associated costs.

Rehabilitation of Existing Housing

Older apartment buildings may have included Affordable units that had shorter term restrictions (e.g. 30 years) before reverting to market rate. Other apartment buildings, motels, or homes may simply become available for purchase. If funds are available, developers or jurisdictions can purchase such properties, modernize or rehabilitate them, and repurpose the units as Affordable Housing.

[Project Homekey](#), a successor to Project Roomkey, is a statewide effort to combat homelessness. Administered by the [California Department of Housing and Community Development](#), it makes grants to local housing entities to enable them to develop interim or permanent housing for unhoused people. Rehabilitation through Project Homekey has been used to purchase and re-

purpose the Azura Hotel in Santa Rosa and the Sebastopol Inn in Sebastopol. They were then repurposed and converted into accommodations and support services for homeless individuals who were highly susceptible to COVID-19 infection. Both properties will eventually be converted to permanent Affordable Housing for households earning no more than 30% of AMI.

Targeted Housing

Affordable Housing is sometimes targeted to specific groups. Often the availability of directed funding provides an opportunity to generate Affordable Housing for defined populations. Senior Citizen housing complexes are the most common. Based on available funding from the [U. S. Department of Agriculture](#), a recently approved project in Cloverdale specifies housing for agricultural workers. Veterans, individuals with disabilities or special needs or other groups may qualify for specific projects.

Incentives to Build Affordable Housing; Loans, Grants, Tax Credits

The cost of building an Affordable house or apartment is not inherently different from the cost of building a market-rate property, but the potential income from the Affordable unit is significantly less. Incentives are used to help projects be economically viable. A summary of these programs is provided below. A more detailed listing of programs is presented in Appendix A.

Federal Programs

- [Low Income Housing Tax Credits \(LIHTC\)](#): This program is the most important Affordable Housing support mechanism, worth \$8 billion per year. The credits are issued to the states by the Federal Government. State housing agencies award the credits to developers of Affordable Housing. Developers can then sell the credits to investors to obtain funding for a project.
- [Community Development Block Grants \(CDBG\)](#): This HUD program allocates funds on a formula basis to states, counties and cities for projects that improve the quality of living for residents whose incomes are less than 80 percent of the AMI. Examples include housing acquisition, rehabilitation, and provision of homeless shelters.
- [HOME Investments Partnership Program](#): This program provides block grants to states and localities that are often used in partnership with local nonprofit groups to build, buy, or rehabilitate Affordable Housing.
- **Federal Loan Guarantees**: HUD has several programs that provide federal backup for long-term low interest fixed rate fully amortized loans. These loans usually range from \$2 million to \$100 million, with no upper limit. Affordable Housing properties have additional concessions and can be combined with the (LIHTC) program.

State Programs

- [Affordable Housing and Sustainable Communities](#): This program invests cap-and-trade money in Affordable Housing infill projects close to transportation services and infrastructure. In 2022, this program provides \$130 million from the Greenhouse Gas Reduction Fund.
- [Building Homes and Jobs Act \(SB 2\)](#): This Act created a trust fund for Affordable Housing through a \$75 recording fee, charged every time real estate documents are recorded.

- Multifamily Housing Program (SB 3): The [Veterans and Affordable Housing Bond Act of 2018](#) provides \$1.5 billion in bonds for this program which provides deferred payment loans for projects related to permanent and transitional rental Affordable Housing.
- [No Place Like Home](#): A 2016 Bond issue provides money in the form of noncompetitive funding and competitive grants for housing the unhoused and people living with mental illness. The actual funding started in 2019.
- [California Housing Finance Agency \(CalHFA\) Loans](#): CalHFA offers low, fixed-rate mortgage products, as well as down payment and closing cost assistance to provide Affordable Housing opportunities for developers and low to moderate income first-time home buyers.
- [Infill Infrastructure Grant Program](#). These grants provide gap funding for infrastructure improvements on qualifying infill housing projects.

Sonoma County and Local Funding programs

- [Sonoma County Fund for Housing](#) (CFH): CHF was established in 2003 to provide financial assistance for the development and preservation of low, very low, and extremely low income Affordable Housing. CFH provides loans and grants from various sources such as developer in-lieu fees, transient occupancy taxes and CFH loan processing fees.
- Cities: Some cities utilize the fees that developers pay to fund Affordable Housing projects. Impact fees assessed on new residential developments, in-lieu fees, and linkage fees assessed on new commercial developments provide the funds.

Concessions

A variety of modifications to requirements for new construction are intended to increase the supply of Affordable Housing. Some of the most common are:

- Density bonuses: Zoning ordinances usually define the maximum allowable residential density on a site. Inclusion of greater than required numbers of Affordable units can allow up to 50% higher density in a project, resulting in increased potential revenue.
- Fee reduction or waiver: Some jurisdictions may waive or reduce mitigation fees for Affordable Housing. This is common for ADU and JADU construction; for example, Petaluma waives fees on ADUs of less than 750 square feet. Fee waivers are also sometimes possible for other Affordable Housing construction projects. Santa Rosa has a fee reduction program for high density multi-unit Affordable Housing in the downtown area. Fresno allows deferral of all mitigation fees until an Affordable Housing unit is occupied, and recently expanded a fee waiver program for infill and transit-oriented units.
- Development incentives: A variety of concessions or incentives support construction of Affordable Housing. For example, in return for increased inclusionary units, the Shiloh Terrace project in Windsor proposed a reduction in the number of parking spaces, changes in height restrictions and a reduction in open space requirements.



- California Environmental Quality Act (CEQA) waivers: CEQA serves to inform the public on environmental effects of proposed discretionary projects through environmental impact reports. Under some circumstances, CEQA requirements can be waived to speed up the process.
- There can be flexibility in other site-specific factors such as public transportation access, numbers of trees, covered parking spaces, walkability of the area, playground space, etc.



Public Education

Public opposition to housing growth is common, and informational programs and processes can help modify public opinion. Sonoma County and its cities all provide information on their websites that is intended to increase public awareness of local policies. Planning documents such as [Sonoma County Five-Year Strategic Plan 2021-2025](#) outline housing policies and goals, including Affordable Housing. Generation Housing, a Sonoma County advocacy group, provides educational materials such as [State of Housing in Sonoma County, January 2022](#), and a housing project tracking tool that provides identification and status information on Affordable Housing projects in the County. There is even a public support movement, Yes In My Back Yard ([YIMBY](#)), that argues for increased housing density in cities.

Factors that Inhibit Development of Affordable Housing

Although there is Federal, State and local support for the concept of Affordable Housing and there are many programs to support it, there are also barriers that keep its supply well below its demand. Some of these barriers are common to all housing construction, and some are more specific to Affordable Housing.

Public Acceptance of Affordable Housing - NIMBY: Not in My Backyard

The need for more housing, including Affordable Housing, is officially recognized by the State of California, Sonoma County, and its nine cities. These housing needs are widely understood but not universally endorsed by the public and some cities, especially with respect to Affordable Housing. Often an opinion, stated as “*Affordable Housing in some other city or county*” is more popular than “*Affordable Housing in my town*”, which is perhaps better than “*Affordable Housing in my neighborhood*” and much more acceptable than “*Affordable Housing next door to me.*” The strongest opposition to a project most often comes from those it most immediately

affects. Factors that contribute to [Not In My Backyard](#) (NIMBY)ism with respect to Affordable Housing include:

- Fear of any new development that will change the character of the County, city, or neighborhood. Many residents of Sonoma County are simply happy with the way things are. Many came here to escape more crowded environments. They see no need for population growth, more houses, new apartment complexes, high-rise buildings, busier roads, or losing their view, etc.
- Fear and misunderstanding of Affordable Housing residents: Affordable Housing is often seen as solely aimed at groups who will, in accord with negative stereotypes, alter or degrade the neighborhood. It should be noted that ordinances demand that Affordable Housing developments and houses be compatible with their neighborhoods and not stand out as different or of inferior construction. Inclusionary apartments should also be interspersed with the market-rate apartments in a multi-unit building.
- Environmental concerns: In 2006 Sonoma County voters strongly supported the reauthorization of a 1990 sales tax increment to fund the Sonoma County Agricultural Preservation and Open Space District. The rural and agricultural nature of the County is seen by some as incompatible with growth. Support for CEQA is generally high. Water shortages due to continuing drought, air quality degradation from more traffic, and loss of wildlife habitat are cited as concerns. Many environmentalists favor new housing, especially infill, because denser, city-centered developments, and modern construction methods can be more effective in reducing water and energy usage.
- Infrastructure and resource concerns: New housing means more traffic and congestion, more streets and roads, more schools, stores and offices, more sewage and trash, yet all within the limitations of water, land, transportation, and the costs to the community of expansion. Residents fear that they will be paying the costs of newcomers, even though general housing expansion and Affordable Housing development are aimed at current Sonoma County residents who cannot find or afford a decent place to live.
- Property value concerns: There is a common fear that the presence of Affordable Housing will lower the value of existing properties nearby. [Don't Put it Here!](#), a study from the New York University Furman Center, found that Affordable Housing had neither a positive nor a negative effect on nearby property values. A review of several studies by the Urban Studies Program at San Francisco State University found no effect on nearby property values in 13 of 14 investigations.
- Natural disaster preparedness: Sonoma County has experienced major disasters in the last few years and needs to be prepared for the next challenge: fire, flood, or earthquake. Many areas in the County have only one or two potential escape or access routes. In an emergency, roads could quickly become impassable, overcrowded, or clogged with traffic. More housing raises fears of reduced safety. This concern needs attention from emergency management entities regardless of additional housing; it is not solely a concern for new housing.
- Racial and ethnic concerns: Few people openly admit to racial or ethnic prejudice. Nevertheless, racial and ethnic stereotypes, although often unspoken, remain. There is concern that *those people* will not “fit into the neighborhood”. A potential cultural

enrichment is seen as a threat. This is a problem that extends far beyond Sonoma County and needs to be understood and countered nationally and beyond.

Inconsistent and Complex Governmental Regulations and Commitment to Affordable Housing

Although all jurisdictions in Sonoma County support the addition of Affordable Housing, the levels of support, commitment, and accomplishment are not uniform.

- Inclusionary housing ordinances vary widely from city to city. The minimum number of units in an inclusionary development can be 5, 7, or 10 depending on city policy. In-lieu fees can be welcomed, tolerated or prohibited. The minimal number of inclusionary units ranges from 5% to 25%, with most jurisdictions requiring 15%. The mix of low, very low, and (sometimes) extremely low priced units is inconsistent between cities. Santa Rosa and Petaluma have different requirements that favor city center developments over those outside the inner core.
- Zoning ordinances in some cities favor single family home construction over multi-family housing. Affordable single family homes for purchase are often directed at moderate (up to 120% AMI) or median income levels, whereas Affordable rental apartments are more commonly directed at low income (less than 80% or less than 60% AMI) or very low income (less than 50% AMI) families.
- Lack of political will from County officials or city councils: Elected officials are expected to consider the opinions of their constituents, and sometimes there is strong opposition to a project. For example, a project in Cloverdale was approved by a split vote in early 2022, but only after two council votes and considerable discussion. The City of Sonoma created or expanded three historic districts early in 2022, greatly limiting the possibility of expanding housing in those areas. The [North Bay Bohemian](#) cites a recent ordinance in the City of Sonoma that requires that any property on which a second housing unit is proposed must have at least three mature trees and ten shrubs. These requirements would limit SB 9 implementation. In addition, a [proposed multi-unit development in Sebastopol](#) has been on-hold since 2019 due to public concerns, but may be able to move forward based on SB 35 implementation.
- Commercial development may be considered more favorably than housing, including Affordable Housing. Interviews with housing officials indicated that new housing had a negative impact on their budgets. Despite mitigation fees and taxes, services for new residents usually cost more than the income they bring to the jurisdiction. In contrast, a large commercial development such as a car dealership or a big box store brings in added sales taxes while not requiring social services, new schools, parks, etc. Similarly, a hotel generates occupancy taxes for a city.
- City Boundaries and Their Spheres of Influence: Each City has a well-defined boundary within which it has jurisdiction. The [Sonoma Local Agency Formation Commission](#), which regulates city and special district boundaries, delineates Spheres of Influence: areas adjacent to the cities and potentially appropriate for annexation and siting of Affordable Housing. Cloverdale has utilized this, resulting in City Council approval of the design and development plan for the Bumgardner Ranch Project in September 2020. Other jurisdictions have hesitated to annex adjacent property. Most cited the costs of bringing infrastructure (water, sewers, roads, parks and other amenities) to the added territory in order to develop it into housing.

- In November 2018, Santa Rosa voters defeated an Affordable Housing bond measure (Measure N), and Sonoma County refused to put a similar measure on the ballot. Additionally, some housing advocates we interviewed don't think Affordable Housing measures would pass today because of low levels of public acceptance.

Land and Construction Costs

Any factor that increases building costs has a disproportionate effect on Affordable Housing, since higher costs cannot be offset with higher rents or house prices. Land values in Sonoma County are high and rising. In their 2022 report *State of Housing in Sonoma County*, Generation Housing (Gen H, a non-profit advocacy group), indicates that the average cost of a quarter acre home lot rose 117% between 2012 and 2018, from \$128,100 to \$278,600. The land accounted for 34.7% of the cost of building a house. Apartment developments require less land per unit than individual houses. Nevertheless builders report that land costs usually represent about 20% of the cost of such projects.



Skilled and unskilled building workers are in high demand and able to command good wages. It can be hard to find construction workers. Interviewees indicated that project labor agreements (or prevailing wage agreements) can add to labor costs by as much as 20-30%. Construction materials are also currently expensive and hard to get because of pandemic-induced supply problems. Lumber prices surged in 2021, and components that had been plentiful remain scarce. A [New York Times article](#) in February 2022 indicated it took 20 weeks to acquire a garage door, without which a house normally cannot get an occupancy permit. Other shortages of materials can delay projects for weeks.

Availability and Complexity of Financing

There are many government programs that help finance Affordable Housing, yet there is never enough money to fund everything. Funding programs are almost all highly competitive, and application processes are complex and slow. For example, HUD advises applicants for Section 221(d)(4) loan guarantees that the time to complete the process is 7 to 12 months; documentation requirements are extensive and carefully checked, and application fees are significant.

- 100% Affordable Housing projects can have larger hurdles to overcome. Extensive evaluation of the site, project details, local need, and especially the economic viability of the project need to be documented in detail. Financing is particularly complex. One person interviewed by the Grand Jury described a 100% Affordable Housing project that needed ten different sources of funding, and that a typical project uses seven. Multiple funding sources often have different affordability, documentation, monitoring, and timing requirements.

Complex Multistep Approval Processes

Even when a jurisdiction is strongly pro-housing, the pathway from concept to finished construction is complicated. For a typical inclusionary or 100% Affordable Housing project, steps include:

- Site identification and acquisition: A private builder may already own appropriately zoned land or be able arrange a loan and purchase through normal channels. A non-

profit organization might first need to arrange low cost loans or grant funding for the purchase, or it could also depend on a donated site with restrictions on how it could be developed. This step may take a few months to over a year.

- Preliminary design reviews: County or local design review boards concern themselves with multiple aspects of the project, including geology of the site, appropriateness of the project, housing density, size and appearance of the buildings, space use, landscaping and amenities, site access and parking, neighborhood impact, environmental considerations, access to utilities, and access to public transportation and services. Financing for the project may be arranged, or at least in process. Public opinion is sought, and hopefully an economically viable project is given preliminary approval. This step usually takes several months to more than a year, and occasionally a project can lie dormant for longer periods.
- Final design and approval involve public review, payment of a variety of mitigation fees, procurement of permits, and approval by city or county authorities. At this stage there may be modifications to plans to accommodate public or environmental concerns. Sometimes a builder might want to alter the number of Affordable units by the payment of in-lieu fees. Funding must be finalized. This step may also take several months or more to complete.
- Construction can now begin. Recent shortages of materials and labor have slowed this step. It is in the interest of the builder to complete the project quickly since money is being spent but no rents are being collected.

Builders interviewed by the Grand Jury indicated that the process from concept to occupied housing usually takes four years or more. 100% Affordable Housing projects can be slower because of the greater complexity of obtaining funding.

The planning stages, which include negotiations between builders and planning staff, can be lengthy and involved. Several individuals the Grand Jury spoke with were critical of the complexity and bureaucracy involved in the planning process. Builders felt that their concerns were sometimes not understood.

CEQA Exploitation and Misuse

The California Environmental Quality Act was passed in 1970 with the aim of identifying and mitigating the environmental effects of public projects. As detailed in a recent article in [The Atlantic](#), the scope of CEQA has expanded to cover almost any private project that requires a level of governmental approval. CEQA lawsuits are relatively easy and inexpensive to bring, but they can demand lengthy and expensive environmental studies and significantly delay a project, add to its costs, and even cause its abandonment. Studies cited in the article indicate that multifamily housing is the most common target of CEQA lawsuits, and that up to 80% concern infill housing, projects that are often likely to be more environmentally friendly than e.g. industrial construction. California SB 35 attempts to limit arbitrary use of CEQA.

Mitigation Fees: What Keeps Them from Building Quickly or At All

Additional housing, including Affordable Housing, adds to the need for infrastructure and government services, such as fire and police. Mitigation fees, levied on both new construction and remodeling of housing, are designed to offset some or all of these costs. Fees vary widely in

Sonoma County, but all are a significant cost of development. As an example, the fee schedule for Sebastopol is shown below.

Purpose	Single Family House	Multiunit Apartment (per unit)
Park Land	\$7,276	\$4,958
Park Facilities	5,922	4,036
Traffic Impact	8,174	4624
General Government	3,017	2,056
Fire Facilities	1,000	681
Stormwater Facilities	5,502	2,830
Total	\$30,891	\$19,185

Every other jurisdiction has its own set of fees, and both the amounts and the nature of the charges are different in each jurisdiction. For example, in Cloverdale, the list of fees is different, but the average total shown on their website is about \$41,000 for a house and \$30,500 per apartment unit. In January 2022, the fee total for a single family house in Santa Rosa was \$51,862. In Windsor, traffic mitigation fees alone are \$11,475 and \$6,941. Developers complained to the Grand Jury about both the cost and the inconsistency of these fees.

In addition, school district mitigation fees are charged separately and also vary considerably. The Rincon Valley School District charges \$2.86 per square foot of newly constructed housing. The equivalent figure for Cotati/Rohnert Park is \$3.79 per sq. ft. while Cloverdale has a proposal for \$4.79 per sq. ft. Some jurisdictions set fees that are directed at a specific problem or situation. As an example, the continuing drought has led to the adoption of a [Water Demand Offset Policy](#) in the City of Santa Rosa. Funds from this fee would be used to implement projects or plans to offset the water needs of the development.

Building Permits, Review Processes, and Personnel

Virtually any construction or rehabilitation of housing requires building permits from the governing authority. Again, there is great variability in the nature and costs of required permits and in the time needed to secure them. Grand Jury interviews of builders and developers indicate that they accept that permitting oversight is needed to ensure quality and meet accepted standards (code), and that costs are involved in approval processes. Builders also wish that more self-certification or video-based remote certification was available. They accept that permit personnel are generally reasonable and professional in their actions. Nevertheless, the inconsistency from jurisdiction to jurisdiction in processes and procedures is seen as a hindrance to development. They further complain that the permitting process is often very slow, and permit departments often fail to meet their own goals for timeliness. Slowness was considered to be more of a problem than permit costs.

Nevertheless, the total cost of mitigation fees and permit fees is significant. Interviewees indicated that, depending on the nature and cost of a project, between 11% and as much as 20% of the total cost of construction can go to paying fees.

Complex multi-step review processes also add to costs by slowing the pace of a development and increasing the amount of paperwork involved in it. Cotati has attempted to ease this problem by essentially combining preliminary and final review processes into a more streamlined and direct

negotiation. Lack of sufficient personnel in planning departments was cited as a problem in several interviews. In Sonoma County, staffing of planning departments can range from one person to four or more. Understaffing complicates all aspects of development of additional housing. In contrast, Petaluma takes a novel approach by contracting with an outside consultant to manage their effective Affordable Housing programs.



Unoccupied Housing: Time Shares, Airbnb, Pacaso, etc.

Areas with high levels of tourism can experience large numbers of second or vacation homes that are unoccupied for much of the year or, in the case of Pacaso properties, occupied serially by non-residents. Time-share properties provide housing for short term visitors, as do vacation rentals such as VRBO and Airbnb. Properties of this sort are important to tourism, but they can also be a problem for tourist destinations; in Sonoma County this includes Healdsburg, the Russian River area, and the City of Sonoma. Every house or apartment that is removed from the housing supply, and made unavailable to residents, helps to increase the price of the remaining properties. At the same time corporate buyers purchase houses and leave them vacant while their values increase. This further contributes to the inflation of house prices and leads to the exclusion of local residents.

CONCLUSION

The State of California is committed to significantly increasing the supply of all housing, including Affordable Housing. In Sonoma County and its nine Cities this commitment is expressed through ABAG and the requirements of RHNA. The Grand Jury has confirmed that while there is strong official support for these goals, there is sometimes less commitment to their achievement. Many programs that support development of Affordable Housing are in place. Yet many barriers also exist and greatly inhibit housing development. The principal barriers identified in this report include:

- The sheer complexity of navigating the bureaucracy in all aspects of a project
- The high cost of land in Sonoma County
- The difficulty, complexity, and slow pace of financing a project
- The shortage and high cost of building materials and supplies
- The shortage of both skilled and unskilled labor as well as labor costs
- The complexity and costs of mitigation fees and building permits
- The inconsistency of costs, procedures, and regulations among the jurisdictions within the County
- Public opposition and misunderstanding of Affordable Housing and its recipients

FINDINGS

The Sonoma County Civil Grand Jury determined that:

- F1. Increased Affordable Housing has been mandated by the State of California and officially accepted by Sonoma County and its nine Cities.
- F2. Housing jurisdictions must show sufficient progress in meeting 6th cycle Regional Housing Needs Allocation mandates or they risk being fined or losing local authority over their housing programs.
- F3. Sonoma County and its nine Cities have officially recognized the need for Affordable Housing but not all have fully endorsed the Regional Housing Needs Allocation or met earlier goals.
- F4. Some cities hinder the development of Affordable Housing through designation of new historic districts, increased landscaping requirements, highly restrictive zoning, and exploitation of environmental concerns.
- F5. Public acceptance of the need for Affordable Housing is not universal; NIMBYism and misinformation can negatively impact the planning and development process.
- F6. In Sonoma County, costs and availability of land, building supplies, and labor impede development and construction of Affordable Housing.
- F7. There is great variability in the planning and approval processes and procedures for developing Affordable Housing in the County and its Cities, thus complicating and slowing development.
- F8. Financing of Affordable Housing projects is unusually complex, slow, and uncertain.
- F9. Funding of Affordable Housing is often directed to specific groups such as seniors, veterans, or agricultural workers.
- F10. Design review and project approval are often slow and very complex, and hinder the development of Affordable Housing.
- F11. The permitting regulations, processes, and fees differ by jurisdiction.
- F12. Mitigation fees vary by individual projects and jurisdictions, complicating the building of Affordable Housing.
- F13. The speed of issuing permits has improved in some jurisdictions, but greater efficiency would help meet the building needs of Sonoma County.
- F14. Payment of in-lieu fees to the housing jurisdiction results in fewer inclusionary Affordable Housing units and houses being built.
- F15. Development of commercial projects such as hotels and big box stores is often favored over housing due to lesser demand on public services and increased sales or occupancy tax revenue.
- F16. Recent legislation encourages construction of transit-oriented infill housing but has yet to show a large effect.
- F17. Changes to city boundaries by annexation of land within their Spheres of Influence could allow the development of more Affordable Housing but is resisted due to the high costs of additional infrastructure.

- F18. The time periods for which new Affordable Housing units cannot convert to market-rate prices have been lengthened to preserve the units as Affordable.
- F19. Rehabilitation and the repurposing of existing properties both preserve and increase the supply of Affordable Housing.
- F20. Inclusive Affordable Housing must be equivalent to market rate units and be dispersed throughout a project making it harder to identify and stigmatize them.
- F21. Manufactured and factory built home construction provide less expensive routes to Affordable Housing without necessarily reducing its quality.
- F22. Design modifications can help make Affordable Housing projects economically viable.
- F23. Contrary to commonly expressed fears, Affordable Housing does not usually affect local property values.
- F24. Vacation homes, time shares, Airbnb, Pacaso houses, and vacant houses reduce the number of units available to permanent residents and, by reducing supply, increase the cost of housing.

RECOMMENDATIONS

The Sonoma County Civil Grand Jury recommends that:

- R1. By December 31, 2022, Permit Sonoma and the nine Cities should begin to streamline their procedures, from preliminary review through the permitting process, related to the development of Affordable Housing. (F7, F10, F11, F13)
- R2. By December 31, 2022, Permit Sonoma and the nine Cities should meet to consider standardizing their procedures related to the development of Affordable Housing. (F7, F10, F11, F13)
- R3. By December 31, 2022, Permit Sonoma and the nine Cities should meet to discuss the coordination of fee reduction standards for Affordable Housing throughout the County. (F11, F12, F14)
- R4. By December 31, 2022, Permit Sonoma and the nine Cities should identify properties within their jurisdictions and Spheres of Influence that could support the construction of infill housing and accessory dwelling units. (F1, F2, F3, F4, F16, F17)
- R5. By December 31, 2022, Permit Sonoma and the nine Cities should identify properties within their jurisdictions and Spheres of Influence that are likely opportunities for rehabilitation or repurposing to increase the availability of Affordable Housing. (F16, F19, F22)
- R6. By June 1, 2023, Permit Sonoma and the nine Cities should develop permit ready accessory dwelling unit and junior accessory dwelling unit plans. (F1, F2, F3, F4, F5, F7, F10, F11, F13, F21, F22)
- R7. By December 31, 2022, Permit Sonoma and the nine Cities should discuss integration of preliminary design review committees with their planning commissions to help expedite the construction of Affordable Housing. (F1, F2, F3, F4, F5, F7, F10, F11, F13, F19, F20, F21, F22)
- R8. By December 31, 2022, Permit Sonoma and the nine Cities should review their permitting requirements to allow nontraditional options such as manufactured homes,

factory built homes, and tiny houses to increase housing supply. (F1, F2, F3, F4, F5, F10, F11, F13, F21, F22)

REQUIRED RESPONSES

Pursuant to Penal Code §§ 933 and 933.05, the Grand Jury requires responses as follows:

- Permit Sonoma (R1, R2, R3, R4, R5, R6, R7, R8)
- City of Cloverdale (R1, R2, R3, R4, R5, R6, R7, R8)
- City of Cotati (R1, R2, R3, R4, R5, R6, R7, R8)
- City of Healdsburg (R1, R2, R3, R4, R5, R6, R7, R8)
- City of Rohnert Park (R1, R2, R3, R4, R5, R6, R7, R8)
- City of Santa Rosa (R1, R2, R3, R4, R5, R6, R7, R8)
- City of Sebastopol (R1, R2, R3, R4, R5, R6, R7, R8)
- City of Sonoma (R1, R2, R3, R4, R5, R6, R7, R8)
- City of Petaluma (R1, R2, R3, R4, R5, R6, R7, R8)
- Town of Windsor (R1, R2, R3, R4, R5, R6, R7, R8)

The governing bodies indicated above should be aware that their comments and responses must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

BIBLIOGRAPHY

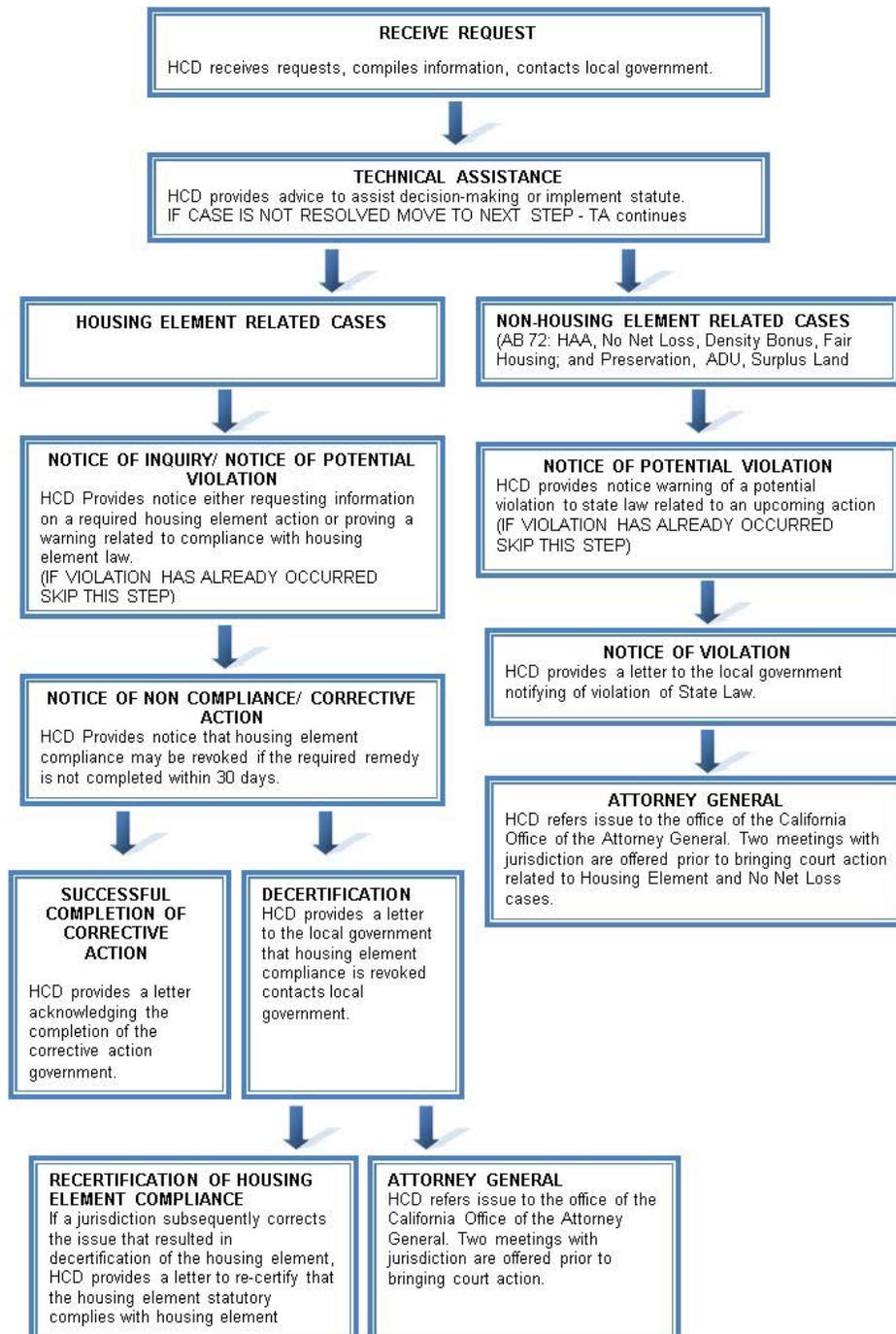
- Association of Bay Area Governments, [Association of Bay Area Governments](#)
- Association of Bay Area Governments, RHNA – Regional Housing Needs Allocation, [Regional Housing Needs Allocation](#)
- Association of Bay Area Governments, *Final Regional Housing Needs Allocation (RHNA) Plan: San Francisco Bay Area, 2023-2031*, December 2021 [ABAG Regional Housing Needs Allocation \(RHNA\) Plan 2023-2031](#)
- California Department of Housing and Community Development, Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) <https://www.hcd.ca.gov/policy-research/accessorydwellingunits.shtml>
- California Department of Housing and Community Development, Infill Infrastructure Grand Program (IIG) <https://www.hcd.ca.gov/infill-infrastructure-grant>
- California State Treasurer, California Tax Credit Allocation Committee, Compliance Monitoring <https://www.treasurer.ca.gov/ctcac/compliance.asp>
- State of California, Governor’s Office of Planning and Research, CEQA: The California Environmental Quality Act <https://opr.ca.gov/ceqa/>
- State of California, Governor’s Office of Planning and Research, Infill Development <https://opr.ca.gov/planning/land-use/infill-development/>
- City of Santa Rosa, Water Demand Offset Policy and Fees, March 29, 2022 <https://srcity.org/3641/Water-Demand-Offset-Policy-and-Fees>
- County of Sonoma, Community Development Commission, <https://sonomacounty.ca.gov/development-services/community-development-commission>

- County of Sonoma, Community Development Commission, Community Development Block Grant <https://sonomacounty.ca.gov/development-services/community-development-commission/divisions/housing-and-neighborhood-investment/funding-opportunities/cdbg>
- County of Sonoma, Community Development Commission, Housing and Neighborhood Investment, Income and Rent Limits <https://sonomacounty.ca.gov/development-services/community-development-commission/divisions/housing-and-neighborhood-investment/income-and-rent-limits>
- County of Sonoma, Community Development Commission, Project Homekey <https://sonomacounty.ca.gov/development-services/community-development-commission/divisions/homeless-services/be-part-of-the-solution/funding-opportunities/project-homekey>
- County of Sonoma, *Sonoma County Five-Year Strategic Plan 2021-2025* <https://socostrategicplan.org/>
- Gray, M. N., The Atlantic, “How Californians are Weaponizing Environmental Law,” March 12, 2021 <https://www.theatlantic.com/ideas/archive/2021/03/signature-environmental-law-hurts-housing/618264/>
- Generation Housing, *State of Housing in Sonoma County*, January 2022 https://generationhousing.org/wp-content/uploads/2022/02/2022_Feb_SOH_Sonoma-County.pdf
- Jennifer Hernandez, Chelsea Maclean, Daniel Golub and Paloma Perez-McEvoy, *California Housing Resources Handbook*, 2020 [California Housing Resource Handbook-2020 \(Holland & Knight\)](#)
- Housing Land Trust of Sonoma County <https://www.housinglandtrust.org/>
- Manuela Tobias, North Bay Bohemian, *Sonoma Among Cities Resisting New State Housing Law*, April 12, 2022 <https://bohemian.com/ca-cities-resisting-new-housing-law/>
- Nashelly Chavez, The Press Democrat, *Developer enlists 2017 law to advance stalled Sebastopol affordable housing project*, April 13, 2022 <https://www.pressdemocrat.com/article/news/developer-enlists-2017-law-to-advance-stalled-sebastopol-affordable-housing/>
- NYU Furman Center, The Center for Housing Policy Insights from Housing Policy Research, *Don't Put it Here!* https://furmancenter.org/files/media/Dont_Put_It_Here.pdf
- Sonoma County, California – Code of Ordinances, Article 89 – Affordable Housing Program Requirements & Incentives, February 8, 2022 https://library.municode.com/ca/sonoma_county/codes/code_of_ordinances?nodeId=CH26SOCOZORE_ART89AFHOPRREIN
- U.S. Department of Housing and Urban Development, <https://www.hud.gov/>
- U.S. Department of Housing and Urban Development, Housing Choice Voucher Program Guidebook, Housing Assistance Payments (HAP) Contracts, July 2021 https://www.hud.gov/sites/dfiles/PIH/documents/HAP_Contracts_HCV_Guidebook_Chapter_July_2021.pdf
- U.S. Department of Housing and Urban Development, Office of Policy Development and Research (PD&R), Income Limits <https://www.huduser.gov/portal/datasets/il.html>
- U.S. Department of Agriculture <https://www.usda.gov/>
- U.S. Department of Housing and Urban Development, Home Investment Partnership Program https://www.hud.gov/program_offices/comm_planning/home

- U.S. Department of Housing and Urban Development, Office of Policy Development and Research (PD&R), Low Income Housing Tax Credits <https://www.huduser.gov/portal/datasets/lihtc.html>
- YIMBY Law, Fighting For Housing <https://www.yimbylaw.org/>

APPENDIX A

California Housing Law Enforcement



Source: California Department of Housing and Community Development

APPENDIX B

Funding Sources for Affordable Housing

There are many sources of funding for Affordable Housing, but there is no consistency in its availability from year to year. Sometimes a city may save its cash resources for a few – or several – years and then spend them all in one year; other times a city may qualify for some particular funding one time but may not qualify another time. Currently, the most popular source is Affordable Housing Tax Credits.

<https://generationhousing.org/wp-content/uploads/2020/01/200121-Gen-H-Housing-Funding-Overview.pdf>

Federal Programs

- **Low-Income Housing Tax Credits (LIHTC):** The Low-Income Housing Tax Credit (LIHTC) subsidizes the acquisition, construction, and rehabilitation of affordable rental housing for low and moderate income tenants. The LIHTC was enacted as part of the 1986 Tax Reform Act and has been modified numerous times. The Federal Government issues the tax credits to the states. State housing agencies then award the credits to private developers of affordable rental housing projects through a competitive process. Developers generally sell the credits to private investors to obtain funding. Once the housing project is placed in service (essentially, made available to tenants), investors can claim the LIHTC over a 10-year period. (Burbank Housing follows this model) but the property must be maintained as affordable housing for a minimum of 30 years.
- **9% Tax Credit** subsidizes 70% of the eligible costs and is available for projects such as new construction or substantial rehabilitation that do not use tax-exempt bonds. Priority is given to developments that are close to public amenities such as transit, schools or parks.
- **4% Tax Credit** subsidizes 30% of eligible costs and is available for projects that do use tax-exempt bonds.
- **Community Development Block Grants (CDBG):** Funds are used for projects that improve the quality of living for lower-income residents whose incomes are less than 80 percent of the area median income as established by the Department of Housing and Urban Development. The project must meet certain criteria, including being beneficial to low and moderate income people. This could include housing rehabilitation and homeless shelters. Santa Rosa and Petaluma receive their funds directly while Sonoma County manages the funds for the smaller cities.
- **HOME Investments Partnership Program (HOME):** HOME provides block grants to states and localities that communities use - often in partnership with local nonprofit groups. At least 15 percent of HOME funds must be set aside for specific activities to be undertaken by a special type of nonprofit called a Community Housing Development Organization (CHDO). A CHDO is a private nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves.

State Programs

Affordable Housing and Sustainable Communities (AHSC): This program invests cap-and-trade money in projects that connect Affordable Housing with low-emission transportation services and infrastructure. Funds are from the Greenhouse Gas Reduction Fund (GGRF). It provides grants and loans for Affordable Housing, infill and compact transit-oriented development, and infrastructure connecting these projects to transit. In 2022, the state's budget allocated \$130 million from cap and trade auction revenues.

- **SB2 Building Homes and Jobs Act:** Effective January 1, 2018, this Act created a trust fund for Affordable Housing through a \$75 fee charged every time real estate documents are recorded. This money funds a variety of housing activities, depending on the needs of the community. These include farm worker housing and mixed-income multifamily housing developments which provide Affordable Housing for Californians with lower and moderate incomes.
- **SB3 and Multifamily Housing Program (MHP):** In 2018 the Veterans and Affordable Housing Bond Act, which funds \$1.5 billion in bonds for this program, was passed. The program provides deferred payment loans for projects related to permanent and transitional rental housing.
- **No Place Like Home:** A 2016 Bond issue provides money in the form of noncompetitive funding and competitive grants for the unhoused and mentally ill. The actual funding started in 2019.

Loans

- **California Housing Finance Agency (CalHFA):** The California Housing Finance Agency (CalHFA) offers low, fixed-rate mortgage products, as well as down payment and closing cost assistance to provide Affordable Housing opportunities for low- to moderate-income first-time home buyers.
- **Federal Loan Guarantees:** HUD has several programs that provide federal backup for long-term low interest fixed rate fully amortized loans. Section 221(d)(4) insures loans with up to 40 year duration for construction or rehabilitation of multifamily housing. These loans usually range from \$2 million to \$100 million, with no upper limit. The application process is slow and complex, and HUD advises use of an experienced intermediary. HUD 223(f) loans are made for purchase or refinancing of existing multifamily properties. Affordable Housing properties have additional concessions and can be combined the Low Income Housing Tax Credit (LIHTC) program.

Sonoma County and Local Funding

- **Sonoma County Fund for Housing (CFH):** The County Fund for Housing was established in 2003 to provide financial assistance for the development and preservation of Affordable Housing located in Sonoma County. The purpose is to accelerate the pace of development of Affordable Housing for low, very low, and extremely low-income households. CFH provides loans and grants to qualified developers, public entities, groups and individuals to build Affordable Housing. Various sources such as developer in-lieu fees, transient occupancy taxes and CFH loan processing fees provide the funding. [County Fund for Housing \(CFH\) \(ca.gov\)](#)

Cities

- Some cities utilize the impact and in-lieu fees that developers pay to fund Affordable Housing projects. Impact fees are assessed on new residential developments and in-lieu fees are charged when developers pay a fee instead of providing inclusionary housing.
- Linkage fees are assessed on new commercial developments: They are impact fees levied to fund the development of Affordable Housing. They are collected by Sonoma County and cities such as Cotati, Petaluma, Rohnert Park, and Sebastopol.

Affordable Housing: Monitoring and Compliance

Who is Watching the Henhouse?

SUMMARY

In response to citizens' complaints and reports published in The Press Democrat, the 2021-2022 Sonoma County Civil Grand Jury (Grand Jury) investigated the monitoring of Affordable Housing within Sonoma County. Affordable Housing, as defined by the U.S. Department of Housing and Urban Development, is housing priced on the basis of family income, not the market rate. Monitoring involves verification of tenant incomes and continued eligibility for an Affordable unit, the owner's or manager's collection of required information, and the ongoing maintenance of the property and its amenities. Housing departments for the County and its nine Cities are required to monitor compliance with the regulations for occupancy of Affordable Housing.

All housing is in short supply; this includes Affordable Housing, which should be available only to those who qualify. This report examines the monitoring of existing Affordable Housing. A companion report, "*Affordable Housing: Past, Present, and Future*," examines the potential for increasing its availability.

The Grand Jury investigated procedures used in the County and its nine cities and found that monitoring was inconsistent among the housing jurisdictions. All of the agencies were overly reliant on self-reported information from owners and managers. Direct observation and verification through on-site monitoring were rare and essentially ceased during the COVID-19 shutdowns. A low priority was often given to monitoring, and the staffing to do it was usually insufficient. The Grand Jury concluded that there was little probability that illegal behaviors, if they existed, would be detected using current procedures.

Recommendations from the Grand Jury include increased on-site personal monitoring at housing locations, more standardization of procedures, consistent and on-going training with developers and property managers, and better coordination and cooperation amongst agencies to increase efficiency.

GLOSSARY

- ABAG Association of Bay Area Governments
- AMI Area Median Income
- CDC Sonoma County Community Development Commission
- HAP Housing Assistance Payments
- HUD U.S. Department of Housing and Urban Development
- RHNA Regional Housing Needs Allocation
- SCHA Sonoma County Housing Authority
- Section 8 Section 8 Housing Choice Vouchers

BACKGROUND

Housing in Sonoma County is widely acknowledged to be in short supply and very expensive. A chart¹ in The Press Democrat for March 13, 2022 showed the median price of a home in January 2022 to be \$789,000, up from \$715,000 just a year earlier. As reported by the [North Bay Business Journal](#), Sonoma County median rent for a one or two-bedroom unit is \$2,167, and residents are increasingly unable to afford a suitable place to live.

Common complaints include:

- My adult kids can't afford to live here and will have to move somewhere else.
- My rent is so high I can't afford to pay my other bills.
- I couldn't afford my house if I had to buy it today.
- Sonoma County needs to have more affordable places to live.”

The term “affordable housing” can have different meanings:

“AH” = In this report and more generally in the housing industry, we use capital letters to identify Affordable Housing as apartments or houses that are potentially available to rent or are deeded as Affordable for those who earn a specified percentage of the median income.

“ah” = Lower case letters are used to differentiate between the two meanings of affordable housing; “ah” is a more general term. An apartment that rents for \$3,500/month might be affordable to an executive but may not be affordable to a junior employee, a retiree, or a person with disabilities.

The Federal Government, State, County, Cities and private organizations have created programs that make home buying or apartment rental more attainable. Affordable Housing, as defined by the U.S. Department of Housing and Urban Development (HUD), means that families pay rent or purchase homes at prices determined by their incomes rather than by the housing market. These programs have strict and specific conditions that define eligibility. Income and family size are central, but other factors such as individuals with disabilities, senior status, or veterans may sometimes be a consideration. Since many more residents are qualified to receive Affordable Housing than housing is available, it is reasonable to ensure that the limited supply is occupied by those for whom it is intended. It is also logical to ensure that the housing is managed and maintained appropriately. Local County and city housing departments are charged with monitoring compliance with the conditions of the programs. A draft of the Sonoma County CDC [Affordable Rental Housing Monitoring Procedures](#), presented to the Sonoma County Board of Supervisors on December 7, 2021, outlines their recommendations. Each of the nine cities would benefit from also having clearly defined procedures if they do not already exist.

In 2021, The Press Democrat published award-winning reports on a situation in Sonoma County where individuals rented apartments for which they were not eligible. The Grand Jury also received citizen complaints about this specific situation. This case has been well documented by the press and investigated by County authorities and is still a subject for potential lawsuits.

For these reasons, the Grand Jury did not center its attention on this individual problem, but rather, asked more general questions. What are the requirements for access to Affordable Housing? What are the requirements for verifying and monitoring compliance with the

¹ Prices are from the sales of single-family homes recorded in Sonoma County.

regulations? How is the monitoring done? Is the monitoring sufficient to assure compliance? How common is fraud? How can monitoring be improved? This report attempts to answer these questions.

METHODOLOGY

This investigation was initiated in response to citizen complaints received by the 2021-2022 Sonoma County Civil Grand Jury.

The Grand Jury conducted interviews with key individuals in Sonoma County who are involved in the Affordable Housing arena. They included:

- County and City officials
- Non-profit agencies
- Affordable Housing agencies and advocates

The Grand Jury reviewed and evaluated documents from a wide range of sources addressing Affordable Housing, including many websites, from Sonoma County, the nine cities, State and Federal agencies. The most important of these are listed in the Bibliography.

DISCUSSION

What is Affordable Housing?

Affordable Housing is defined in multiple ways and categories. Still, all are based on the ability of a tenant or buyer to pay no more than a specific percentage of their income for housing. The rules and requirements are complex; Article 89 of the Sonoma County zoning code, [Affordable Housing Program Requirements and Incentives](#), is 215 pages long. Eligibility resides in four or more categories, with income levels compared to the area median income (AMI) in Sonoma County. The AMI is determined annually by the [U.S. Department of Housing and Urban Development](#) (HUD) using sampled census data for a four-person household. This number, which is currently \$103,300, is used to calculate similar numbers for smaller and larger households using formulas developed by HUD. Rent levels are then defined in relation to family size and income level.

As an example, the tables below show [income and rent limits](#) used by the [Sonoma County Community Development Commission](#) (CDC) for rental housing in several (but not all) programs under its control. Other programs may use different limits, but the basic principles are the same; housing cost for the tenant is based on income, not on the market price of a comparable apartment or house.

Persons in Household	Acutely Low Income (15% Area Median Income)	Extremely Low Income	Very Low Income 50% AMI	60% AMI*	Low Income 80% AMI**	Median Income 100% AMI	Moderate Income 120% AMI
1	\$10,850	\$24,450	\$40,750	\$48,900	\$65,150	\$72,300	\$86,750
2	12,400	27,950	46,550	55,860	74,450	82,650	99,150
3	13,950	31,450	52,350	62,820	83,750	92,950	111,550

4	15,500	34,900	58,150	69,780	93,050	103,300	123,950
5	16,750	37,700	62,850	75,420	100,500	111,550	133,850
6	18,000	40,500	67,500	81,000	107,950	119,850	143,800
7	19,200	43,300	72,150	86,580	115,400	128,100	153,700
8	20,450	46,100	76,800	92,160	122,850	136,350	163,600

Table 1: Maximum Income to Qualify for Affordable Housing in Sonoma County
Source: CDC website

As of January 1, 2022, the CDC uses the table above to determine eligibility for multiple categories of Affordable rental housing.

*60% of AMI is used as a data point for other programs using the local region’s “Housing Affordability Index” (HAI)

**HUD defines Low income as 50-80% of AMI and Very Low Income as 30-50% of AMI to qualify for Section 8 housing vouchers.

Unit Size (assumed # occupants)	Extremely Low Income Rent Limit (30% AMI)	Very Low Income Rent Limit (50% AMI)	Low Income Rent Limit (60% AMI)*
Studio (1)	\$611	\$1,019	\$1,223
1 Bedroom (2)	699	1,164	1,397
2 Bedroom (3)	786	1,309	1,571
3 Bedroom (4)	873	1,454	1,745
4 Bedroom (5)	943	1,571	1,886

Table 2: Maximum rent limits for Inclusionary Affordable Housing in Sonoma County
Source: CDC website

*Housing Affordability Index vs. HUD definitions/thresholds

The above table shows the maximum rent for an Affordable Housing unit as of January 1, 2022. These rent limits are calculated using the formula in California Health & Safety Code [50052.5](#) & [50053](#). The rents are based on the income limits for an assumed household size equal to the number of bedrooms in the unit plus one person. For example, the rent for a three-bedroom unit is based on the income limits for a four-person household. Unless otherwise specified, utility costs are included in the maximum rent as set by federal housing laws.

Affordable Housing can also be further directed to specific groups such as seniors, farm workers, individuals with disabilities, veterans, and in some cases, specific professions such as educators or health care workers.

Subsidies for Affordable Housing

Affordable Housing is most common in mid-size to larger developments and can be considered in two categories.

1. One hundred percent Affordable Housing developments: These projects are often constructed and managed by mission-driven non-profit organizations such as MidPen or Burbank Housing, but for-profit developers are also represented here. Building and amenity standards for developments are also expected to ensure comparability to market-rate housing.
2. Inclusionary Affordable Housing: To encourage construction of Affordable Housing, local ordinances may specify a percentage of Affordable units, usually 10-20%, which must be included in a project. Inclusionary housing is almost always built by 'for-profit' developers who will rent or sell these units at lower Affordable rates while the other units will be rented or sold at the market rate. Both apartment complexes and single-family home developments are subject to inclusionary housing ordinances. These ordinances take effect only when a development reaches a specific size set by the County or city, for example 10 units.

The limitations on income and allowable prices often bear little relationship to the real-world costs of building, managing, and maintaining a housing development. Materials and labor costs for a project are the same whether the end product is Affordable or the market determines prices. Affordable Housing projects typically have multiple funding sources, including Federal and State loans that have long-term fixed low interest rates and may allow deferment of repayment and eventual forgiveness. Funding can also come from Federal or State grants, and construction costs may be reduced by accelerating approvals and modifying some requirements such as the number of off-street parking spaces required.

Subsidies are available to supplement rent payments and thus allow some qualified residents to occupy either Affordable or market-rate housing. The best known of these are Section 8 Housing Choice Vouchers (Section 8) which are funded by HUD and issued through local housing authorities. In Sonoma County, Section 8 vouchers are issued through the CDC and by the City of Santa Rosa Housing Authority. A voucher holder can occupy any acceptable rental property where the landlord accepts the voucher and agrees to the program's requirements. The voucher is valid anywhere in the County or beyond, and the holder pays only an income-based portion of the rent; HUD pays the remainder directly to the landlord.

Unfortunately, the need for Affordable Housing greatly exceeds the available supply. Each Affordable Housing development has a waiting list that may include several years wait before a unit becomes available. Section 8 vouchers within Sonoma County also have a long waiting list. New applicants can only join the Section 8 waiting list through a lottery process. The last lottery was held in October 2021 and the next is not expected until about October 2023. Again, the wait is measured in years.

How Much Affordable Housing is There in Sonoma County?

The website of [Affordable Housing Online](#) suggests that there are 8,700 Affordable rental apartments in Sonoma County. The site delineates 2,510 income-based units for which direct subsidies (*e.g.* Section 8 vouchers) are available and 6,023 apartments which are subsidized indirectly (*e.g.* as inclusionary units).

The [CDC](#) website identifies individual Affordable Housing developments, community by community. It shows a smaller number of apartments (8,129), but it is not clear when it was last updated. Santa Rosa lists individual complexes within the City, showing 3,817 Affordable units, while the CDC website shows 4,076 units in Santa Rosa. Again, it is unclear how current these numbers are. New construction is ongoing, and all of the specific numbers for Affordable units will probably be out of date by the time this report is published.

The number of Affordable apartments may appear to be large, but very few, if any, are actually available and unoccupied at any given time, resulting in long wait lists. Moreover, given the approximately half-million population of Sonoma County, there is not a sufficient supply to meet the need for an Affordable place to live.

The [Association of Bay Area Governments](#) (ABAG) periodically evaluates the housing requirements of the greater area. It then prepares a [Regional Housing Needs Allocation](#) (RHNA) for each county and its cities. The allocation for Sonoma County for 2023-2031 calls for 14,562 new housing units to be added over the next several years. Of this total, 3,999 are designated as very-low-income housing and 2,302 as low-income housing units. In each category, roughly one-third is allocated to Santa Rosa, one-third to the eight other cities of the County, and one-third to unincorporated areas of Sonoma County. If fulfilled, RHNA allocations would increase the number of Affordable units by more than two-thirds. The demand for oversight of these new residences would increase accordingly.

Section 8 Housing Choice Vouchers Monitoring Requirements

Access to Affordable Housing is a precious commodity and it should only be available to those who qualify. It is the responsibility of the local housing authorities to ensure that this is the case. Monitoring of compliance with conditions and regulations is required on a regular basis for virtually all Affordable Housing programs. The diagram below illustrates the various obligations inherent in CDC oversight of Section 8 rental properties.

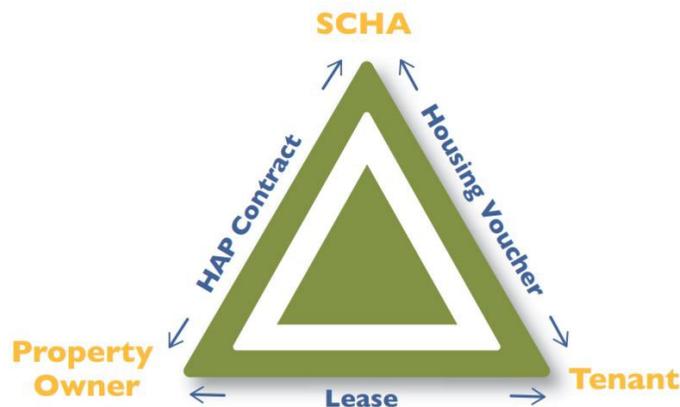


Figure 1. Participant Responsibilities in Section 8 Affordable Housing.
Source: Adapted from the CDC website.

Property owners must sign a rental agreement or lease with the Section 8 participant. The property owner agrees to provide decent, safe, and sanitary housing as confirmed by regular Housing Authority inspections. The primary benefit to the property owner for participating in the program is that the federal government guarantees a portion of the rent.

Property Owner Responsibilities Include:

- Perform all management and rental functions, including screening and selection of tenants.
- Maintain the units and property in accordance with Housing Quality Standards.
- Prepare information required under the Housing Assistance Payments (HAP) contract and furnish the information to the Housing Authority.

Sonoma County Housing Authority Responsibilities Include:

- Make rental assistance payments to the landlord in a timely manner.
- Regularly evaluate family eligibility including income and family size.
- Inspect units at least once every two years.
- Investigate potential fraud or program abuse by tenants or landlords.

Tenant Responsibilities Include:

- Supply information determined necessary by the Housing Authority or HUD to administer the program, including the completion of scheduled income reviews.
- Act responsibly as a tenant, paying rent and utilities on time and minimizing damage to the property.
- Notify the Housing Authority and the owner 30 (no more than 60) days before moving or terminating the lease.

Inclusionary Rental Housing Monitoring Requirements: How is it Done in the Real World?

Monitoring of inclusionary housing is clearly defined by County ordinance:

Rental Unit Monitoring: “The CDC shall monitor the rental of affordable units for compliance with the Affordable Housing Agreement and the provisions of this Article. On an annual basis, the owner shall pay to the CDC a fee for monitoring each unit subject to the Affordable Housing Agreement, which fee shall be established by resolution of the Board of Directors of CDC from time to time. (Ord. No. 6085, § IV (Exh. C), 10-7-2014)”

Other housing jurisdictions may have similar or less specific monitoring expectations, while some do not define their procedures at all (see Table 3 below). Thus, housing personnel must deal with different sets of expectations for multiple properties within their jurisdiction. There are two approaches to monitoring compliance with Affordable Housing requirements:

- *Self-Reporting:* The owner/manager/landlord of a rental property is required to reconfirm eligibility for at least a percentage or specific number of Affordable Housing tenants, often on a set schedule. This involves verification of income and other factors, such as occupancy numbers, depending on the program under which the unit is rented. This information is reported to the CDC or to the local housing jurisdiction for units not under CDC purview. The housing departments are then required to verify that the information supplied by the landlord is accurate and complete. There is currently no CDC requirement for on-going compliance training for owners, managers, or staff. Within the cities, training is also limited.
- *On-site monitoring:* It would be wasteful of staff and resources to replicate the activities of the landlord, but spot-checking of some number or percentage of units is feasible. A housing department monitor visits a site, interviews the manager or owner, examines

selected records, verifies their accuracy with the tenants, and inspects the property, including one or more units.

In practice, on-site monitoring is done by first making an appointment with an owner or manager and describing what needs to be seen or done on a visit. Surprise or unscheduled monitoring is rarely or never done because the required documentation may be incomplete or unavailable. It could also be intrusive to tenants, and the owner, manager, or tenant may simply be unavailable when the monitor arrives. Interviewees stated that on-site monitoring was rare even before the onset of the COVID-19 pandemic. It was eliminated during the COVID-19 restrictions, when non-essential contact was minimized to avoid spread of the virus. In most cases, on-site monitoring has not been reinstated. In practice, the County and Cities rely almost totally on self-reporting from developers and managers.

The costs of on-site monitoring and verification of self-reported data are the responsibility of the housing agency, and monitoring is often seen as an unfunded mandate. It is therefore not surprising that housing agencies in Sonoma County are motivated to accept the data supplied by owners and managers as accurate. Monitoring is also limited by staff availability, which has been exacerbated by the COVID-19 crisis. This has resulted in an inability to actually visit sites and interact with residents and managers. The lack of personnel was a significant concern to almost all of the housing representatives the Grand Jury interviewed. Again, this results in reliance on self-reporting by development owners and managers.

There are good reasons for owners and managers to monitor compliance accurately. Non-profit developers of Affordable Housing are mission-oriented. They are committed to providing Affordable Housing to those who qualify for it. Non-compliance is not only wrong, but also a threat to their continued access to low-cost financing and other concessions. For-profit complexes with inclusionary units also have good reasons to assure compliance. They too could lose access to low-cost financing, be subject to fines or lawsuits, and generate bad publicity and public distrust if they fail to comply with Affordable Housing agreements.

Incentives for owners and managers to minimize monitoring also exist for various reasons.

- Compliance verification takes time and effort and therefore involves costs.
- It can be intrusive to a tenant when the monitor needs to enter or inspect their apartment or house.
- Not everyone follows the prescribed guidelines; an unqualified friend, relative, or associate could be favored.
- Through mismanagement, Affordable units could be rented for more than the allowable amount.

Compliance monitoring is a significant burden to the housing departments which conduct it. The burden will increase significantly as RHNA requirements are met and the supply of Affordable Housing units is greatly increased. Unfortunately, the person-power, time, and resources allocated to monitoring already appear to be insufficient. The table below illustrates the size of the monitoring task and the resources currently available to do the work. Future RHNA Allocations represent the number of units which are expected or required to be added in each community between 2023 and 2031.

Housing Authority	Current Number Of Apartments	Future RHNA Allocation	Monitoring Personnel	On-Site Monitoring *
Cloverdale	221	117	None dedicated	No
Cotati	88	94	None dedicated	No
Healdsburg	352	299	None dedicated	Rare
Petaluma	1,206	787	One + one open position	Annual
Rohnert Park	564	629	None dedicated	No
Santa Rosa	4,076	1,919	One (80%)	Not since Covid
Sebastopol	327	86	One, occasional	No
Sonoma	389	131	One, part time	Some
Unincorporated So Co	109	1,632	One	Rare
Windsor	398	607	One, part time	No
Total	7,730	6,301		

Table 3. Monitoring Tasks and Resources
Source: Interviews with multiple housing personnel

*On-site monitoring should include file reviews, grounds inspections, and apartment/house inspections. This monitoring was suspended during the COVID restrictions.

Inclusionary Housing Ownership Monitoring Requirements

Single-family homes are a smaller segment of Affordable Housing and are governed by somewhat different rules and expectations. Potential homebuyers are evaluated and their incomes are verified. The price of the house is then set, based on the income of the family. Mortgage payments, utilities, taxes, etc. are factored into the amount paid. Continued income verification is not required, and incomes can increase beyond the Affordable level at which the house was purchased. However, if the house is resold, it must be sold as Affordable. The Grand Jury recommends that this information be attached to the title of the house and apparent to any title company involved in a resale. The requirement is central to the original contract; it allows the buildup of equity through mortgage payments, but ensures that the house remains Affordable for the next buyer. Housing departments should maintain an inventory of Affordable houses within their jurisdictions and verify that their titles are flagged for restricted sale, and not at market rate.

Is There Significant Fraud in the Management of Affordable Housing?

The Grand Jury investigation cannot provide a definitive answer to this question, nor can the housing departments that are charged with monitoring. No one the Grand Jury interviewed expressed fears of widespread misbehavior. Nevertheless, owners and managers have provided almost all of the information concerning compliance, with little or no opportunity for direct documentation by housing department monitors. Staff who were responsible for monitoring see this as a potential problem, and most expressed the desire to re-initiate on-site monitoring visits.

How Can Monitoring be Improved?

Housing personnel from the nine cities and the CDC meet regularly to discuss planning issues and the administration of their housing programs. Monitoring can be included in these

discussions, but the Grand Jury found there is, as yet, little coordination or cooperation in the actual monitoring process. Each city has its own personnel, procedures, and expectations, and none claim to give monitoring their highest priority. The quality of monitoring throughout the County could be improved if the various agencies agreed on a common set of goals, expectations, and procedures that set higher and more uniform standards. The CDC once provided leadership in this process and appears ready to do so again.

Petaluma and Rohnert Park make use of a customizable program from City Data Services that, among other things, helps streamline the monitoring process by moving it online. This, or a similar system, could help in tracking activities, managing documentation, and generally improving the quality of monitoring while simplifying it.

Essentially all of the housing representatives the Grand Jury interviewed felt that there is not enough staff within their departments to make anyone a full-time compliance monitor. It is easy to suggest hiring more people, but that is especially unlikely to happen in the smaller cities due to budget restrictions. The Grand Jury believes it could be advantageous for the County and cities to cooperate by jointly using (and paying proportionately) staff to monitor countywide. Alternatively, the agencies could jointly contract with a consulting firm to do the monitoring. This would benefit the smaller cities in particular, since they have small staff sizes and fewer monitoring obligations that are more likely to be overlooked.

If self-reporting is to remain the main source of compliance information, it is important that those who collect and report it are adequately trained to compile the data. The people who do the reporting need to know how and why monitoring is important and necessary. The CDC, in conjunction with the Cities, could create an informational document or policy and procedures manual to provide upfront and ongoing training in the monitoring process.

CONCLUSION

Monitoring of compliance with the rules and regulations of Affordable Housing programs is complex. Responsibility lies with individual housing departments in the County and its nine cities. Staffing in these agencies is often insufficient, and there is little coordination amongst these organizations. Monitoring in general and on-site monitoring in particular have long been low priority. Requirements have been largely met by accepting self-reported data from owners and managers of apartment and housing units. The COVID-19 pandemic and the restrictions imposed in response to it placed almost total reliance on self-reported information. Systems that are already overburdened do not appear to be prepared for the large increases in Affordable Housing that are planned for the near future.

FINDINGS

The Sonoma County Civil Grand Jury determined that:

- F1. Monitoring of compliance with Affordable Housing regulations has been inconsistent and often inadequate.
- F2. The use of self-reported data in monitoring is the accepted norm.
- F3. On-site (in-person) monitoring beyond that required by law is rare due to insufficient personnel, budgetary limitations, and relatively low incentives.
- F4. COVID-19 further reduced in-person on-site monitoring due to public health restrictions.

- F5. Surprise or unscheduled monitoring of individual units is not done, for reasons of privacy, availability, efficiency, and practicality.
- F6. Unscheduled monitoring of properties and management, in order to review tenant files, grounds, and the amenities is not done.
- F7. The Community Development Commission has informational documents and policies to provide upfront training in the monitoring process.
- F8. There is limited or no standardized training in Affordable Housing compliance regulations for developers and managers of inclusionary housing within the nine Cities.
- F9. The cities of Petaluma and Rohnert Park use computerized compliance monitoring programs to facilitate and improve the quality of their work.
- F10. The property titles of Affordable single-family houses have not always been flagged as deed restricted.
- F11. The majority of the housing representatives the Grand Jury interviewed felt that there is not enough staff within their departments to make anyone a full-time compliance monitor.

RECOMMENDATIONS

The Sonoma County Civil Grand Jury recommends that:

- R1. By December 31, 2022, the Sonoma County Community Development Commission and the nine Cities meet and develop agreed-upon standards and procedures for the monitoring of Affordable Housing. (F7, F8)
- R2. The Sonoma County Community Development Commission and the nine Cities resume on-site monitoring by October 1, 2022. (F3, F4)
- R3. By January 1, 2023, the Sonoma County Community Development Commission and the nine Cities review and ensure that they have sufficient personnel to conduct on-site monitoring and process self-reported monitoring data to meet future Regional Housing Needs Allocations. (F1, F2, F3, F5, F6, F11)
- R4. The Sonoma County Community Development Commission use informational documents and policies to provide ongoing training in the monitoring process for developers and managers of Affordable Housing projects by January 1, 2023. (F7)
- R5. By January 1, 2023, the nine Cities develop informational documents and policies to provide both upfront and ongoing training in the monitoring and compliance procedures for developers and managers of Affordable Housing projects. (F8)
- R6. By November 1, 2022, the nine Cities meet and discuss to jointly or individually utilize Affordable Housing monitoring software. (F9)
- R7. By November 1, 2022, the nine Cities meet and discuss pooling resources to fulfill their monitoring responsibilities, through either a consultant or designated employees. (F11)
- R8. By December 31, 2022, the Sonoma County Community Development Commission and the nine Cities should update and maintain their inventory of Affordable houses within their jurisdictions and verify that all their property titles are flagged for restricted sale. (F10)

REQUIRED RESPONSES

Pursuant to Penal Code §§ 933 and 933.05, the Grand Jury requires responses as follows:

- Sonoma County Community Development Commission (R1, R2, R3, R4, R8)
- City of Cloverdale (R1, R2, R3, R5, R6, R7, R8)
- City of Cotati (R1, R2, R3, R5, R6, R7, R8)
- City of Healdsburg (R1, R2, R3, R5, R6, R7, R8)
- City of Rohnert Park (R1, R2, R3, R5, R6, R7, R8)
- City of Santa Rosa (R1, R2, R3, R5, R6, R7, R8).
- City of Sebastopol (R1, R2, R3, R5, R6, R7, R8)
- City of Sonoma (R1, R2, R3, R5, R6, R7, R8)
- City of Petaluma (R1, R2, R3, R5, R6, R7, R8)
- Town of Windsor (R1, R2, R3, R5, R6, R7, R8)

The governing bodies indicated above should be aware that their comments and responses must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

BIBLIOGRAPHY

- Affordable Housing Online [Affordable Housing Online](#)
- Sonoma County, California – Code of Ordinances, *Article 89 – Affordable Housing Program Requirements & Incentives*, February 8, 2022 [Affordable Housing Program Requirements and Incentives](#)
- County of Sonoma, Community Development Commission [Sonoma County Community Development Commission](#)
- Sonoma County Five-Year Strategic Plan 2021-2025 <https://socostrategicplan.org/>
- Sonoma County Board Of Supervisor Agenda 12/7/2021, Consent Calendar Item 2021-1179, Sonoma County Community Development Commission - Affordable Rental Housing Monitoring Procedures [Attachment 1-Existing Procedures Manual \(not amended at this time\), with Exhibits Summary Report](#)
- Association of Bay Area Governments [Association of Bay Area Governments](#)
- Association of Bay Area Governments, RHNA – Regional Housing Needs Allocation [Regional Housing Needs Allocation](#)
- Association of Bay Area Governments, Final Regional Housing Needs Allocation (RHNA) Plan: San Francisco Bay Area, 2023-2031, December 2021 [ABAG Regional Housing Needs Allocation \(RHNA\) Plan 2023-2031](#)
- Jennifer Hernandez, Chelsea Maclean, Daniel Golub and Paloma Perez-McEvoy, *California Housing Resources Handbook*, 2020 <https://housingactioncoalition.org/wp-content/uploads/2020/05/HK-Housing-Handbook-2020.pdf>
- U.S. Department of Housing and Urban Development [U.S. Department of Housing and Urban Development](#)
- Ethan Varian and Andrew Graham, *Gallaher companies to pay \$500,000 to settle claim from whistleblower who alleged affordable housing fraud*, The Press Democrat, August 21, 2021 [Gallaher Companies To Pay 500000 To Settle Claim From Whistleblower](#)

- Ethan Varian and Andrew Graham, *Former Gallaher employees at Santa Rosa apartment complex say they were pushed to take part in housing fraud schemes*, The Press Democrat, September 3, 2021 [Former Gallaher Employees At Santa Rosa Apartment Complex](#)
- Ethan Varian and Andrew Graham, *In wake of newspaper investigation, Sonoma County launches review of affordable housing oversight*, The Press Democrat, October 9, 2021 [In Wake Of Newspaper Investigation Sonoma County Launches Review Of Affordable Housing](#)
- Ethan Varian and Andrew Graham, *Sonoma County to bolster oversight of affordable housing compliance after Press Democrat investigation*, The Press Democrat, December 8, 2021 [Sonoma County To Bolster Oversight Of Affordable Housing Compliance](#)
- Press Democrat Staff, *Press Democrat affordable housing investigation wins James Madison Award*, The Press Democrat, March 16, 2022 [Press Democrat affordable housing investigation wins James Madison Award](#)



DATE: August 8, 2022

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Eric Danly, City Attorney
Dylan Brady, Assistant City Attorney

SUBJECT: Resolution Making Required Findings and Authorizing the City Manager to Implement Teleconferenced Public Meetings for the City Council and All City Subordinate Bodies Pursuant to Assembly Bill 361

RECOMMENDATION

It is recommended that the City Council adopt a Resolution (Attachment 1) making required findings and authorizing the City Manager to implement teleconferenced public meetings for the City Council and all City subordinate bodies pursuant to Assembly Bill 361.

BACKGROUND

On October 4, 2021, City Council adopted Resolution No. 2021-163 N.C.S., on November 1, 2021, City Council adopted Resolution No. 2021-176 N.C.S., on November 15, 2021, City Council adopted Resolution No. 2021-183 N.C.S., on December 6, 2021, City Council adopted Resolution No. 2021-189 N.C.S., on January 3, 2022, City Council adopted Resolution No. 2022-001 N.C.S., on January 24, 2022, City Council adopted Resolution No. 2022-008 N.C.S., on February 7, 2022, City Council adopted Resolution No. 2022-020 N.C.S., on March 7, 2022, City Council adopted Resolution No. 2022-029 N.C.S., on April 4, 2022, City Council adopted Resolution No. 2022-045 N.C.S., on May 2, 2022, City Council adopted Resolution No. 2022-068 N.C.S., on May 16, 2022, City Council adopted Resolution No. 2022-081 N.C.S., on June 6, 2022, City Council adopted Resolution No. 2022-94 N.C.S., on June 20, 2022, City Council adopted Resolution No. 2022-107 N.C.S., and on July 18, 2022, City Council adopted Resolution No. 2022-119 N.C.S. authorizing the City Manager to implement teleconferenced public meetings in compliance with Government Code Section 54953. These fourteen Resolutions stated that the continuance of teleconference meetings, “may be extended by the adoption of subsequent resolutions as permitted pursuant to AB 361.” This item and subsequent resolutions will need to be adopted every 30 days pursuant to Government Code Section 54953 to continue teleconference meetings due to COVID-19.

The Ralph M. Brown Act (Brown Act) allows for meetings via teleconferencing subject to certain requirements, including that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at

each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. (Government Code Section 54953(b)(3)). To prevent the spread of COVID-19, the Centers for Disease Control and Prevention (CDC) still recommends that people stay at least "6 feet away from other people", "avoid crowds", and "wear a mask."¹ Accordingly, the CDC's recommendations may conflict with holding public meetings in the City Council chambers and the Government Code's requirements that the public be admitted to the teleconference locations.

In an effort to reduce the spread of COVID-19 at public meetings, on March 17, 2020, Governor Newsom signed Executive Order No. N-29-20, which suspends the Brown Act's requirements for teleconferencing during the COVID-19 pandemic, provided that specified notice and accessibility requirements are met, and that members of the public are allowed to observe and address the legislative body at the teleconference meeting. On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which extended the provision of Order N-29-20 concerning conducting of public meetings through September 30, 2021. The City of Petaluma has been holding teleconference public meetings for the City Council and all of its subordinate bodies in accordance with these two executive orders during the COVID-19 pandemic.

With a surge of COVID-19 delta variant cases and Executive Order N-08-21 sunseting on September 30, 2021, Assembly Bill 361 (AB 361) was signed by Governor Newsom on September 16, 2021, which provides procedures for public entities to continue teleconference meetings. AB 361 amends Education Code Section 89305.6, applicable to public meetings of School Boards, Government Code Section 11133 of the Bagley-Keene Opening Meeting Act, applicable to public meetings for state boards and commissions, and Government Code Section 54953 applicable to public meetings held by cities and counties. AB 361 provides an alternative to the teleconferencing requirements of Government Code Section 54953(b)(3), as long as a state of emergency exists declared by the Governor and the local legislative body makes certain factual findings regarding the state of emergency, including that meeting in person would present imminent risks to the health or safety of attendees. When there is a continuing state of emergency as declared by the Governor and when state or local officials have imposed or recommended measures to promote social distancing, AB 361 would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to AB 361, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures. The attached Resolution makes these required findings and if adopted will allow the City Council and its subordinate bodies to continue to hold public meetings by teleconference to help mitigate the spread of COVID-19.

On May 2, and May 16, 2022, City Council held a hybrid meeting which allowed the public to be both in person and participate via zoom. City Council meetings will continue to be held in person. However, this resolution is still necessary for the other boards and commissions and their staff liaisons who have not yet been trained on conducting hybrid meetings. Additionally, the resolution is necessary to allow commission, committee, and board members to attend their meetings virtually without having to allow the public into their homes.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

DISCUSSION

The Petaluma City Council has the express power pursuant to Section 8630 of the Government Code and Section 2.32.060(A) of the Petaluma Municipal Code “to proclaim the existence or threatened existence of a ‘local emergency’ if the city council is in session” or to ratify the proclamation of a ‘local emergency’ if the City Manager declares a ‘local emergency’ while the Council is not in session. This power was exercised on March 16, 2020, when the City Council adopted Resolution No. 2020-040 N.C.S. which ratified the local emergency declaration proclamation by the City Manager related to COVID-19. The authority to proclaim a local emergency resides with the City Council, not with any of the City subordinate bodies.

Section 55 of the Petaluma City Charter states that “[t]he city council shall have the power to establish such commissions as shall be necessary for the effective accomplishment of municipal business.” Over the years, the City Council has established numerous commissions to help accomplish City business and make recommendations to City Council pursuant to Section 55 of the City Charter. The City Council has also established numerous committees to help accomplish City business and advise the Council. Such committees are not subject to Section 55 of the City Charter and have been created pursuant to the Council’s inherent legislative powers. Accordingly, Council’s decision on whether to continue teleconferenced meetings will also determine whether its subordinate bodies will also continue to have teleconferenced meetings or not.

AB 361 amends Government Code Section 54953 (part of the Brown Act) to provide an alternative to permitting the public to access the locations from which City Councilmembers are teleconferencing. In order to have teleconference public meetings without providing access to City Councilmember’s remote teleconference locations (typically, their private residences), the City Council must pass a resolution stating that:

1. The City Council has reconsidered the circumstances of the COVID-19 state of emergency and that any of the following circumstances exist;
2. The state of emergency as a result of COVID-19 continues to directly impact the ability of the members of City Council and the members of the City’s subordinate bodies to meet safely in person; and/or
3. State or local officials continue to impose or recommend measures to promote social distancing.

AB 361 requires the City Council to make these findings every 30 days to continue holding teleconference hearings without members of the City Council and the public being physically present. If the City Council adopts a resolution under AB 361 as recommended, staff will agendize a similar action once a month until the state of emergency is over, the City Council no longer believes teleconference meetings are necessary to protect the health or safety of City Council meeting attendees, or until Government Code Section 54953 expires on January 1, 2024. AB 361 refers to the “legislative body” making the findings required for the first and subsequent teleconference meetings as permitted by the statute. Some have read the statute’s use of “legislative body” to mean that city councils and each subordinate body of a city council that intends to meet by teleconference as permitted under AB-361 must make the initial and subsequent findings every

30 days. However, as noted above, none of the subordinate bodies created by the Petaluma City Council has the authority to make emergency findings or declarations. Accordingly, the attached resolution has been prepared such that the City Council's findings and authorization to conduct teleconference meetings under AB-361 apply both to the Council and to all of its subordinate bodies. If the Council adopts the resolution, staff will prepare subsequent resolutions for Council action under AB 361 the same way.

The Sonoma County Health Officer is recommending social distancing, and the City has implemented or is preparing to implement the Health Officer's orders by:

- Requesting staff and visitors to wear masks inside City buildings;
- Posting COVID-19 safety measures on the City's social media pages;
- Limiting the hours that the public may enter City Hall;
- Placing hand sanitizer stations in City Hall; and
- Providing online services such as EnergGov to allow the public to access City services, including obtaining permits, online rather than in person.

AB 361 also includes requirements intended to ensure that the public is able to watch teleconference meetings and participate by making public comments during the meetings. These requirements are already being implemented by the City, and include:

- Providing notice of the means by which members of the public may access teleconference meetings and offer public comment, including providing an opportunity for all persons to attend via a call-in option or an internet-based service option.
- The Legislative Body being prohibited from taking further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting to members of the public, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, prohibiting the legislative body from taking further action on agenda items until public access is restored.
- Prohibiting the legislative body from requiring public comments to be submitted in advance of the meeting and specifying that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time.
- Prohibiting the legislative body from closing the public comment period until the public comment period has elapsed or until a reasonable amount of time has elapsed.

Additionally, in anticipation of returning to in-person City Council and subordinate body meetings in the future, on August 2, 2021, the City Council passed an ordinance allocating part of the City's American Rescue Plan Act funds to improvements to the City Council chambers for when in-person public meetings can safely resume.

On October 7, 2021, Governor Newsom vetoed Assembly Bill 339 (AB 339) which sought to require hybrid (virtual and in person) public meetings for jurisdictions that contain a population of at least 250,000 people. As part of Governor Newsom's veto message he stated that AB 339 "would set a precedent of tying public access requirements to the population of jurisdictions. This patchwork approach may lead to confusion...limits flexibility and increases costs for the affected

local jurisdictions.” And that we are still in “a declared state of emergency...” and “could put the health and safety of the public and employees at risk depending on the nature of the declared emergency.”² Even if AB 339 was adopted the City would not be subject to AB 339 due to its population. Regardless, the City is in the process of conducting hybrid meetings as the City believes that hybrid meetings will provide the greatest access to the public.

If the AB 361 Resolution is not passed then the City will not be conducting “teleconferenced meetings” as defined under Government Code Section 54953 of the Brown Act. This means that Councilmembers and all of the subordinate boards and commission members will need to conduct the meetings in person even if the City moves to hybrid meetings. If a Councilmember, or subordinate body member were to teleconference into the meeting, the location of where they are participating would need to be accessible to the public.

Besides AB 361, there are currently two Assembly Bills working its way through the California Legislature that if signed into law, would provide local agencies greater flexibility to conduct teleconferenced meetings. Assembly Bill 1944 would allow the legislative body member to conduct meetings from private locations without having to allow the public into their private location if the meeting agenda identifies the legislative body members who are participating remotely and where they are participating remotely. Assembly Bill 2449 would allow some members to teleconference as long as a quorum is present at a single location that is present to the public. Staff will continue to monitor these two Assembly Bills and provide updates when appropriate.

PUBLIC OUTREACH

This item previously appeared on the October 4, 2021, November 1, 2021, November 15, 2021, December 6, 2021, January 3, 2022, January 24, February 7, 2022, March 7, 2022, April 4, 2022, May 2, 2022, May 16, 2022, June 6, 2022, June 20, 2022, and on July 18, 2022, City Council meetings. Additionally, this agenda item was noticed in compliance with the California Brown Act.

COUNCIL GOAL ALIGNMENT

This action helps achieve the following City Council goals:

Workplan Item #161

Increase community engagement through programs that attract new followers. Complete Latinx outreach strategy and begin implementing recommendations from the strategy.

Workplan Item #169

Develop guidelines and policies to reopen city facilities in a way that supports safety and flexibility for city staff.

² <https://www.gov.ca.gov/wp-content/uploads/2021/10/AB-339-PDF.pdf>

ALTERNATIVES

If the resolution is not adopted, the City Council and its subordinate bodies will be required to hold public meetings in-person or conduct teleconference meetings in accordance with subsection 54953(b)(3) of the California Government Code, which requires posting of the agenda at each teleconference location and for the public to be admitted to each teleconference location.

FINANCIAL IMPACTS

There are no direct financial impacts from enactment of the proposed resolution.

ENVIRONMENTAL COMPLIANCE

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a resolution making required findings and authorizing the City Manager to implement teleconferenced public meetings for the City Council and all City subordinate bodies pursuant to Assembly Bill 361 does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. and is exempt pursuant to Section 15269(c) of the CEQA Guidelines, as specific actions necessary to prevent or mitigate an emergency.

ATTACHMENT

1. Draft Resolution

Resolution No. 2022-XXX N.C.S.
of the City of Petaluma, California

**MAKING REQUIRED FINDINGS AND AUTHORIZING THE CITY MANAGER TO IMPLEMENT
TELECONFERENCED PUBLIC MEETINGS FOR THE CITY COUNCIL AND FOR ALL CITY
SUBORDINATE BODIES PURSUANT TO ASSEMBLY BILL 361**

WHEREAS, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which was first detected in China and has now spread across the globe, with multiple confirmed cases in California, including the City of Petaluma; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, in response to COVID-19, the Governor of the State of California issued a Proclamation of a State of Emergency on March 4, 2020, and the Governor’s declared State of Emergency is still in effect; and

WHEREAS, on March 9, 2020, the City Manager of the City of Petaluma proclaimed the existence of a local emergency related to the COVID-19 threat, and on March 16, 2020, the City Council ratified the emergency proclamation by adopting Resolution no. 2020-040 N.C.S.; and

WHEREAS, the Petaluma City Council has the express power pursuant to Section 8630 of the Government Code and Section 2.32.060(A) of the Petaluma Municipal Code “to proclaim the existence or threatened existence of a ‘local emergency’ if the city council is in session” or to ratify the proclamation of a ‘local emergency’ if the City Manager declares a ‘local emergency’ while the Council is not in session; and

WHEREAS, the authority to proclaim the existence of a local emergency resides with the City Council alone and none of the City subordinate bodies possess such authority; and

WHEREAS, to mitigate the spread of COVID-19, the Centers for Disease Control and Prevention recommends that people “[a]void crowded spaces,” “[c]hoose events that take place outside with enough space for attendees to stay at least six-feet apart,” and “[h]ave a virtual gathering;” and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended and modified some of the teleconferencing requirements under the Brown Act (California Government Code Section 54950 et seq.) to permit legislative bodies to hold public meetings via teleconference (with audio or video communications, without a physical meeting location), subject to specified requirements, including that public meeting agendas identify the teleconferencing procedures to be used to permit the public to participate by teleconference; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which extended the provisions of Executive Order N-29-20 concerning the conduct of public meetings through September 30, 2021; and

WHEREAS, California Assembly Bill 361 was signed into law on September 16, 2021, amends Education Code Section 89305.6, applicable to public meetings of School Boards, Government Code Section 11133 of the

Bagley-Keene Opening Meeting Act. applicable to public meetings for state boards and commissions, and Government Code Section 54953 applicable to public meetings held by cities and counties; and

WHEREAS, AB 361 includes requirements to Government Code Section 54953 intended to ensure that the public may watch and make public comments during teleconferenced public meetings permitted pursuant to AB 361, including:

- Requiring legislative bodies to provide notice of the means by which members of the public may access teleconferenced meetings and offer public comment, and to provide an opportunity for all persons to attend teleconferenced meetings via a call-in option or an internet-based service option;
- Prohibiting legislative bodies from taking further action on agenda items when there is a disruption which prevents broadcasting the meeting, or in the event of a disruption within the local agency’s control which prevents members of the public from offering public comments, prohibiting legislative bodies from taking further action on agenda items until public access is restored;
- Prohibiting legislative bodies from requiring public comments to be submitted in advance of teleconferenced meeting and specifying that legislative bodies must provide an opportunity for the public to address the legislative body and offer comment in real time;
- Prohibiting legislative bodies from closing the public comment period until the public comment period has elapsed or until a reasonable amount of time has elapsed; and

WHEREAS, the City is already implementing and complying with the above public meeting requirements now codified in Government Code Section 54953(e)(2)(B-G); and

WHEREAS, Government Code Section 54953(b)(3) permits public meetings by teleconference, and requires that agendas be posted at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, and that each teleconference location be accessible to the public; and

WHEREAS, pursuant to Government Code Section 54953(e)(3), if a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

1. Reconsidered the circumstances of the COVID-19 state of emergency and that any of the following circumstances exist:
2. The state of emergency as a result of COVID-19 continues to directly impact the ability of the members of City Council and the members of the City’s subordinate bodies to meet safely in person; and
3. State or local officials continue to impose or recommend measures to promote social distancing; and

WHEREAS, pursuant to Government Code Section 54953(f), Government Code Section 54953 remains in effect until January 1, 2024; and

WHEREAS, the Sonoma County Health Officer continues to recommend social distancing, and the City has implemented or is preparing to implement the Health Officer’s orders by:

1. Recommending that staff and visitors wear masks in City buildings;
2. Posting COVID-19 safety measures on the City’s social media pages;
3. Limiting the hours that the public may enter City Hall;
4. Placing hand sanitizer stations in City Hall; and
5. Installing EnergGov to allow the public to obtain permits online rather than in person; and

WHEREAS, Section 55 of the Petaluma City Charter states that, “[t]he city council shall have the power to establish such commissions as shall be necessary for the effective accomplishment of municipal business;” and

WHEREAS, the City Council has established numerous commissions to help accomplish City business and make recommendations to City Council pursuant to Section 55 of the City Charter; and

WHEREAS, the City Council has also established numerous committees to help accomplish City business and advise the Council, and such committees are not subject to Section 55 of the City Charter and have been created pursuant to the Council’s inherent legislative powers; and

WHEREAS, this Resolution will determine whether the subordinate commissions and committees of City Council will continue to hold teleconferenced meetings for the next thirty days; and

WHEREAS, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a resolution making required findings and authorizing the City Manager to implement teleconferenced public meetings for the City Council and all City subordinate bodies pursuant to Assembly Bill 361 does not meet CEQA's definition of a “project,” because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. and is exempt pursuant to Section 15269(c) of the CEQA Guidelines, as specific actions necessary to prevent or mitigate an emergency; and

WHEREAS, on October 4, 2021, City Council adopted Resolution No. 2021-163 N.C.S., again on November 1, 2021 City Council adopted Resolution No. 2021-176 N.C.S., again on November 15, 2021 City Council adopted Resolution No. 2021-183 N.C.S., on December 6, 2021 City Council adopted Resolution No. 2021-189 N.C.S., again on January 3, 2022, City Council adopted Resolution No. 2022-001 N.C.S., again on January 24, 2022, City Council adopted Resolution No. 2022-008 N.C.S., on March 7, 2022, City Council adopted Resolution No. 2022-029 N.C.S., again on April 4, 2022, City Council adopted Resolution No. 2022-045 N.C.S., again on May 2, 2022, City Council adopted Resolution No. 2022-068 N.C.S., on May 16, 2022, City Council adopted Resolution No. 2022-081 N.C.S., on June 13, 2022, City Council adopted Resolution No. 2022-094 N.C.S., again on June 20, 2022, City Council adopted Resolution No. 2022-107 N.C.S., and again on July 18, 2022, City Council adopted Resolution No. 2022-119 authorizing the City Manager to implement teleconferenced public meetings for thirty days; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings, including public comments.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Petaluma as follows:

1. Declares that the above recitals are true and correct and are incorporated into this resolution as findings of the City Council.
2. Finds that proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a resolution making required findings and authorizing the City Manager to implement teleconferenced public meetings for the City Council and all City subordinate bodies pursuant to Assembly Bill 361 does not meet CEQA's definition of a “project,” because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the

action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. and is exempt pursuant to Section 15269(c) of the CEQA Guidelines, as specific actions necessary to prevent or mitigate an emergency.

3. Finds and declares that City Council has reconsidered the circumstances of the COVID-19 state of emergency as declared by the Governor and that the following circumstances exist:
- The state of emergency as a result of COVID-19 continues to directly impact the ability of the members of City Council and the members of the City’s subordinate bodies to meet safely in person; and
 - State and local officials continue to impose or recommend measures to promote social distancing.

These findings will take effect on August 16, 2022.

4. Authorizes and directs the City Manager, based on the above findings, to implement teleconferenced public meetings for the City Council and all City subordinate bodies in accordance with the requirements Assembly Bill 361.
5. Directs the City Manager to return to the City Council within 30 days so that the Council may update its findings and determinations pursuant to Government Code Section 54953(e)(3) and authorizes continued teleconferenced meetings of the City Council and City subordinate bodies in accordance with the requirements of AB 361 while the state of emergency as a result of COVID-19 continues to directly impact the ability of the members of the City Council and the members of the City’s subordinate bodies to meet safely in person.
6. If any section, subsection, sentence, clause, phrase or word of this resolution is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this resolution; the City Council hereby declares that it would have passed and adopted this resolution and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.
7. This Resolution shall become effective on August 16 and will lapse after 30 days, but may be extended by the adoption of subsequent resolutions as permitted pursuant to AB 361.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 8th day of August 2022, by the following vote:

Approved as to form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor



DATE: August 8, 2022

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Josh Minshall, PE, Senior Civil Engineer, Public Works & Utilities
Christopher Bolt, MPA, PE, CPM, ICMA-CM, Director, Public Works & Utilities

SUBJECT: Resolution Certifying Water Recycling Facility and River Access Improvements Environmental Impact Report Outfall Relocation Addendum, Approving the Project, and Adopting a Mitigation Monitoring Plan; and a Resolution Authorizing Award of Contractor for the Ellis Creek Water Recycling Facility Outfall Relocation Project to NBC Engineering & Construction Inc.

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution Certifying Water Recycling Facility and River Access Improvements Environmental Impact Report Outfall Relocation Addendum, Approving the Project, and Adopting a Mitigation Monitoring Plan; and a Resolution Authorizing Award of Contractor for the Ellis Creek Water Recycling Facility Outfall Relocation Project to NBC Engineering & Construction Inc.

BACKGROUND

The City's Ellis Creek Water Recycling Facility (ECWRF) has been in operation since early 2009 and currently processes an average dry weather daily flow of 4.8 MGD (million gallons per day). The ECWRF site currently has an outfall that extends from a junction box immediately south of the developed ponds and southerly to a structure located within the Petaluma River. This existing outfall was constructed of fiberglass material in the 1970s, which is now known for becoming brittle and prone to failure over time. During a September 2016 inspection, signs of severe stress and imminent failure were observed including longitudinal cracks along the top and bottom of the pipe, separating pipe joints and sections of pipe. As a result, an emergency outfall was constructed in 2017, which could operate temporarily in case of failure of the existing outfall. The emergency outfall requires a pump station and relies on above-ground piping. Relocation of the outfall would replace the existing outfall and allow for the removal of the emergency outfall.

DISCUSSION

The relocation of the outfall was driven primarily by the need to rehabilitate or replace the existing failing outfall pipe. The existing outfall pipe extends approximately 3,100 feet through a tidal marsh and directly into the Petaluma River. The condition of the pipe and location made rehabilitation infeasible. Replacement would be costly, and construction would be disruptive to

the tidal marshland. A cost-effective and environmentally responsible design was prepared, which locates a headwall along the banks of the tidal slough nearest the edge of the developed portion of the site. A hydraulic analysis was conducted to accommodate a full capacity discharge rate of approximately 14 MGD, to match the maximum discharge allowed by the ECWRF discharge permits. This matches the capacity of the existing outfall. Average discharge rates have been approximately 7 MGD during the wet season. The analysis included stabilization and protection of the slough to prevent scouring or channel erosion. The existing and proposed outfall both operate under gravity flow conditions.

The outfall relocation will replace the aging infrastructure associated with the existing outfall and eliminate the risk of a pipe failure which could result in damage to the wetland. The project will also remove the timber pile structure within the Petaluma River made from treated wood. The new outfall located entirely on City-owned property will be easier to inspect and maintain and will ensure that the ECWRF can continue to operate safely.

The City issued an invitation to bid on June 30, 2022. Pre-bid meetings were held on July 7th and 12th and attendance was not mandatory. Representatives from two contracting firms attended the meeting on July 12th which was held on-site. Three contracting firms submitted plan holder forms, including the two in attendance. On July 20, 2022, no bids were received. This satisfied the requirements of state law, and City Charter and Municipal Code.

Since no bids were received, there have been no bid protests. As the City followed the Charter and Municipal Code's bid process it has complied with its local purchasing requirements.

California Public Contract Section 20166 authorizes cities that receive no bids on their construction projects to "have the project done without further complying with" the Local Agency Public Construction Act. Additionally, the common law recognizes a bidding exception for circumstances where competitive bidding of public contracts otherwise required by statute may be excused, including circumstances where the contract is such that competitive proposals would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible, *Graydon v. Pasadena Redevelopment Agency* (1980) 104 CA3d 631. As the City did not receive any bids it would be undesirable and impractical to bid the project out again. Accordingly, under both state law and the common law the City can solicit informal bids on the project.

The City notified the plan holders that no bids were received and requested a response to indicate interest in proposing on the project. One positive response was received by NBC Construction & Engineering, Inc., which was available to provide a responsible bid on July 27, 2022. This quick response enables the construction to occur within the work windows specified by the environmental permits and the City's desired timeline.

The bidder, NBC Construction & Engineering, Inc., is a General Engineering Contractor with over 30 years of experience. Staff verified that the contractor possesses a valid Class A (General Engineering) California Contractor's License, license number 857964, which expires on December 31, 2023, that qualifies the contractor to perform the work.

PUBLIC OUTREACH

The project application for permits included posting on-site. The notification was posted at the entrance from Cypress Drive to the parking area for the Shollenberger Park Extension, as well as at the entrance to the ECWRF.

The Outfall Relocation Environmental Impact Report (EIR) Addendum was posted on the City's website

Due to the remote location of the project, direct mailers were not sent.

COUNCIL GOAL ALIGNMENT

The proposed action meets the following Council Goals:

- #166: Make the City's Wastewater collection system more resilient, by repairing and replacing damaged sewer mains, and implementing the sewer masterplan.

CLIMATE ACTION/SUSTAINABILITY EFFORTS

The outflow is regulated by a weir located within the junction box nearest the outfall. The weir will be modified to elevate for storm conditions and moderate sea-level rise. However, high sea-level rise in conjunction with extreme storm conditions would require upstream modifications within the ECWRF and are beyond the scope of this project. The improvements made by this project are intentionally compatible with future resiliency efforts to adapt to sea-level rise and storm surges.

ENVIRONMENTAL COMPLIANCE

Environmental Impact Report

The EIR for the facility (*Water Recycling Facility and River Access Improvements EIR – State Clearinghouse #2001052089*) included maintenance of the existing outfall structure but did not provide for relocation. The EIR was certified by the City of Petaluma in 2002 and subsequently amended by certified addenda in 2004, 2005, 2006, 2007, and twice in 2016.

The Addendum amends the original Water Recycling Facility and River Access Improvements EIR. Six prior Addenda to the 2002 Certified EIR have previously been adopted. The first four EIR Addenda evaluated changes in design before the ECWR Facility was completed. The fifth EIR Addendum evaluated the addition of Biofuel to Biomass infrastructure to the ECWR Facility, and the sixth EIR Addendum analyzed the relocation of a previously proposed bridge that had never been constructed.

This EIR Addendum, attached to Attachment 1, concludes that the relocation of the outfall does not result in new significant impacts and does not cause substantially more severe significant impacts relative to the impacts previously disclosed in the Water Recycling Facility and River Access Improvements EIR. Thus, an Addendum is the appropriate level of CEQA analysis and the appropriate method of amending the 2002 Certified EIR, pursuant to Sections 15162 and 15164 of

the Guidelines implementing the California Environmental Quality Act (CEQA). While certification of the addendum is not required, each iteration has been previously certified by the City Council and the Mitigation Monitoring Program does need to be adopted as part of the Outfall Relocation Project.

Permitting

The project is located within areas that require great care in protecting the environment and habitat. The project has been designed to minimize the work within the wetlands and waterways. A Mitigation Monitoring Plan has been developed to ensure that the project is constructed in compliance with best practices and the restrictions required by various permitting agencies. The environmental permitting is in progress and shall be fully obtained before the start of work. The agency permits and approvals required for this project include:

- **San Francisco Regional Water Quality Control Board (RWQCB)**
 - Section 401 Water Quality Certification
- **California Department of Fish and Wildlife (CDFW)**
 - Streambed Alteration Agreement
- **Army Corps of Engineers (ACOE)**
 - Section 404 Nationwide Permit
- **Bay Conservation and Development Commission (BCDC).**
 - Regionwide Permit 2

To protect certain wildlife species, the construction windows have been restricted as follows:

Construction in and adjacent to the marsh	September 1 and January 31
Demolition within the Petaluma River	September 1 and October 15
Daylight restriction	30 minutes after sunrise and before sunset

The State Lands Commission is currently evaluating if the existing lease may be terminated or if an amendment will be required for the demolition activity to remove the existing outfall from within the Petaluma River. State Lands Commission approval is not required for the installation of the new outfall which will be located entirely upon City-owned property.

FINANCIAL IMPACTS

The outfall relocation will be funded by Wastewater Enterprise funds. The new outfall is currently in the 22/23 CIP budget, with construction contracts previously estimated at \$1,466,000. This was based on a preliminary design and several unknowns within the waterways.

The proposal from NBC Construction & Engineering Inc. for the base bid amount is \$929,403. For Alternative 1, to demolish the existing outfall in 2022 bid amount is \$86,411. Alternative 2 to demolish the existing outfall in 2023 would be \$129,616 if awarded. We recommend the award of the base bid, alternative 1 in the amount of \$1,015,814, and authorize a contingency of 15%.

Itemized Budget Breakdown	FY 22/23 CIP Budget	Total Project Estimate
Uses		
Planning/Environmental	\$ -	\$ 342,000
Land & Easements	\$ -	\$ -
Design	\$ 75,000	\$ 285,000
Legal Services	\$ -	\$ -
Administration	\$ -	\$ -
Construction Contracts	\$ 1,466,000	\$ 1,466,000
Construction Management	\$ 70,000	\$ 101,000
Contingency	\$ 200,000	\$ 200,000
CIP Overheads	\$ 15,000	\$ 35,000
TOTAL	\$ 1,826,000	\$ 2,429,000

The authorization of award plus contingency for a total of \$1,168,186 is well within the construction contracts budget of \$1,466,000. Some of the construction savings come from the increased design efforts that added value to the project and will be partially utilized to increase construction management efforts to reduce the burden on staff and ensure timely delivery as well as environmental compliance.

ALTERNATIVES

The Council is not required to certify the Outfall Relocation EIR Addendum and could instead approve the project with the adoption of the Mitigation Monitoring Plan. However, given past certifications, this is not recommended.

If the Council does not authorize the award of the contract, it is unlikely that substantial construction could be completed within the 2022 construction windows. The project would be delayed until the fall of 2023 and permits would require revision. Risk to the tidal marsh would continue and if the existing outfall fails, operations staff would be required to operate the emergency outfall. Subsequent construction projects scheduled at ECWRF may be affected due to limited space, staff, and operational considerations.

Staff is recommending the Outfall Relocation EIR Addendum be certified, and the Mitigation Monitoring Plan be adopted, the project approved, and award of a contract authorized at this time so that construction may begin immediately upon finalization of permits and the start of the construction window.

ATTACHMENTS

1. Resolution to Certify the Outfall Relocation EIR Addendum with
 - a. Exhibit A (Certified Water Recycling Facility and River Access Improvement Environmental Impact Report)
 - b. Exhibit B Mitigation Monitoring Plan
2. Resolution to Authorize the Award of Contract
3. Location Map

Resolution No. 2022-XXX N.C.S.
of the City of Petaluma, California

CERTIFYING THE WATER RECYCLING FACILITY AND RIVER ACCESS IMPROVEMENTS ENVIRONMENTAL IMPACT REPORT OUTFALL RELOCATION ADDENDUM, APPROVING THE PROJECT, AND ADOPTING A MITIGATION MONITORING PLAN

WHEREAS, the City of Petaluma currently operates the Ellis Creek Water Recycling Facility (ECWRF); and

WHEREAS, the Water Recycling Facility and River Access Improvements Project Final Environmental Impact Report (EIR), which included the development of the ECWRF (State Clearinghouse #2001052089) was certified on August 5, 2002, by the City Council as Resolution No. 2002-135, with addenda prepared in 2004, 2005, 2006, 2007, and twice in 2016; and

WHEREAS, subsequent to EIR certification, the Water Recycling Facility and River Access Improvements Project was approved, which included maintenance of but not the relocation of the outfall; and

WHEREAS, the proposed new outfall location is within the footprint of the approved project as analyzed in the 2002 certified EIR; and

WHEREAS, the footprint of the relocated outfall would be smaller than the existing outfall, with no changes in the discharge volume or discharge season being proposed; and

WHEREAS, on May 12, 2021, the California Regional Water Quality Control Board San Francisco Bay Region approved NPDES Permit CA0037810, which includes discharging at the new location; and

WHEREAS, the change to the original project is evaluated in the Outfall Relocation EIR Addendum dated June 2022; and

WHEREAS, although the City Council is not required to certify the Outfall Relocation EIR Addendum, it is consistent with the certifications of previous addenda to do so; and

WHEREAS, Resolution No. 2002-136 made certain findings of fact and statement of overriding considerations as required under the California Environmental Quality Act (“CEQA”) and adopted a Mitigation Monitoring Program for the project; and

WHEREAS, on June 7, 2004, the City Council, by Resolution No. 2004-101, re-certified the Water Recycling Facility and River Access Improvements Project Final Environmental Impact Report Addendum, and Adopted Findings and Statement of Overriding Considerations, and Adopted Revised Mitigation Monitoring Program; and

WHEREAS, on August 1, 2005, the City Council, by Resolution No. 2005-130, certified the Water Recycling Facility and River Access Improvements EIR 2005 Construction Addendum, approved revisions to the project, made findings of fact, and adopted a revised Mitigation Monitoring Program; and

WHEREAS, on April 3, 2006, the City Council, by Resolution No. 2006-057 certified the Water Recycling Facility and River Access Improvements EIR February 2006 Construction Addendum, approved the project revisions, and adopted findings of fact; and

WHEREAS, on May 7, 2007, the City Council, by Resolution No. 2007-080 certified the Water Recycling Facility and River Access Improvements EIR April 2007 Addendum, approved the revisions to the project, and made findings of fact; and

WHEREAS, on January 4, 2016, the City Council, by Resolution No. 2016-007 certified the Water Recycling Facility and River Access Improvements EIR 2015 Biomass-to Biofuel Addendum, approved the revisions to the project, and made findings of fact; and

WHEREAS, on June 6, 2016, the City Council, by Resolution No. 2016-089 certified the Water Recycling Facility and River Access Improvements EIR 2015 Bridge Relocation Addendum, approved the revisions to the project, and made findings of fact; and

WHEREAS, under California Environmental Quality Act (CEQA) Guidelines section 15164, a lead agency may prepare an addendum to a previously certified EIR to analyze changes in a project, or in circumstances surrounding a project, where the record indicates that a supplemental or subsequent EIR or negative declaration is not required; and

WHEREAS, the City Council has considered the Outfall Relocation EIR Addendum, attached hereto as Exhibit A, and together with the previously Certified EIR; and

WHEREAS, there is sufficient funding for the project in Wastewater Enterprise funds; and

WHEREAS, the City Council authorized a project budget in the amount of \$1,826,000 for the fiscal year 2023 and a total project estimate of \$2,429,000 as part of the Fiscal Year 2023 Adopted Budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Petaluma hereby:

1. Findings: Based upon the substantial evidence set forth in the record, the City Council makes the following findings:
 - a. The foregoing recitals are true and correct and incorporated by reference.
 - b. Pursuant to CEQA Guidelines 15164(b) and (e), no further environmental review is warranted because:
 - i. no new significant environmental impacts would occur due to the proposed Project modifications; and
 - ii. No substantially more severe significant environmental impacts would occur due to the proposed Project modifications.
 - c. Therefore, there are no conditions warranting further environmental review.
 - d. The Outfall Relocation EIR Addendum represents the independent judgment and analysis of the City Council.
2. Determines that the Outfall Relocation EIR Addendum is the appropriate CEQA documentation for the project as modified.
3. Certifies the Outfall Relocation EIR Addendum.
4. The documents, which constitute the record of proceedings upon which this Resolution is based, are available for review at the City Clerk's office during normal business hours.
5. Approves the outfall as described in the Outfall Relocation EIR Addendum to the Water Recycling Facility and River Access Improvements EIR.

6. Adopts the Mitigation Monitoring Program attached as Exhibit B to this resolution.

7. Directs staff to file a Notice of Determination with the County Clerk.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 8th day of August 2022, by the following vote:

Approved as to
form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor

City of
Petaluma, California



water recycling

FACILITY AND RIVER ACCESS IMPROVEMENTS

Environmental Impact Report
Outfall Relocation Addendum

State Clearing House #2001052089

June 2022

CITY OF PETALUMA, CALIFORNIA

WATER RECYCLING FACILITY AND RIVER ACCESS IMPROVEMENTS ENVIRONMENTAL IMPACT REPORT

OUTFALL RELOCATION ADDENDUM

June 30, 2022

Prepared by the City of Petaluma in Collaboration with GHD



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1 INTRODUCTION AND SUMMARY

BACKGROUND

The City of Petaluma currently operates the Ellis Creek Water Recycling Facility (ECWR Facility). An Environmental Impact Report (EIR) for the Ellis Creek Water Recycling Facility (titled the *Water Recycling Facility and River Access Improvements EIR – State Clearinghouse #2001052089*) was certified by the City of Petaluma in 2002, with addenda prepared in 2004, 2005, 2006, 2007, and twice in 2016. Subsequent to EIR Certification, the City approved the Water Recycling Facility and River Access Improvements Project (Project). The approved Project included maintenance to the existing Petaluma River Outfall structure but did not consider relocating the outfall. The proposed new outfall location is within the footprint of the approved Project as analyzed in the 2002 Certified EIR. The footprint of the relocated outfall would be smaller than the existing outfall. No changes in discharge volume or discharge season are proposed. On May 12, 2021, the California Regional Water Quality Control Board San Francisco Bay Region approved the City’s NPDES Permit CA0037810, which includes discharging at the new location. This minor change to the original Project is evaluated in this Outfall Relocation EIR Addendum.

The existing outfall pipe extends approximately 3,100 linear feet through a tidal marsh, from the ECWR Facility to the Petaluma River. The City is authorized to discharge secondary-treated municipal wastewater effluent to the Petaluma River during the discharge season of October 21st through April 30th of each year. The existing 42-inch-diameter outfall pipe has a capacity to discharge up to 14 million gallons per day (MGD). Average daily discharge since 2016 has been approximately 7.0 MGD; the maximum discharge rate recorded over that time period was 13.9 MGD.

During a September 2016 inspection, the City discovered longitudinal cracks along the top and bottom of the pipe, separating pipe joints, and sections of pipe that have been flattened into an oval shape. An emergency contingency outfall bypass was installed in an unnamed tidal slough in the southern corner of the existing ECWR Facility in 2017 but has not been used except for testing. To address the structural integrity issue, the City is proposing to relocate and construct a new outfall pipeline and outfall structure, directing discharge near the same location as the emergency outfall (see **Figure 3**).

This Addendum amends the original Water Recycling Facility and River Access Improvements EIR. Six prior Addenda to the 2002 Certified EIR have previously been adopted. The first four EIR Addenda evaluated changes in design prior to the ECWR Facility being complete. The fifth EIR Addendum evaluated the addition of Biofuel to Biomass infrastructure to the ECWR Facility, and the sixth EIR Addendum analyzed the relocation of a previously proposed bridge that had never been constructed.

This EIR Addendum concludes that the relocation of the outfall does not result in new significant impacts and does not cause substantially more severe significant impacts relative to the impacts previously disclosed in the Water Recycling Facility and River Access Improvements EIR. Thus, an Addendum is the appropriate level of CEQA analysis and the appropriate method of amending the 2002 Certified EIR, pursuant to Sections 15162 and 15164 of the Guidelines implementing the California Environmental Quality Act (CEQA).

PUBLIC AND AGENCY COMMENTS

This EIR Addendum is available for review at the Petaluma Public Works & Utilities Office located at 202 N. McDowell Boulevard, on the City’s Capital Improvements Program web page, and will be submitted to the State Clearinghouse. The EIR Addendum is tentatively scheduled for consideration at the Petaluma City Council meeting to be held on Monday, August 1, 2022, at 7:00 pm.

Written comments should be mailed or emailed to:

City of Petaluma
202 North McDowell Boulevard
Petaluma, CA 94954
jminshall@cityofpetaluma.org
Attention: Josh Minshall

ORGANIZATION OF THE ADDENDUM

The EIR Addendum is organized in a similar fashion to the 2002 Certified EIR.

- This Introduction and Summary Chapter includes Table 1-1, a summary of potential significant impacts and mitigation measures associated with the approved Project and the proposed revisions.
- Chapter 2 contains a detailed description of the proposed modifications to the Project Description.
- Chapter 3 presents the revisions to the Mitigation Monitoring Program.
- Chapter 4 presents the changes to the environmental analysis due to the proposed revisions.
- Chapter 5 updates the Alternatives chapter.
- Chapter 6 updates the CEQA Issues chapter.
- Chapter 7 presents the preparers of this Addendum.

APPLICABILITY AND USE OF AN ADDENDUM

As directed by CEQA, California Public Resources Code Section 21166, and CEQA Guidelines Section 15162, when an EIR has been prepared for a project, no subsequent EIR shall be prepared, unless one or more of the following circumstances occur:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - a) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - b) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The change in environmental impacts due to proposed changes in the Project or changed conditions has been evaluated and measured against the standards set forth in paragraphs 1, 2, and 3 above to determine whether an Addendum is appropriate or a subsequent EIR is needed. The environmental analysis in Chapter 4 provides the detailed examination of each of these issues. The conclusion is that none of the circumstances which might require a subsequent or supplemental EIR has occurred, and that an Addendum is, therefore, appropriate.

This Addendum should be read together with the full text of the 2002 Certified Petaluma Water Recycling Facility and River Access Improvements EIR. Even though modifications to the approved Project are minor, the modifications have been subjected to a detailed analytical process consistent with the methodology and thresholds of significance applied in the 2002 Certified EIR.

Section 15164 of the Guidelines implementing the California Environmental Quality Act (“CEQA”) provides that an Addendum is the appropriate level of CEQA analysis when the circumstances defined in Section 15162 calling for preparation of a Subsequent EIR do not occur. As noted above, none of the circumstances that require a Subsequent EIR are present. Thus, an Addendum is the appropriate level of CEQA analysis and the appropriate method of amending the 2002 Certified EIR.

SIGNIFICANT AND UNAVOIDABLE ADVERSE IMPACTS

There are no new significant unavoidable environmental impacts as a result of the proposed revisions to the approved Project. The one significant unavoidable impact from the previously approved Project remains:

- Impact **AG-1**: Loss of approximately 149 acres of farmland on Parcels A and B

When the project was approved in August of 2002, a statement of overriding considerations was adopted, explaining the City’s reasons for approving the Project despite the significant impact on farmland.

IMPACT AND MITIGATION SUMMARY

No new significant impacts have been identified as a result of this Addendum, and therefore, no new mitigation measures have been developed. Table 1 provides a summary of the impacts and mitigation measures that were identified in the 2002 Certified EIR for the approved project and those identified for the proposed Outfall Relocation Project. The impacts and mitigation measures remain the same.

The impacts and mitigation measures are identified in one of three categories:

- Significant - Impact is significant before mitigation; some of these significant impacts can be mitigated to a less than significant level, but others remain significant after mitigation.
- Less than Significant - Impact is not considered significant and no mitigation is required.
- No Impact - The project has no effect on the resource described in the criterion.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
1. Land Use			
LU-1. Will the project be inconsistent with the land use plan map of an adopted General Plan?	Less than Significant	No Impact	No mitigation is necessary.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
LU-2. Will the project be inconsistent with zoning?	Less than Significant	No Impact	No mitigation is necessary.
LU-3. Will the project be an incompatible land use type in the MRZ-2 classification or in a designated quarry area?	No Impact	No Impact	No mitigation is necessary.
LU-4. Will the project introduce inappropriate uses in a Community Separator?	No Impact	No Impact	No mitigation is necessary.
LU-5. Will the project increase potential for conflict as a result of incompatible land uses?	Less than Significant	No Impact	No mitigation is necessary.
LU-6. Will the project convert non-urban land to urban uses for Project facilities?	Less than Significant	No Impact	No mitigation is necessary.
LU-7. Will the project convert public open space for Project facilities?	No Impact	No Impact	No mitigation is necessary.
LU-8. Will the project result in loss of homes due to construction of facilities?	Less than Significant	No Impact	No mitigation is necessary.
LU-C1: Will the project have a cumulative potential to disturb land uses?	Less than Significant	No Impact	No mitigation is necessary.
2. Agriculture			
AG-1. Will the project cause loss of farmland?	Significant	No Impact	No mitigation is necessary.
AG-2. Will the project cause Williamson Act contracts to be canceled?	No Impact	No Impact	No mitigation is necessary.
AG-3. Will the project cause damage to adjacent vineyards by increasing glassy-winged sharpshooter populations?	Less than Significant	Less than Significant	No mitigation is necessary.
AG-C1. Will the project have cumulative impacts to agriculture?	Significant	No Impact	No mitigation is necessary.
3. Geology, Soils, and Seismicity			
GS-1. Will project facilities be located within an area of unstable slope conditions?	Less than Significant	Less than Significant	No mitigation is necessary.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
GS-2. Will project facilities be subject to ground rupture due to location near a surface trace of an active fault?	Less than Significant	Less than Significant	No mitigation is necessary.
GS-3. Will project facilities be located in areas with soils and groundwater conditions that are susceptible to liquefaction during an earthquake?	Less than Significant	Less than Significant	No mitigation is necessary.
GS-4. Will earthquake-induced strong ground shaking damage project facilities?	Less than Significant	Less than Significant	No mitigation is necessary.
GS-5. Will construction of the project cause off-site water-related erosion?	Less than Significant	Less than Significant	No mitigation is necessary.
GS-6. Will project facilities be exposed to damage due to expansive soils?	Less than Significant	Less than Significant	No mitigation is necessary.
GS-7. Will project facilities be exposed to damage due to construction on corrosive soils?	Less than Significant	Less than Significant	No mitigation is necessary.
GS-C1: Will the project have a cumulative potential for geologic or seismic impacts?	Less than Significant	No Impact	No mitigation is necessary.
4. Groundwater			
GW-1. Will the project degrade groundwater quality at existing drinking water wells, resulting in a public health hazard?	Less than Significant after Mitigation	No Impact	No mitigation is necessary.
GW-2. Will the project cause groundwater mounding or increase groundwater levels that cause surface discharge in a non-stream environment?	Less than Significant	No Impact	No mitigation is necessary.
GW-3. Will the project lower groundwater levels at existing wells?	No Impact	No Impact	No mitigation is necessary.
GW-C1: Will the project have a potential for cumulative groundwater impacts?	Less than Significant	No Impact	No mitigation is necessary.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
5. Surface Water Quality			
WQ-1. Will the project discharge cause numeric-based criteria to be exceeded?	Less than Significant after Mitigation	No Impact	No mitigation is necessary.
WQ-2. Will the project cause narrative-based criteria to be exceeded.	Less than Significant after Mitigation	No Impact	No mitigation is necessary.
WQ-3: Will project construction result in a substantial degradation of surface runoff quality?	Less than Significant	Less than Significant	No mitigation is necessary.
WQ-C1: Will the project have a cumulative potential to cause numeric or narrative-based criteria to be exceeded?	Less than Significant	Less than Significant	No mitigation is necessary.
6. Hydrology			
H-1. Will the project discharge cause flooding anywhere along the Petaluma River?	Less than Significant	No Impact	No mitigation is necessary.
H-2. Will the project discharge cause streambank erosion in the Petaluma River?	Less than Significant	No Impact	No mitigation is necessary.
H-3. Will non-discharge project components cause flooding?	Less than Significant	No Impact	No mitigation is necessary.
H-4. Will non-discharge project components cause streambank erosion?	Less than Significant	No Impact	No mitigation is necessary.
H-C1: Will the project have a cumulative potential to cause flooding or erosion?	Less than Significant	No Impact	No mitigation is necessary.
7. Public Health and Safety			
PHS-1. Will the project expose the public to chemicals, radionuclides, pathogenic viruses, bacteria, or other disease organisms at concentrations detrimental to human health?	Less than Significant	No Impact	No mitigation is necessary.
PHS-2. Will the project expose workers or the public to hazards from a known hazardous waste site?	Less than Significant	No Impact	No mitigation is necessary.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
PHS-3. Will the project increase potential exposure of the public to hazardous materials due to a chemical release?	Less than Significant	No Impact	No mitigation is necessary.
PHS-4. Will the project expose the public to safety hazards associated with operation of heavy machinery, vehicles, or equipment; or creation of accessible excavations (trenches, pits, or borings); or creation of an accessible open body of water?	Less than Significant	No Impact	No mitigation is necessary.
PHS-5. Will the project increase the potential exposure of the public to disease vectors (i.e., mosquitoes)?	Less than Significant	No Impact	No mitigation is necessary.
PHS-C1: Will the project have a cumulative impact on public health and safety?	Less than Significant	No Impact	No mitigation is necessary.

8. Biological Resources

BIO-1. Will the project cause loss of individuals or occupied habitat of endangered, threatened, or rare fish, wildlife or plant species?	Less than Significant after Mitigation	Less than Significant after Mitigation	BIO-1a. Special-status Species Protection Program. BIO-1b Rare, Threatened and Endangered Plant Protection Program
BIO-2. Will the project cause loss of active raptor nest, migratory bird nests, or wildlife nursery sites?	Less than Significant after Mitigation	Less than Significant after Mitigation	BIO-2a. Active Raptor and Migratory Bird Nest Protection Program.
BIO-3. Will the project cause permanent loss of sensitive wildlife habitat?	Less than Significant	Less than Significant	No mitigation is necessary.
BIO-4. Will the project cause permanent loss of sensitive native plant communities?	Less than Significant after Mitigation	Less than Significant	No mitigation is necessary.
BIO-5. Will the project substantially block or disrupt major fish or wildlife migration or travel corridors?	Less than Significant after Mitigation	Less than Significant	No mitigation is necessary.
BIO-6. Will the project cause permanent loss of aquatic habitat (i.e., streams)?	Less than Significant after Mitigation	Less than Significant	No mitigation is necessary.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
BIO-7. Will the project destroy wetlands or other waters of the U.S.?	Less than Significant after Mitigation	Less than Significant	No mitigation is necessary.
BIO-8. Will the project expose organisms to hazardous levels of toxic or bioaccumulatory substances?	Less than Significant after Mitigation	No Impact	No mitigation is necessary.
BIO-C1. Will the project have cumulative impacts to biological resources?	Less than Significant	Less than Significant	No mitigation is necessary.
9. Traffic and Circulation			
TR-1. Will project traffic cause congestion along study area roadways?	Less than Significant after Mitigation	No Impact	No mitigation is necessary.
TR-2. Will lane closures due to project construction cause traffic delays, transit delays, restricted access, increased traffic hazards, and rerouting of traffic, including emergency vehicles?	Less than Significant	No Impact	No mitigation is necessary.
TR-3. Will project construction traffic increase traffic hazards to motor vehicles, bicyclists, or pedestrians?	Less than Significant	Less than Significant	No mitigation is necessary.
TR-4. Will project construction traffic damage public or private roadbeds?	Less than Significant	Less than Significant	No mitigation is necessary.
TR-5. Will there be inadequate parking for project activities?	Less than Significant	No Impact	No mitigation is necessary.
TR-6. Will project construction activities result in heavy vehicles on roadways not designated or suitable as truck routes?	Less than Significant	Less than Significant	No mitigation is necessary.
TR-C1: Will there be traffic congestion along study area roadways during the cumulative conditions?	Less than Significant	Less than Significant	No mitigation is necessary.
10. Air Quality			
AQ-1. Will construction of the Project generate emissions that expose people to high levels of dust and equipment exhaust?	Less than Significant	Less than Significant	No mitigation is necessary.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
AQ-2. Will project emissions cumulatively exceed allowable limits?	Less than Significant	Less than Significant	No mitigation is necessary.
AQ-3. Will the project expose sensitive receptors to substantial levels of toxic air contaminants?	Less than Significant	Less than Significant	No mitigation is necessary.
AQ-4. Will project violate or contribute to violation of ambient air quality standard?	Less than Significant	Less than Significant	No mitigation is necessary.
AQ-5. Will the project cause potential odors?	Less than Significant	Less than Significant	No mitigation is necessary.
AQ-C1: Will the project have the potential to have a cumulative impact to air quality?	Less than Significant	Less than Significant	No mitigation is necessary.
11. Noise			
N-1: Will construction of the Project expose the public to high noise levels?	Less than Significant	Less than Significant	No mitigation is necessary.
N-2. Will construction of the Project cause high noise levels from construction traffic?	Less than Significant	Less than Significant	No mitigation is necessary.
N-3: Will operation and maintenance of the project expose the public to high noise levels?	Less than Significant	Less than Significant	No mitigation is necessary.
N-C1: Will the project have a cumulative potential to disturb noise-sensitive receptors during or after construction?	Less than Significant	Less than Significant	No mitigation is necessary.
12. Cultural Resources			
CR-1. Will the project disturb known, potentially-eligible National or California Register properties, including archaeological, historical, architectural, and Native American/ traditional heritage resources?	Less than Significant	No Impact	No mitigation is necessary.
CR-2. Will the project disturb unknown archaeological resources?	Less than Significant	Less than Significant	No mitigation is necessary.
CR-C1: Will the project have a cumulative potential to disturb historical or cultural resources?	Less than Significant	Less than Significant	No mitigation is necessary.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
13. Visual Resources			
VR-1. Will the project be inconsistent with the Sonoma County Open Space Element regarding Community Separators seen from public viewpoints?	No impact	No impact	No mitigation is necessary.
VR-2. Will the project be inconsistent with the Sonoma County Open Space Element regarding Scenic Landscape Units seen from public viewpoints?	No impact	No Impact	No mitigation is necessary.
VR-3. Will the project be inconsistent with the Sonoma County Open Space Element regarding Scenic Corridors?	Less than Significant	No Impact	No mitigation is necessary.
VR-4. Will the project be inconsistent with minimum building setbacks for structures along Sonoma County designated scenic corridors?	Less than Significant	No Impact	No mitigation is necessary.
VR-5. Will the project cause an adverse effect on foreground or middle-ground views from a high volume travelway, recreation use area, or other public use area?	Less than Significant	No Impact	No mitigation is necessary.
VR-6. Will the project cause an adverse effect on foreground views from one or more private residences	Less than Significant	No Impact	No mitigation is necessary.
VR-7. Will the project create a new light source?	Less than Significant	No Impact	No mitigation is necessary.
VR-C1: Will the project have a cumulative potential to disturb open space or visual resources?	Less than Significant	No Impact	No mitigation is necessary.
14. Public Services and Utilities			
PS-1. Will the project increase demand for police, fire, park and recreation facilities, water, sewage treatment and disposal or solid waste removal to such a degree that accepted service standards are not maintained?	Less than Significant	No Impact	No mitigation is necessary.

Table 1

Impact and Mitigation Summary
Approved Project and Project Modifications

Impact	Approved Project 2002 Certified EIR	Outfall Relocation Addendum	Mitigation Measures for Outfall Relocation
PS-2. Will project construction disrupt police, fire, schools, parks and recreation facilities to such a degree that accepted service standards are not maintained?	No Impact	No Impact	No mitigation is necessary.
PS-C1: Will the project have a cumulative potential to impact public services and utilities?	Less than Significant	No Impact	No mitigation is necessary.

2 PROJECT DESCRIPTION

PROJECT BACKGROUND AND LOCATION

The City owns and operates the Ellis Creek Water Recycling Facility (ECWR Facility) (**Figure 1 Project Location**). The ECWR Facility provides secondary treatment for wastewater from the City of Petaluma and adjacent unincorporated areas of Sonoma County. A portion of the secondary treated wastewater is pumped to the ECWR Facility's tertiary treatment system to produce recycled water. Flows not diverted for tertiary treatment are directed through a series of oxidation ponds and constructed wetlands for additional treatment. Then the water is chlorinated and flows to polishing wetlands or a chlorine contact chamber. Wastewater from the chlorine contact chamber and/or polishing wetlands is dechlorinated and discharged to the Petaluma River through a submerged outfall from October 21 to April 30 each year.

The existing outfall pipe extends approximately 3,100 linear feet through a tidal marsh, from the ECWR Facility to the Petaluma River. During an inspection in September 2016, the City discovered longitudinal cracks along the top and bottom of the pipe, separating pipe joints, and sections of pipe that have been flattened into an oval shape. To address this structural integrity issue, the City is proposing to construct a new outfall pipeline and outfall structure in the tidal slough within and adjacent to the southern corner of the existing ECWR Facility. An emergency contingency outfall bypass was installed at this location in 2017 but has not been used except for testing.

The City would divert all future treated wastewater effluent discharges to a tidal slough located within the southeast corner of the ECWR Facility via a new outfall pipeline and discharge structure. No changes would occur to the volume or seasonal restrictions of the wastewater discharges. The existing Petaluma River outfall, as well as the emergency pipeline and outfall, would be removed. Refer to **Figure 2 Demolition Plan** and **Figure 3 Relocated Outfall Site Plan** for the location of these improvements.

INSTALL RELOCATED OUTFALL

Pipeline and Outfall Structure

An approximately 95-foot-long outfall pipe would be installed below grade from Junction Box 2, adjacent to the Chemical Storage Facility, to the tidal slough. At the point the pipeline reaches the bank of the slough, it would exit the bank where a concrete headwall structure will be installed. The outfall pipeline would be 42 inches in diameter and terminate with a duckbill or similar check valve.

Slope Protection

Slope protection improvements consisting of 6- to 12-inch riprap would be installed on either side of the outfall structure along the lower portion of the bank, as well as at the bed of the slough to protect the slough from erosion during discharges. The slope protection would include approximately 16 cubic yards of riprap covering approximately 192 square feet of the slough channel. Prior to placement of the riprap, the slough would be excavated to a depth of approximately 28-inches. Excavated material would be disposed off-site in accordance with State and federal regulations. Slope protection would be installed at low tide with a sediment curtain installed around the work area.

Dewater Work Area

Although the work would be complete during low tide, the slough would still require dewatering for the installation of the riprap and placement of the pre-cast headwall. An exclusion barrier would be installed around the work area, then water would be pumped to the upland area. The riprap within the slough would cover approximately 140 square feet, with the dewatering area slightly larger to encompass the excavation for the headwall. Dewatering and installation of the riprap would be done at low tide and is expected to last up to 2 days.

REMOVE EXISTING PIPELINE AND OUTFALL WITHIN PETALUMA RIVER

The existing 42-inch outfall pipeline would be abandoned in place. The existing outfall structure in the Petaluma River would be removed and the pipeline capped. Both above and below water appurtenances would be removed. Approximately 65 feet of pipe along the bottom of the riverbed would be removed between the existing outfall structure and the edge of the marsh, removing that portion of the structure within the dredge footprint of the Petaluma River. To avoid impacts to the brackish marsh, the remainder of the pipeline, from the ECWR Facility through the marsh, would be abandoned in place with the end of the pipe sealed or capped with a flexible plastic end cap.

REMOVE EXISTING EMERGENCY PIPELINE AND OUTFALL WITHIN SLOUGH

The existing 24-inch emergency pipeline and outfall structure, installed in 2017, would be dismantled and removed. The emergency outfall lays on the ground surface except where it crosses beneath an ECWR Facility roadway, covered by road plates. Once the pipeline is removed, the road would be repaired.

PROJECT CONSTRUCTION METHODS

The outfall pipe, from Junction Box 2 to the edge of the slough, would be installed using an open-trench construction method. The outfall structure, including headwall and wing walls, would be precast and placed with a crane.

Demolition and removal of the existing outfall and pipeline would occur via a barge from the Petaluma River and would be performed by divers. Piles would be removed using vibratory extraction or a direct pull method. If, during removal, a pile breaks above the mud line it would be cut 1 foot below the mudline. A floating debris barrier or sediment curtain would be installed around the work area during demolition.

Demolition and removal of the existing emergency pipeline would not require any excavation as the structure sits above ground. The exception is where the pipe crosses the internal road, where minimal earthwork would be needed to repair and restore the road.

All activities would be subject to project measure **PD-8 Erosion, Stormwater Runoff, and Spill Control Measures**, which was adopted as part of the original Project. PD-8 requires the City to implement measures designed to prevent construction-related water quality impacts. As applied to the outfall relocation, this includes re-seeding upland disturbed areas and installation of silt fencing during construction.

Construction Work Windows and Hours

Construction of the relocated outfall and removal of the emergency outfall would occur in 2022 and last approximately three months. Construction would be limited to September 1 to January 31 to avoid the nesting bird season, including black rails.

Removal of the existing Petaluma River outfall would last 3 to 5 days and occur during the appropriate in-water work window for salmonids. In addition, work would occur within 250 of rail habitat. Therefore, the in-water work window of August 1 to October 15, is narrowed to September 1 to October 15 to avoid the rail nesting season in the nearby marsh.

As allowed in Section 22-301 of the City of Petaluma's Zoning Ordinance, construction work hours would be 7:00 a.m. to 10:00 p.m. on weekdays and 9:00 a.m. to 10:00 p.m. on weekends and holidays.

Construction Equipment

A variety of equipment would be used to construct the project. This could include an excavator, backhoe, loader, dump truck, paver, concrete truck, and barge.

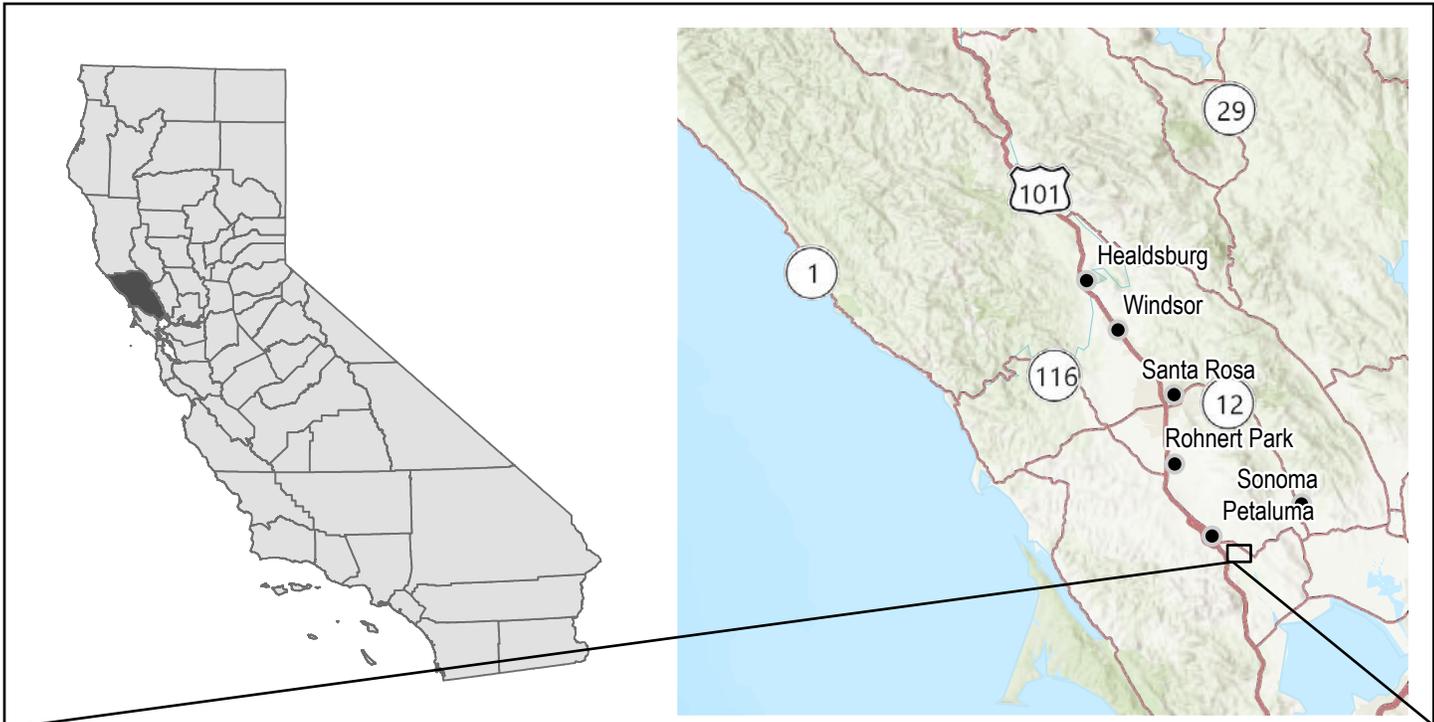
Construction Staging Area and Access

Staging would occur in the paved areas surrounding the Chlorine Contact Basin. Access to the site would occur from Lakeville Highway at the gated drive at the far eastern corner of the ECWR Facility. Left-hand turns leaving the facility would not be allowed before 9 a.m. or after 4 p.m.

PERMITS AND APPROVALS

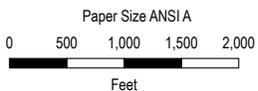
The following agency permits and approvals may be required for the Project:

- Section 404 Nationwide Permit, US Army Corps of Engineers
- Section 401 Water Quality Certification, San Francisco Regional Water Quality Control Board
- Streambed Alteration Agreement, California Department of Fish & Wildlife
- Regionwide Permit 2, Bay Conservation and Development Commission



Legend

Project Area



**City of Petaluma
Ellis Creek Water Recycling Facility
Outfall Project**

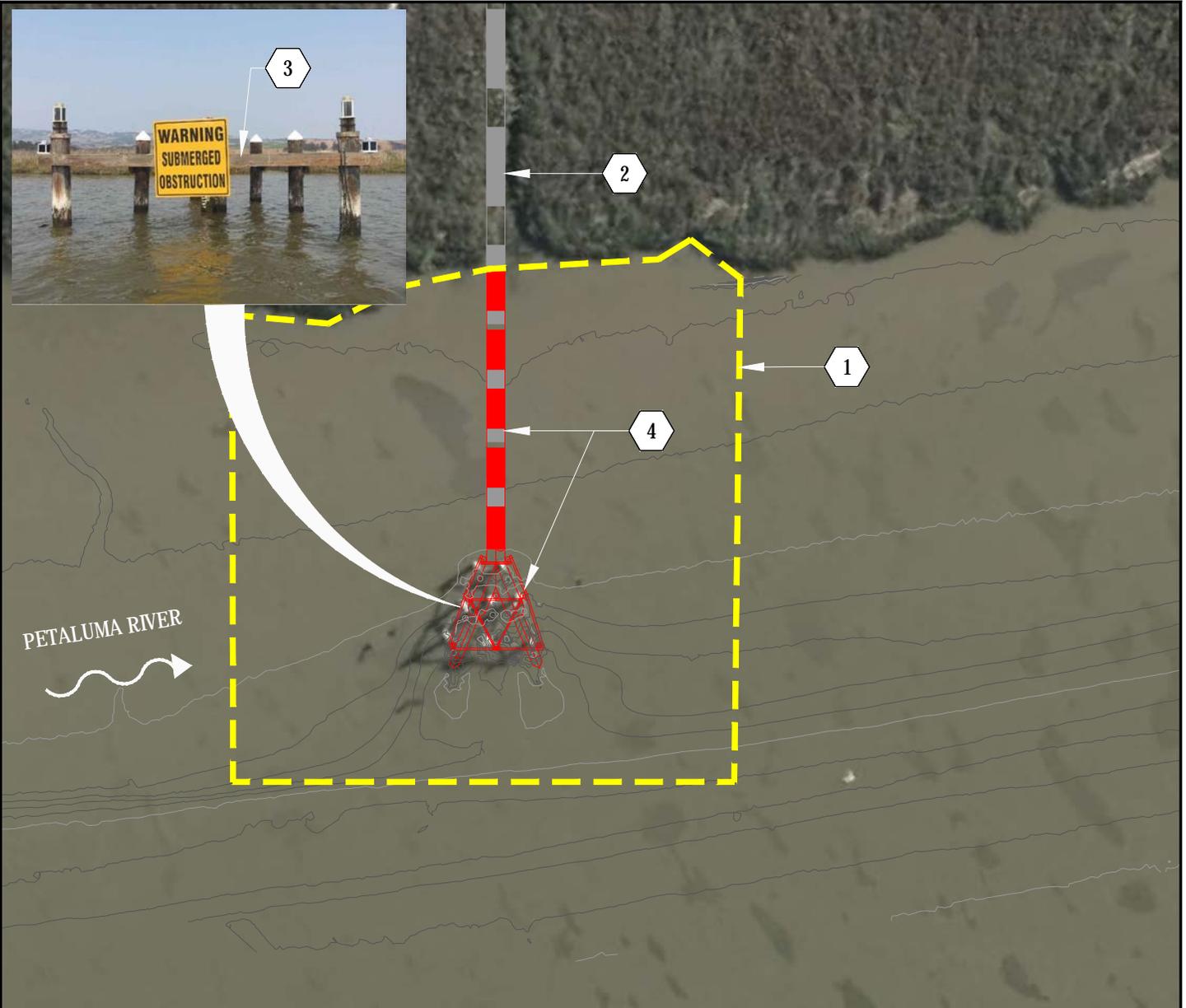
Project No. 11152197
Revision No. -
Date Apr 2022

Map Projection: Lambert Conformal Conic
Horizontal Datum: North American 1983
Grid: NAD 1983 StatePlane California II FIPS 0402 Feet

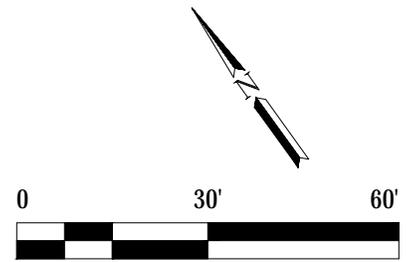
Project Location

FIGURE 1

FILE NAME: \\ghdnet\ghd\US\Santa Rosa\Projects\561111227516\Digital_Design\ACAD 2018\Figures\2022-03-25_ Exhibit 2 - Update.dwg LAYOUT NAME: 1 PLOTTED: Monday, April 04, 2022 - 9:46am USER: cmartinez



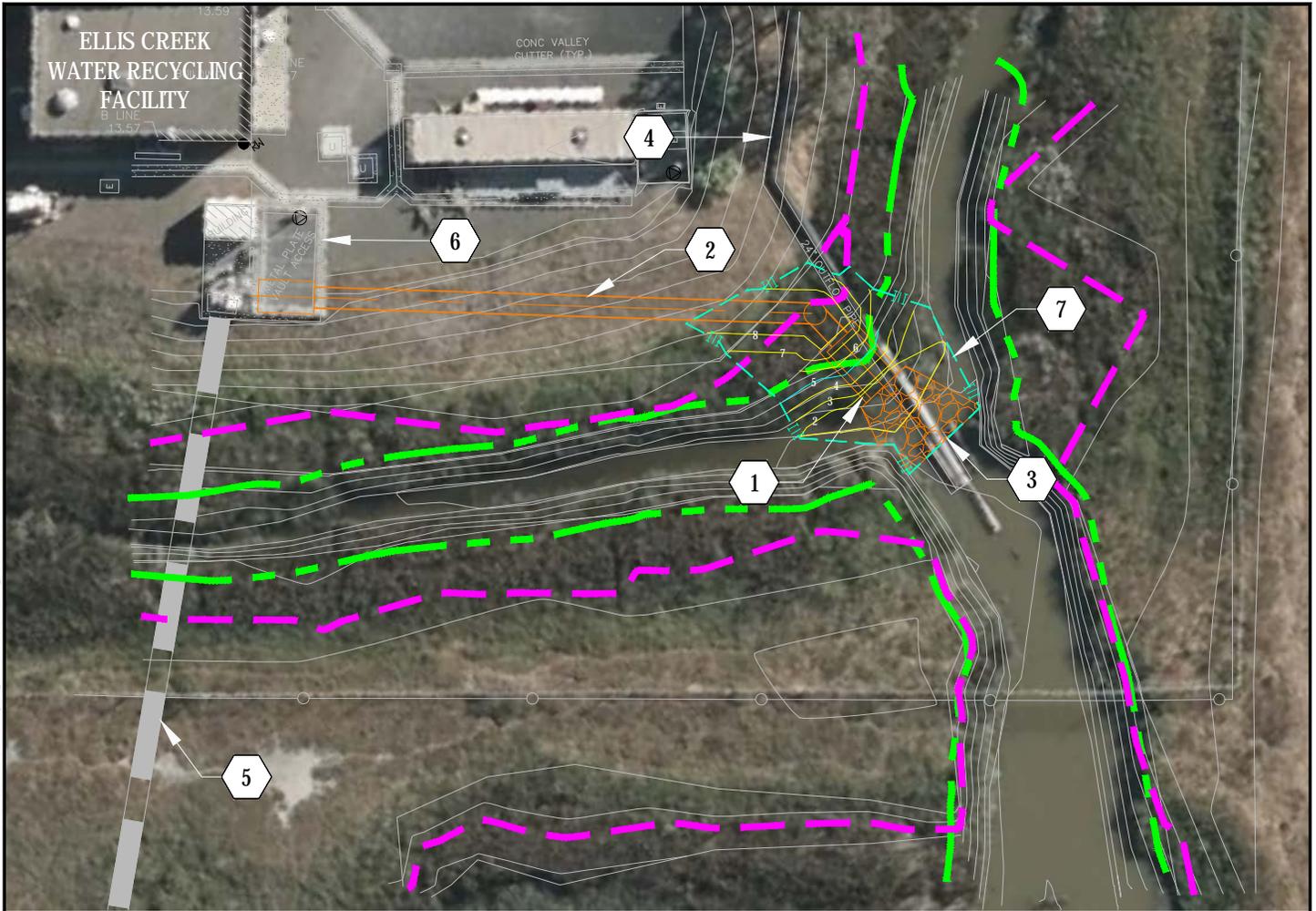
-  **Keynotes**
1. Approximate limits of demolition.
 2. Abandon existing 42" outfall piping in place.
 3. Demolish existing outfall structure, including all lanterns, signage, gauges, bracing and fasteners, and cut off pilings 1' below mudline. Side cast sediment to expose structure.
 4. Demolish all existing piping within Petaluma River including duckbill check valves, 24" welded steel piping, eccentric reducers, 42" true wye, and 42" welded steel piping.



Demolition Plan - Existing Petaluma River Outfall Structure

Figure 2

FILE NAME: \\ghdnet\ghd\US\Santa Rosa\Projects\561111227516\Digital_Design\ACAD 2018\Figures\2022-03-25_ Exhibit 3 - Update.dwg LAYOUT NAME: 2 PLOTTED: Tuesday, April 05, 2022 3:50pm USER: cmartinezii



Legend:

-  BCDC Jurisdiction (MSL + 5')
-  MHHW Line Elevation (6.66')
-  Daylight Line

 **Keynotes**

1. Construct outlet structure.
2. Construct 42" pipe.
3. Construct Rip Rap energy dissipator.
4. Demolish existing emergency HDPE outfall.
5. Abandon existing 42" outfall piping in place.
6. Modify existing junction box.
7. Approximate grading limits.



Relocated Outfall Site Plan

Figure 3

3 MITIGATION MONITORING PROGRAM REVISIONS

This Chapter presents only the revisions to the adopted 2002 Mitigation Monitoring Program, as modified in 2004, 2005, 2015, and 2016. Revisions are shown in ~~strikeout~~ and underline for ease of reference.

MEASURES INCLUDED IN THE PROJECT

The following project description measure is revised to reflect current regulations and standards.

PD-20 Protection of Previously Undiscovered Historic and Archaeological Resources

Description: If subsurface archaeological or historical remains, that qualify as a historic resource or unique archaeological resource under CEQA Guidelines Section 15064.5, are discovered during construction, work in the area shall stop immediately and a qualified professional archaeologist shall ~~be consulted to develop, if necessary, further mitigation measures to reduce any archaeological impact to a less than significant level before construction continues~~ evaluate any materials and recommend appropriate treatment. A Native American monitor shall be present for the investigation, if the local Native American tribe requests. Avoidance of impacts to the resource are preferable. In considering any suggested measures proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the City shall determine whether avoidance is feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures as recommended by the archaeologist (e.g., data recovery) shall be instituted. Work may proceed on other parts of the Project while mitigation for the historic resources or unique archaeological resources is being carried out.

If human burials are encountered, all work in the area will stop immediately and the Sonoma County coroner's office shall be notified immediately. If the remains are determined to be Native American in origin, both the Native American Heritage Commission and any identified descendants must be notified and recommendations for treatment solicited (CEQA Section 15064.5); Health and Safety Code Section 7050.5; Public Resources Code Section 5097.94 and 5097.98).

Lead Agency: City of Petaluma
Implementing Agency: Design Engineer and Construction Manager
Timing: **Start:** Upon certification of the EIR
Completion: Completion of construction
Monitoring Agency: City of Petaluma
Validation: A qualified professional archaeologist and Native American tribe affiliated with the area shall be consulted if subsurface archaeological or historical remains are discovered.

MITIGATION MEASURES

The following mitigation measure is revised to reflect current regulations and best management practices for the protection of special-status species.

BIO-1a ~~Aquatic~~ Special-status Species Protection Program

Description: The City shall implement a ~~Aquatic~~ Special-status Species Protection Plan, as follows:

- A Worker Environmental Awareness Training Program for construction personnel shall be provided that addresses sensitive habitats and special-status species that may be found on-site and outline procedures in the event a special-status species is encountered.
- Any ground-disturbing construction activity in Ellis Creek (i.e., in the bank or bed of the channel) or slough channel shall be 1) conducted when no or low freshwater flow from upstream into the work area (which will potentially be tidal at the time of construction) is occurring to avoid downstream transport of sediment and impacts on any migrating salmonid fish, or other rare aquatic species; and 2) conducted between coffer dams around which any tidal or stream flow shall be routed. Prior to coffer dam installation, a qualified biologist shall seine the area between the dams ~~and the area within 25 feet of the dams~~ to determine if sensitive species are present. If sensitive species are present, they should be relocated in consultation with NMFS, USFWS, and ~~DFG~~CDFW consistent with federal and State regulations.
- Facilities shall be located and constructed using methods that minimize the loss of existing riparian or marsh vegetation. Unavoidable loss of riparian vegetation shall be mitigated by planting sufficient native riparian vegetation ~~of like species so as~~ to compensate for the loss of shade and habitat.
- A 20-foot buffer zone from the top of the bank of Ellis Creek shall be established, where feasible, and fenced during construction.
- If aquatic habitat must be removed, create or restore like habitat on site at a compensatory ratio of 1:1 (1 acre of restored habitat for every 1 acre impacted) or as required by the Corps of Engineers or Regional Water Quality Control Board. Identify opportunities to improve current habitat conditions within Ellis Creek and implement, where feasible. Cropped upland is available as mitigation sites for salt marsh, freshwater marsh, or stream impacts. Shollenberger Park also has sites available for mitigation for river habitat impacts.
- Best management practices shall be implemented to control erosion, sedimentation, and runoff of pollutants. As an appropriate example, best management practices are described in the *Caltrans Storm Water Quality Handbooks: Construction Site Best Management Practices Manual* (~~November 2000~~May 2017). Refer to PD-8 for a potential list. These shall be implemented as necessary under the supervision of the construction manager. Detailed specifications shall be incorporated onto bid documents and construction drawings.

- Construction and grading activities that would affect Ellis Creek or upland areas that might erode into the creek or marsh, shall be restricted to the dry season.
- For work within or adjacent to the tidal marsh, temporary salt marsh harvest mouse exclusion fence shall be installed around the construction footprint and buried to a depth of 4 inches. The fence shall be constructed of heavy plastic sheeting curved outward at the top from the construction area to prevent mice from climbing or passing through. Fence height shall be at least 12 inches higher than adjacent vegetation. A qualified biologist shall inspect the fence as needed, to ensure there are no gaps or damage. Stakes shall be located on the inside of the exclusion fence (to deter mice from climbing stakes).

Lead Agency: City of Petaluma

Implementing Agency: City of Petaluma

Timing: **Start:** Before start of construction of the affected area
Completion: Completion of construction

Monitoring Agency: City of Petaluma and Construction Manager

Validation: Annual Report

4 ENVIRONMENTAL ANALYSIS

This Chapter consists of 14 sections, each of which presents the analysis of the proposed revisions to the Project within a particular environmental discipline. The analysis refers back to the original evaluation of impacts contained in the 2002 Certified EIR and 2004 Addendum, and identifies the change in impacts, if any, from the previously approved Project. If there are no changes to the previous impact evaluation, an explanation for this conclusion is provided. For those sections where a change in impacts is identified, the evaluation criteria taken directly from the 2002 Certified EIR are also provided. For ease of reference, the evaluation criteria table numbers remain the same as the numbering used in the 2002 Certified EIR.

Most of the information presented in the 2002 Certified EIR has not changed and is not repeated here. Please refer to the 2002 Water Recycling Facility and River Access Improvements EIR for descriptions of setting, discussion of methodology, and the complete identification and discussion of impacts.

4.1 LAND USE

The land use designations identified in the 2002 Certified EIR for the Facility site were Public and Institutional on the east side of Ellis Creek and Land Extensive Agriculture on the west side of Ellis Creek, with those on the west privately owned and under County jurisdiction. The 2002 Certified EIR found that the Project facilities would be compatible with the Land Extensive Agriculture and Public and Institutional designations because public buildings and structures were considered conditional uses within the zoning designations. After certification of the EIR, the City purchased the parcels on the west side of Ellis Creek, changed the land use designation to Public and Institutional, and rezoned the site Planned Community District (as well as rezoned the parcel on the east side of Ellis Creek).

The outfall would be relocated in the southeast corner of the ECWR Facility and would be compatible with the permitted and conditional uses at the site as it is an ancillary structure that supports the on-site uses.

No change in impacts related to MRZ-2, Community Separators, conversion of public open space, or loss of homes would occur due to the relocation of the outfall. Construction and use of the outfall at the new location would not cause new significant impacts or substantially more severe land use impacts than identified in the 2002 Certified EIR.

4.2 AGRICULTURE

The proposed modification to the Project does not require revisions to the evaluation of Agriculture. The 2002 Certified EIR identified a significant and unavoidable loss of agricultural land due to construction of the ECWR Facility, including all 149 acres of the site west of Ellis Creek. The outfall would be relocated to the southeast corner of the facility which is a developed part of the ECWR Facility and is not farmland.

No change to the impacts on agricultural resources relative to Williamson Act land and glassy-winged sharpshooter populations would occur at the new outfall site. Project measure **PD-2, Purchase Locally Grown or Inspected Plants**, adopted as part of the approved Project, would continue to be implemented, as needed. The proposed relocated outfall and associated improvements described in Chapter 2 of this EIR Addendum would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.3 GEOLOGY, SOILS, AND SEISMICITY

The proposed change to the Project does not require revisions to the evaluation of Geology, Soils and Seismicity. The entire site was evaluated in the 2002 Certified EIR, and the modifications will not result in new impacts as the type of facilities, general location, and geologic setting remains the same. The outfall relocation would not create the potential for additional or different geologic hazards. Project

measures **PD-3 Liquefaction, PD-4 Seismic Design to Resist Ground Shaking, and PD-6 Standard Engineering Methods for Corrosive Soils**, adopted as part of the approved Project to address liquefaction, ground shaking, and corrosive soils would still be applicable to construction of replacement outfall (Miller Pacific Engineering Group 2022). Construction of the outfall and associated improvements described in Chapter 2 of this EIR Addendum would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.4 GROUNDWATER

The proposed change to the Project does not require revisions to the evaluation of Groundwater. The facilities at the ECWR Facility were found to have less-than-significant impacts to groundwater because they are in completely contained structures and would not utilize groundwater or interfere with groundwater recharge. The relocation of the outfall would not change this analysis. There would be no new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.5 SURFACE WATER QUALITY

The proposed change to the Project does not require revisions to the evaluation of Surface Water Quality. The City's discharges and recycled water reuse would continue to meet standards set by federal, state, and regional agencies. On May 12, 2021, the Regional Water Quality Control Board San Francisco Bay Region approved the City's new NPDES Permit CA0037810, which includes discharging at the proposed new location. The City would continue to comply with the conditions of the Permit, including inspection, monitoring, and reporting.

As indicated in the 2002 Certified EIR, activities related to maintenance of the existing outfall would have the potential to cause temporary sediment disturbance. Similar disturbance could occur with demolition of the Petaluma River outfall and construction of the relocated outfall in the slough. Project measure **PD-8 Erosion, Stormwater Runoff, and Spill Control Measures**, adopted as part of the approved Project, would remain applicable to the demolition of the existing outfall and construction of the new outfall and associated improvements, requiring the City to develop and implement measures designed to prevent significant construction impacts to water quality. Relocation of the outfall would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.6 HYDROLOGY

The 2002 Certified EIR found that velocity within the Petaluma River during discharge would be 0.5732 feet per second and determined this to be a less-than-significant impact on the potential for streambank erosion. Discharge at the proposed outfall location would be conveyed via a tidal slough before reaching the Petaluma River. There would be little to no change in velocity within the Petaluma River as the discharge would dissipate as it traveled through the slough.

Hydraulic modeling of the slough was conducted as part of the Project design for two tidal scenarios: Mean High High Water (MHHW) and no tidal influence. For the MHHW scenario, the slough is backwatered and the flow velocity within the slough is less than 0.3 feet per second with negligible shear stress in the channel. For the no tidal influence scenario, the flow velocity within the slough is less than 1.5 feet per second with shear stresses of less than 0.1 pound per square foot. Given the small shear stresses in the slough estimated from the modeling, significant streambank erosion within the slough is not anticipated to occur as a result of discharge at the new location (GHD Basis of Design 2022). Impacts from Project discharge on streambank erosion would remain less than significant.

Impervious surface would increase slightly by approximately 100 square feet but have no effect on the flood elevation given the small area. As the volume of discharge into the watershed would not change from that previously analyzed in the 2002 Certified EIR, no change to the flood elevation from discharge is anticipated.

Relocation of the outfall would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.7 PUBLIC HEALTH AND SAFETY

The proposed change to the Project does not require revisions to the evaluation of Public Health and Safety. The outfall would be constructed in an area that is generally inaccessible to the public. The relocation of the outfall does not change the production of recycled water, expose workers to hazardous waste, increase the use of hazardous materials, or increase exposure to disease vectors. The proposed outfall relocation and associated improvements described in Chapter 2 of this EIR Addendum would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.8 BIOLOGICAL RESOURCES

The proposed outfall relocation area is within the boundary of the ECWR Facility and was included in the existing conditions assessment in the 2002 Certified EIR. The outfall relocation footprint was mapped as “ruderal disturbed” and “marsh”, while the existing outfall location in the Petaluma River was identified as “waters.” The 2002 Certified EIR included an analysis of impacts from maintenance activities to the existing outfall and from modifications to the chlorine contact basin and installation of new pipelines within and near the proposed outfall relocation area.

In Table 4.8-6, Project Impacts to Sensitive Habitats, of the 2002 Certified EIR, impacts related to maintenance of the existing outfall are identified as 0.8 acre of temporary impacts to waters. In the 2004 Addendum, the temporary impacts were recalculated as 0.09 acre. In addition, temporary impacts to the habitat for tidewater goby and Sacramento splittail habitat were identified in the 2002 Certified EIR.

In a Biological Report (Olofson 2018, updated 2022) and Wetland Delineation Report (Valerius 2018) prepared specific to the proposed outfall relocation, the site was evaluated and concluded that the habitat is the same as evaluated in the 2002 Certified EIR. The reports found that the upland and tidal marsh areas were unchanged from previous studies described in the 2002 Certified EIR. In addition, the Biological Report includes updated special-status species lists and critical habitat assessment. The following addresses impacts to the special-status species determined to potentially occur at the site, as well as mapped critical habitat.

In accordance with a recommendation in the 2018 Biological Report and mitigation measure **BIO-1b Rare, Threatened and Endangered Plant Protection Program**, a botanist visited the site in September 2019 and found no special-status plant species (Valerius 2019). In addition, it was documented that the marsh habitat within, and adjacent to, the Project footprint was not suitable for Point Reyes salty bird’s-beak (a species identified as having low potential to occur at the site in the 2018 Biological Report). Since this species is absent from the study area, there would be no impact to special-status plant species.

Removal of the existing Petaluma River outfall would temporarily impact approximately 0.01 acre of waters. This temporary impact would be significantly less than the impact to waters, as related to the outfall maintenance, identified in the 2002 Certified EIR. Placement of the relocated outfall would fill approximately 0.006 acre of wetland and waters. These impacts would occur in a different area of the ECWR Facility than was previously identified to have wetland and waters impacts. However, removal of the existing Petaluma River outfall and the emergency outfall in the slough would remove 0.016 acre of fill, resulting in a net reduction in fill by 0.01 acre. Therefore, there would be no new permanent impact to wetland and waters as fill would be reduced with implementation of the Project.

The tidal marsh provides suitable habitat for salt marsh harvest mouse (Federal Endangered, California Fully Protected) and California black rail (California Fully Protected) but is unlikely to provide suitable habitat for California Ridgway’s rail due to an unfavorable salinity gradient. In two consecutive years of surveys, California Ridgway’s rail were not detected in the marsh, but California black rail were detected

(Olofson 2021 and 2022). As noted in the project description in Chapter 2 of this EIR Addendum, work within and adjacent to the tidal marsh would occur within the work window of September 1 to January 31, thus avoiding disturbance during the bird nesting season. Impacts to black rail, and other nesting birds within the vicinity of the project, would be less than significant.

Salt marsh harvest mouse may utilize the upland area adjacent to the tidal marsh, particularly to escape high tide events. If one entered the work area and was injured or killed, this would be a significant impact. Implementation of **Mitigation Measure BIO-1a Special-status Species Protection Program**, as revised in this EIR Addendum, would be implemented to reduce potential impacts to salt marsh harvest mouse to less than significant. BIO-1a would exclude salt marsh harvest mouse from entering the work area by requiring the installation of exclusion fencing between the tidal marsh and upland area. After installation, the work area would be cleared by a qualified biologist prior to the start of construction.

The location of the existing Petaluma River outfall is within critical habitat for both steelhead – Central California Coast DPS and green sturgeon. The relocated outfall is adjacent to critical habitat for green sturgeon. As noted in the project description in Chapter 2 of this EIR Addendum, demolition within the Petaluma River would occur for 3 to 5 days within the timeframe of September 1 to October 15. This restricted work window occurs outside the fish migration season (and also takes into account rail nesting season hence the later start time of September rather than August). In addition, **PD-8 Erosion, Stormwater Runoff, and Spill Control Measures**, adopted as part of the approved Project to prevent construction impacts to water quality, would continue to be implemented as part of the Project. Impacts to fish and critical habitat would remain less than significant.

Approximately 212 square feet of marsh habitat along the bank of the slough would be displaced to accommodate the relocated outfall structure and approximately 42 square feet would be restored from removal of the emergency outfall, resulting in a reduction of 170 square feet of tidal marsh. This small reduction in habitat along the edge of the marsh would not result in the loss of wildlife species as it would be a small, isolated fraction of the available habitat within the greater marsh. Impacts to tidal marsh habitat would be less than significant.

Project modifications would not cause additional impacts to wetlands or waters, riparian areas, sensitive habitat, trees, migration corridors or streams beyond those that were identified in the 2002 Certified EIR. The demolition of the existing outfall and construction of the relocated outfall would abide by the same restrictions and be subject to the same project measures and mitigation measures as the previous construction of the ECWR Facility. These measures include mitigation measure **BIO-1a Special-status Species Protection Program** and project measure **PD-8 Erosion, Stormwater Runoff, and Spill Control Measures**. Relocation of the outfall would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.9 TRANSPORTATION

The proposed change to the Project does not require revisions to the evaluation of Transportation. There would be no increased operational traffic from relocation of the outfall. Construction traffic would temporarily increase traffic on Lakeville Highway by 10 to 12 vehicles per day during the 3-month construction period. This is significantly less than the 300 per day construction trips evaluated in the 2002 Certified EIR. Neither construction nor operation of the relocated outfall and associated improvement described in Chapter 2 of this EIR Addendum would cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.10 AIR QUALITY

The proposed change to the Project does not require revisions to the evaluation of Air Quality. Project measure **PD-14 Construction Air Quality Controls**, which incorporates best management practices into the approved Project to address air quality during construction, would remain applicable to the outfall

relocation. Operation of the relocated outfall would not create new air emissions. Neither construction nor operation of the outfall at the new location would cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.11 NOISE

The proposed change to the Project does not require revisions to the evaluation of Noise. Construction noise would be substantially less than the noise levels identified in the 2002 Certified EIR for the construction of the ECWR Facility. In addition, the proposed new outfall site is located more than 4,000 feet from the nearest sensitive receptor, with intervening topography and vegetation. Construction traffic also would be much less than the construction traffic evaluated for the original construction of the facility, as noted above in Section 4.9 Transportation. The relocated outfall would not result in any new operational noise activities. Neither construction nor operation of the relocated outfall would cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.12 CULTURAL RESOURCES

The proposed change to the Project does not require revisions to the evaluation of Cultural Resources. The entire Facility site was evaluated in the original EIR. The proposed new outfall location is within that footprint previously evaluated in the 2002 Certified EIR and would not result in any new impacts. Project measure **PD-20 Protection of Previously Undiscovered Historic and Archaeological Resources**, as revised in this Addendum, remains included in the Project to address unknown cultural resources if encountered during construction. Construction of the outfall and associated improvements described in Chapter 2 of this EIR Addendum would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.13 VISUAL RESOURCES

The proposed change to the Project does not require revisions to the evaluation of Visual Resources. The proposed new outfall would be located more than 3,000 feet south/southwest of Lakeville Highway. In addition, the majority of the improvements would be located below or at grade. Only the proposed new headwall would be visible from a short distance within the facility. The relocated outfall would not be visible to any residences or travelers on Lakeville Highway, or recreational uses along the ECWR Facility trails or Petaluma River. Therefore, no new significant visual impacts would occur resulting from view obstruction or degradation of visual quality.

The proposed changes to the Project do not include any new lighting, therefore there would be no impact related to a new light source. Construction of the relocated outfall and associated improvements described in Chapter 2 of this EIR Addendum would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

4.14 PUBLIC SERVICES AND UTILITIES

The proposed change to the Project does not require revisions to the evaluation of Public Services and Utilities. The modifications will not change the demand for public services nor the potential disruption of emergency services that was analyzed in the 2002 Certified EIR. Emergency vehicles will still be able to access the site from two locations: from Cypress Drive and directly from Lakeville Highway. Implementation of the relocated outfall and associated improvements described in Chapter 2 of this EIR Addendum would not cause new significant impacts or substantially more severe impacts than identified in the 2002 Certified EIR.

5 ALTERNATIVES TO THE PROPOSED PROJECT

The proposed changes to the Project are minor and would not affect the relative comparison of alternatives presented in the 2002 Certified EIR. The proposed changes do not require the consideration of new or revised alternatives, because the environmental impacts are not substantially greater than previously reported, and there are no new significant effects.

6 CEQA-REQUIRED SECTIONS

GROWTH-INDUCING IMPACTS OF THE PROJECT

The potential for growth inducement would not increase due to the proposed relocation of the outfall. The discharge volume would remain the same, and the proposed relocation of the outfall would not increase the capacity of the ECWR Facility.

SIGNIFICANT AND UNAVOIDABLE ADVERSE IMPACTS

There are no new significant unavoidable environmental impacts as a result of the proposed revisions. The one significant unavoidable impact from the approved Project remains:

- **Impact AG-1:** Loss of approximately 149 acres of farmland on Parcels A and B

When the Project was approved in August of 2002, a statement of overriding considerations was adopted, explaining the City's reasons for approving the Project despite the significant impact on farmland. The original Project has since been constructed and the loss of farmland has occurred.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The 2002 Certified EIR identified the Environmentally Superior Alternatives as both Alternative 4, (Hopper Street) and the proposed project (Extended Aeration), because they would have similar levels of environmental impacts and therefore both qualify as the Environmentally Superior Alternative. The proposed project has since been constructed.

There are no new impacts related to the relocation of the outfall and therefore the relative comparison of alternatives does not change and there is no need to evaluate further alternatives related to this minor change in the project.

7 PREPARERS

LEAD AGENCY

The City of Petaluma is the lead agency under CEQA for the preparation of the Petaluma Water Recycling Facility and River Access Improvements EIR Outfall Relocation Addendum.

Staff Member	Role
Josh Minshall	Senior Civil Engineer, Petaluma Department of Public Works and Utilities
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DOCUMENT PREPARATION

GHD

Staff Member	Role
Brian Bacciarini	Quality Control
Kristine Gaspar	Project Manager
Seth Stevens	Engineer

CITY OF PETALUMA, CALIFORNIA

**WATER RECYCLING FACILITY
AND RIVER ACCESS IMPROVEMENTS
PROJECT**

**MITIGATION MONITORING PROGRAM
FOR CONSTRUCTION OF OUTFALL
RELOCATION PROJECT**

SCH # 2001052089

July 2022



MITIGATION MONITORING PROGRAM

This Mitigation Monitoring Plan applies to the relocation of the outfall at the Ellis Creek Water Treatment Facility as described in the Outfall Relocation Addendum dated June 2022.

BACKGROUND

The legal basis for the development and implementation of mitigation measures lies in the California Environmental Quality Act (CEQA). Pursuant to Section 21002 of CEQA, public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. Subsection 21002.1(b) further requires that each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out whenever it is feasible to do so. Section 21081.6 requires a lead agency to adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.

The reporting or monitoring program must be adopted when a public agency makes its findings under CEQA so that the program can be made a condition of project approval in order to mitigate significant effects on the environment.

Table 3-1 lists all of the Project Measures and Mitigation Measures in the Mitigation Monitoring Plan from the original 2002 Water Recycling Facility EIR. Those Project Measures and Mitigation Measures that do not apply to the outfall relocation are indicated in ~~strike through~~.

PURPOSE

This Mitigation Monitoring Program is designed to serve as a tool for the evaluation of Project compliance with mitigation measures adopted as part of the 2002 Certified EIR and revised in the Outfall Relocation Addendum. The basic objectives of the Mitigation Monitoring Program are to achieve the following:

- To report to the City Council, and the public, information regarding compliance with the EIR mitigation measures; and
- To provide assurance and documentation that the studies and actions called for in the mitigation measures are being performed as planned.

CHAPTER FORMAT

Compliance with Existing Programs

This section presents the applicable federal, state, regional, county, and local policies and regulations with which the project must comply. Compliance with these policies and regulations will result in avoidance and/or minimization of adverse environmental impacts.

Measures Included in the Project

This section presents a listing and description of measures and standards which were incorporated into the original project design. The City has adopted these measures and incorporated them as part of the project in order to avoid or minimize potential environmental impacts. These measures represent standard engineering, design, construction, and maintenance practices. Measures were developed to change the project and avoid potential impacts identified by the public and federal, state, and local agencies. Other measures were developed as a result of geotechnical, biological, cultural, and hydrological analysis in order to avoid or minimize potential impacts.

Because these measures are part of the project, they do not qualify under the normal definition of mitigation. However, these measures have been included in this chapter to provide a mechanism to ensure that these measures are implemented and monitored, and to assist the reader in understanding the commitments made by the City of Petaluma.

This section includes measures to be implemented in all phases of the project, including planning and design, construction, operation, and maintenance. Compliance with these measures will result in avoidance and/or minimization of adverse environmental impacts.

Mitigation Measures

This section contains a listing and description of mitigation measures recommended in Chapter 4, Environmental Analysis, of the 2002 Certified EIR, and that are applicable to construction of the outfall at the new location as well as the demolition of the existing outfall. The mitigation measures listed in this section are recommended to avoid or reduce environmental impacts.

The mitigation measures generally require the construction manager to follow certain constraints during construction and to repair and rehabilitate impacts resulting from construction of the project. Compliance with all of these measures would result in the reduction of adverse environmental impacts.

ADMINISTRATION

The Director of the Public Works and Utilities Department and/or his/her designee will be responsible for overall implementation and administration of the Mitigation Monitoring Program. In order to carry out the mitigation monitoring program, the Director will designate a staff person to serve as coordinator among the various agencies and departments. This person (Coordinator) will ensure that each mitigation measure is implemented to the standards specified in the EIR and is completed in a timely manner. If current staffing within the Department cannot

absorb the work demand to implement the program, a private contractor will be hired to manage and coordinate the mitigation monitoring and reporting program. The contractor will serve under the direction of the Director.

Administration of the Mitigation Monitoring Program will include the following:

- Documentation of permit approvals by other agencies;
- Compliance with conditions of project approval;
- Routine inspections and reporting activities;
- Plan checks;
- Coordination of activities of consultants hired by the City when such expertise and qualifications are necessary;
- Coordination with applicable agencies that have mitigation monitoring and reporting responsibilities (if any);
- Follow-up and response to citizens' complaints;
- Development of a work plan and schedule for monitoring activities;
- Maintenance of a mitigation monitoring checklist or other suitable mitigation compliance summary;
- Implementation of corrective actions or enforcement measures, as needed;
- Preparation of reports of the status of implementation and monitoring of mitigation measures; and
- Monitoring of financial resources associated with the program.

IMPLEMENTATION

Each responsible individual or agency listed as a “Monitoring Agency” in the Mitigation Monitoring Program will be responsible for determining whether the mitigation measures contained within the monitoring program have been implemented. A Monitoring Agency may submit a Verification Report Form (see page MMP-5) or other verification report to the Coordinator that documents compliance with each of the mitigation measures for which they are responsible. Based on the information provided by the reports, the Coordinator will maintain a mitigation monitoring checklist that documents the completion status of all required mitigation measures as shown in Table 3-1. Prior to the start of construction, the Coordinator will review the mitigation monitoring program checklist to ensure that the Project design is in compliance with all mitigation measures that are required to be implemented as a condition of the permit.

ENFORCEMENT

If a responsible individual or agency determines that compliance has not been achieved, a written notice shall be delivered to the Director or Coordinator describing the non-compliance and requiring compliance within a specified period of time. If non-compliance still exists at the expiration of the specified period of time, construction may be halted, and/or remedies shall be required, as appropriate and at the discretion of the Director.

APPROVAL AND CHANGES

This Mitigation Monitoring Program is adopted in conjunction with the project approvals for the project. Subsequent changes to the Mitigation Monitoring Program may be approved by the Director if deemed to meet the intent of said mitigation.

Table 3-1

Mitigation Monitoring Checklist – Outfall Relocation Project

Mitigation Measure	Implementing Agency	Monitoring Agency	Status	Comments
Measures Included in the Project				
PD-1 Uniform Relocation Assistance	City of Petaluma	City of Petaluma		
PD-2 Purchase Locally Grown or Inspected Plants	Design Engineer	City of Petaluma		
PD-3 Liquefaction Protection	Design Engineer	City of Petaluma		
PD-4 Seismic Design to Resist Ground Shaking	Design Engineer	City of Petaluma		
PD-5 Standard Engineering Methods for Expansive Soils	Design Engineer	City of Petaluma		
PD-6 Standard Engineering Methods for Corrosive Soils	Design Engineer	City of Petaluma		
PD-7 Groundwater Monitoring and Management	City of Petaluma	City of Petaluma		
PD-8 Erosion, Stormwater Runoff, and Spill Control Measures	Construction Manager and Design Engineer	City of Petaluma & San Francisco Bay RWQCB		
PD-9 Conduct Phase II Site Assessment at Hopper Street to Assess the Potential for Contamination beneath the Sludge Lagoons	City of Petaluma	City of Petaluma		
PD-10 Monitor Soil and Groundwater During Demolition/ Construction for Evidence of Hazardous Waste at Hopper Street	Construction Manager	City of Petaluma		
PD-11 Test Suspected and Properly Dispose of Soils and Groundwater at Hopper Street	City of Petaluma	City of Petaluma		
PD-12 Inspect and Test for Lead-based Paint and Asbestos Containing Material (ACM) in any Buildings at 950 Hopper Street that will be Demolished	Construction Manager	City of Petaluma		

Table 3-1

Mitigation Monitoring Checklist – Outfall Relocation Project

Mitigation Measure	Implementing Agency	Monitoring Agency	Status	Comments
PD-13 Mosquito Prevention	City of Petaluma	City of Petaluma		
PD-14 Construction Air Quality Controls	Design Engineer	City of Petaluma		
PD-15 Permitting and Control of Toxic Air Contaminants	City of Petaluma	City of Petaluma		
PD-16 Odor Control	Design Engineer and Plant Operator	City of Petaluma		
PD-17 Construction Noise Mitigation Measures	Construction Manager/City of Petaluma	City of Petaluma		
PD-18 Operational Noise Mitigation Measures	Design Engineer	City of Petaluma		
PD-19 Protection of Historic and Archaeological Resources.	City of Petaluma	City of Petaluma		
PD-20 Protection of Previously Undiscovered Historic and Archeological Resources.	Design Engineer and City of Petaluma	City of Petaluma		
PD-21 Landscaping Design	Design Engineer	City of Petaluma		
PD-22 Lighting Design	Design Engineer and City of Petaluma	City of Petaluma		
PD-23 Fire Protection	Design Engineer and City of Petaluma	City of Petaluma		
Mitigation Measures				
GW-1 Drinking Water Well Protection Program	City of Petaluma	City of Petaluma		
WQ-1a Chromium Monitoring and Source Reduction Program	City of Petaluma	City of Petaluma		
WQ-1b Nickel Monitoring and Source Reduction Program	City of Petaluma	City of Petaluma		
WQ-1c Bis(2-ethylhexyl)phthalate Effluent Monitoring and Source Reduction Program	City of Petaluma	City of Petaluma		

Table 3-1

Mitigation Monitoring Checklist – Outfall Relocation Project

Mitigation Measure	Implementing Agency	Monitoring Agency	Status	Comments
WQ-1d Constituents not Monitored in Effluent Monitoring and Source Reduction	City of Petaluma	City of Petaluma		
WQ-1e Dioxin/Furan Congener Monitoring and Source Reduction Program	City of Petaluma	City of Petaluma		
BIO-1a Aquatic Species Protection Program	City of Petaluma	City of Petaluma		
BIO-1b Rare, Threatened and Endangered Plant Protection Program	City of Petaluma	City of Petaluma		
BIO-1c Wildlife Protection Program	City of Petaluma	City of Petaluma		
BIO-2a Active Raptor and Migratory Bird Nest Protection Program	City of Petaluma	City of Petaluma		
BIO-2b Rookery Protection Program	City of Petaluma	City of Petaluma		
BIO-4 Prepare a Riparian Census and Conceptual Riparian Mitigation Plan	City of Petaluma	City of Petaluma		
BIO-7 Create or Restore Wetlands and Waters of the U.S.	City of Petaluma	City of Petaluma		
TR-1a Reroute Construction Worker Trips	Construction Manager	City of Petaluma		
TR-1b Install Signage to Reroute Employee and Visitor Trips	City of Petaluma	City of Petaluma		

COMPLIANCE WITH EXISTING PROGRAMS

This section presents the applicable federal, state, regional, county, and local policies and regulations that the project are required to comply with. Compliance with these policies and regulations, and future modifications thereof, is required, and will result in avoidance and/or minimization of adverse environmental impacts.

Federal

Archaeological and Historic Data Preservation Act of 1974

California Toxics Rule

Clean Air Act of 1970, amended 1977 and 1990

Clean Water Act of 1977, amending the Water Pollution Control Act

Endangered Species Act of 1973, as amended (FESA)

Migratory Bird Treaty Act of 1918

Resources Conservation and Recovery Act

Rivers and Harbors Act of 1899, Section 10

Water Pollution Control Act, as amended by the Clean Water Act of 1977; Section 404

State

Accidental Release Prevention and Hazardous Waste Control Laws

Alquist-Priolo Earthquake Fault Zone Act

California Clean Air Act

California Department of Fish and Wildlife Fish and Game Code Section 1602

California Endangered Species Act (CESA) (Fish and Game Code Sec. 2050-2098)

California Government Code, Sec. 65962.5, Hazardous Waste and Substances Sites List (Cortese List)

California Health and Safety Code, Section 25500 et seq. - Hazardous Materials Release Response Plans and Inventory

California Native Plant Protection Act (Fish and Game Code Section 1900-1913)

California Occupational Safety and Health Administration (Cal-OSHA)

Porter-Cologne Water Quality Control Act

Title 8, California Code of Regulations (CCR), Sec. 25500 *et seq.*, Hazardous Material Storage

Title 8, California Code of Regulations (CCR), Sec. 1500-1938, California Construction Safety Regulations

Title 8, California Code of Regulations (CCR), Sec. 1509 & 3203, Injury and Illness Prevention Program

Title 8, California Code of Regulations (CCR), Sec. 1597-1599, Vehicles, Traffic Control, Flaggers, Barricades, and Warning Signs

Title 8, California Code of Regulations (CCR), Sec. 5194, Hazard Communication

Title 22, California Code of Regulations (CCR), Sec. 60301 *et seq.*, Recycled/Reclaimed Water

Title 22, California Code of Regulations, Section 66260.1 *et seq.* - California Hazardous Waste Regulations

Water Quality Control Plan for the San Francisco Bay Basin (2017)

Regional

Bay Area Clean Air Plan

Bay Area Air Quality Management District Risk Management Policy

Bay Area Air Quality Management District Rules and Regulations

Petaluma

Petaluma General Plan

Petaluma Building and Grading Regulations

Petaluma Zoning Ordinance

MEASURES INCLUDED IN THE PROJECT

This section presents the measures the City decided to incorporate into the Water Recycling Facility & River Access Improvements Project. Those measures that are applicable to the construction and operation of the larger Water Recycling Facility project, but that are not related to construction of the outfall at the new location are listed below. The full text of those measures applicable to the outfall component of the Project is provided on the following pages.

Project Measures not Applicable to Outfall Relocation

- PD-1 Uniform Relocation Assistance
- PD-5 Standard Engineering Methods for Expansive Soils
- PD-7 Groundwater Monitoring and Management
- PD-9 Conduct Phase II Site Assessment at Hopper Street to Assess the Potential for Contamination beneath the Sludge Lagoons
- PD-10 Monitor Soil and Groundwater during Demolition/construction for Evidence of Hazardous Waste at Hopper Street
- PD-11 Test Suspected and Properly Dispose of Contaminated Soils and Groundwater at Hopper Street
- PD-12 Inspect and Test for Lead-based Paint and Asbestos Containing Material (ACM) Any Buildings at 950 Hopper Street that will be Demolished
- PD-13 Mosquito Prevention
- PD-15 Permitting and Control of Toxic Air Contaminants
- PD-16 Odor Control
- PD-17 Construction Noise Mitigation Measures
- PD-18 Operational Noise Mitigation Measures
- PD-19 Protection of Historic and Archaeological Resources
- PD-21 Landscaping Design
- PD-22 Lighting Design
- PD-23 Fire Protection

PD-2 Purchase Locally Grown or Inspected Plants

Description: The City of Petaluma shall designate that the purchase of all plants for the wetlands and restoration efforts shall be from locally grown stock or from a nursery that has an approved monitoring program for the glassy-winged sharpshooter.

Lead Agency: City of Petaluma

Implementing Agency: Design Engineer

Timing: **Start:** Upon certification of the EIR

Complete: Prior to the start of landscaping or restoration

Monitoring Agency: City of Petaluma

Validation: Specifications for restoration and landscaping contracts

PD-3 Liquefaction Protection

Description: The City shall densify or solidify soil as necessary where site specific conditions are identified that are liquefaction prone. Overexcavation and replacement of liquefiable soil will be viable for some of the construction. Vibro-replacement or compaction grouting would also be effective, especially in areas of deeper excavation or trenching. Special foundation designs (e.g., pile or structural slab) may be appropriate for structures such as the new structures near existing Pond No. 10. Piles are not required for new facilities in existing Ponds No. 1 and 4.

Lead Agency: City of Petaluma

Implementing Agency: Design Engineer

Timing: **Start:** Upon certification of the EIR

Complete: At completion of construction

Monitoring Agency: City of Petaluma

Validation: Design-phase geotechnical report

PD-4 Seismic Design to Resist Ground Shaking

Description: The City shall take into account the high probability of strong seismic ground shaking, by incorporating design features that accommodate lateral movements and flexibility. Construction of all facilities and earth embankments should meet UBC standards for Seismic Zone 4, Seismic Source Type A, and Seismic Coefficients of 0.44 Na (Ca) and 0.64 Na (Cv). UBC soil profile type for the site is Sd and near source factors for the Rodger’s Creek fault are 1.19 (Na) and 1.58 (Nv). New facilities should be designed in accordance with the Sonoma County building codes which incorporate the seismic design for Zone 4 provisions of the 1997 Uniform Building Code.

Lead Agency: City of Petaluma

Implementing Agency: Design Engineer

Timing: **Start:** Upon certification of the EIR
Complete: Upon completion of construction

Monitoring Agency: City of Petaluma

Validation: Design-phase geotechnical report

PD-6 Standard Engineering Methods for Corrosive Soils

Description: The City shall sample soils for corrosivity and remove affected soils. Facilities shall be constructed of materials not susceptible to corrosion or designed to provide corrosion protection.

Lead Agency: City of Petaluma

Implementing Agency: Design Engineer

Timing: **Start:** Upon certification of the EIR
Complete: Upon completion of construction

Monitoring Agency: City of Petaluma

Validation: Design-phase geotechnical report

PD-8

Erosion, Stormwater Runoff, and Spill Control Measures

Description:

The City shall develop and implement measures designed to prevent significant construction impacts to water quality. Examples of possible measures include the following:

Construction Site Best Management Practices (BMPs)	
ID	BMP Name
Temporary Soil Stabilization	
SS-1	Scheduling
SS-2	Preservation of Existing Vegetation
SS-3	Hydraulic Mulch
SS-4	Hydroseeding
SS-5	Soil Binders
SS-6	Straw Mulch
SS-7	Geotextiles, Plastic Covers, & Erosion Control Blankets/Mats
SS-8	Wood Mulching
SS-9	Earth Dikes/Drainage Swales & Ditches
SS-10	Outlet Protection/Velocity Dissipation Devices
SS-11	Slope Drains
Temporary Soil Stabilization	
SC-1	Silt Fence
SC-2	Desilting Basin
SC-3	Sediment Trap
SC-4	Check Dam
SC-5	Fiber Rolls
SC-6	Gravel Bag Berm
SC-7	Street Sweeping and Vacuuming
SC-8	Sandbag Barrier
SC-9	Straw Bale Barrier
SC-10	Storm Drain Inlet Protection
Wind Erosion Control	
WE-1	Wind Erosion Control
Tracking Control	
TC-1	Stabilized Construction Entrance/Exit
TC-2	Stabilized Construction Roadway
TC-3	Entrance/Outlet Tire Wash
Non-Storm Water Management	
NS-1	Water Conservation Practices
NS-2	Dewatering Operations

Construction Site Best Management Practices (BMPs)	
ID	BMP Name
NS-3	Paving and Grinding Operations
NS-4	Temporary Stream Crossing
NS-5	Clear Water Diversion
NS-6	Illicit Connection/Illegal Discharge Detection and Reporting
NS-7	Potable Water/Irrigation
NS-8	Vehicle and Equipment Cleaning
NS-9	Vehicle and Equipment Fueling
NS-10	Vehicle and Equipment Maintenance
Waste Management and Materials Pollution Control	
WM-1	Material Delivery and Storage
WM-2	Material Use
WM-3	Stockpile Management
WM-4	Spill Prevention and Control
WM-5	Solid Waste Management
WM-6	Hazardous Waste Management
WM-7	Contaminated Soil Management
WM-8	Concrete Waste Management
WM-9	Sanitary/Septic Waste Management
WM-10	Liquid Waste Management

Source: Caltrans 2000.

In addition, stormwater runoff from the existing oxidation pond site during operation shall be diverted into the wastewater treatment system. Stormwater runoff from the visitors parking lot on Parcel A shall be treated either by diversion into the wastewater treatment system or installation of an oil and grease separator at the bottom of the lot.

Construction within the Petaluma River or the lower 300 feet of Ellis Creek shall be performed from a barge and with divers when appropriate. Excavation underwater shall be done with pressurized water.

Lead Agency: City of Petaluma

Implementing Agency: Construction Manager

Timing: **Start:** Prior to start of construction

Complete: Upon completion of construction

Monitoring Agency: City of Petaluma and San Francisco Bay Regional Water Quality Control Board

Validation: Storm Water Pollution Prevention Plan

PD-20 Protection of Previously Undiscovered Historic and Archaeological Resources

Description: If subsurface archaeological or historical remains, that qualify as a historic resource or unique archeological resource under CEQA Guidelines Section 15064.5, are discovered during construction, work in the area shall stop immediately and a qualified archaeologist shall evaluate any materials and recommend appropriate treatment. A Native American monitor shall be present for the investigation, if the local Native American tribe requests. Avoidance of impacts to the resource are preferable. In considering any suggested measures proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the City shall determine whether avoidance is feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures as recommended by the archaeologist (e.g., data recovery) shall be instituted. Work may proceed on other parts of the Project while mitigation for the historic resources or unique archaeological resources is being carried out.

If human burials are encountered, all work in the area will stop immediately and the Sonoma County coroner’s office shall be notified immediately. If the remains are determined to be Native American in origin, both the Native American Heritage Commission and any identified descendants must be notified and recommendations for treatment solicited (CEQA Section 15064.5); Health and Safety Code Section 7050.5; Public Resources Code Section 5097.94 and 5097.98).

Lead Agency: City of Petaluma

Implementing Agency: Design Engineer and City of Petaluma

Timing: **Start:** Upon certification of the EIR

Completion: Completion of construction

Monitoring Agency: City of Petaluma

Validation: A qualified professional archaeologist and Native American tribe affiliated with the area shall be consulted if subsurface archaeological or historical remains are discovered.

MITIGATION MEASURES

This section contains mitigation measures to be implemented prior to, during, and immediately following project construction. These measures generally require the construction manager to follow certain constraints during construction and to repair and rehabilitate impacts resulting from construction of the project. Compliance with these mitigation measures would result in minimizing, rectifying, or reducing adverse environmental impacts. Those measures that are applicable to construction and operation of the larger Water Recycling Facility project, but that are not related to construction of the outfall at the new location are listed below. The full text of those measures applicable to the outfall component of the Project is provided on the following pages.

Mitigation Measures not Applicable to Outfall Relocation

- GW-1 Drinking Water Well Protection Program
- WQ-1a Chromium Monitoring and Source Reduction Program
- WQ-1b Nickel Monitoring and Source Reduction Program Program
- WQ-1c Bis(2-ethylhexyl)phthalate Effluent Monitoring and Source Reduction Program
- WQ-1d Constituents not Monitored in Effluent Monitoring and Source Reduction
- WQ-1e Dioxin/Furan Congener Monitoring and Source Reduction Program
- BIO-1c Wildlife Protection Program
- BIO-2b Rookery Protection Program
- BIO-4 Prepare a Riparian Census and Conceptual Riparian Mitigation Plan
- BIO-7 Create or Restore Wetlands and Waters of the U.S.
- TR-1a Reroute Construction Worker Trips
- TR-1b Install Signage to Reroute Employee and Visitor Trips

BIO-1a Special-status Species Protection Program

Description:

The City shall implement an Special-status Species Protection Plan, as follows:

- A Worker Environmental Awareness Training Program for construction personnel shall be provided that addresses sensitive habitats and special-status species that may be found on-site and outline procedures in the event a special-status species is encountered.
- Any ground-disturbing construction activity in Ellis Creek (i.e., in the bank or bed of the channel) or slough channel shall be 1) conducted when no or low freshwater flow from upstream into the work area (which will potentially be tidal at the time of construction) is occurring to avoid downstream transport of sediment and impacts on any migrating salmonid fish, or other rare aquatic species; and 2) conducted between coffer dams around which any tidal or stream flow shall be routed. Prior to coffer dam installation, a qualified biologist shall seine the area between the dams to determine if sensitive species are present. If sensitive species are present, they should be relocated in consultation with NMFS, USFWS, and CDFW consistent with federal and State regulations.
- Facilities shall be located and constructed using methods that minimize the loss of existing riparian or marsh vegetation. Unavoidable loss of riparian vegetation shall be mitigated by planting sufficient native riparian vegetation to compensate for the loss of shade and habitat.
- A 20-foot buffer zone from the top of the bank of Ellis Creek shall be established, where feasible, and fenced during construction.
- If aquatic habitat must be removed, create or restore like habitat on site at a compensatory ratio of 1:1 (1 acre of restored habitat for every 1 acre impacted) or as required by the Corps of Engineers or Regional Water Quality Control Board. Identify opportunities to improve current habitat conditions within Ellis Creek and implement, where feasible. Cropped upland is available as mitigation sites for salt marsh, freshwater marsh, or stream impacts. Shollenberger Park also has sites available for mitigation for river habitat impacts.
- Best management practices shall be implemented to control erosion, sedimentation, and runoff of pollutants. As an appropriate example, best management practices are described in the *Caltrans Storm Water Quality Handbooks: Construction*

Site Best Management Practices Manual (May 2017). Refer to PD-8 for a potential list. These shall be implemented as necessary under the supervision of the construction manager. Detailed specifications shall be incorporated onto bid documents and construction drawings.

- Construction and grading activities that would affect Ellis Creek, or upland areas that might erode into the creek or marsh, shall be restricted to the dry season.
- For work within or adjacent to the tidal marsh, temporary salt marsh harvest mouse exclusion fence shall be installed around the construction footprint and buried to a depth of 4 inches. The fence shall be constructed of heavy plastic sheeting curved outward at the top from the construction area to prevent mice from climbing or passing through. Fence height shall be at least 12 inches higher than adjacent vegetation. A qualified biologist shall inspect the fence as needed, to ensure there are no gaps or damage. Stakes shall be located on the inside of the exclusion fence (to deter mice from climbing stakes).

Lead Agency:	City of Petaluma
Implementing Agency:	City of Petaluma Public Works & Utilities Department
Timing:	Start: Before start of construction of the affected area Complete: Upon completion of construction
Monitoring Agency:	City of Petaluma and Construction Manager
Validation:	Annual report

BIO-1b Rare, Threatened and Endangered Plant Protection Program

Description:	<p>The City shall retain a qualified biologist to conduct floristically-based surveys for special-status plants in accordance with the CDFG’s “Guidelines for Assessing the Effects of Proposed Developments on Rare and Endangered Plants and Plant Communities” prior to initiation of construction activities. The purpose of these surveys will be to locate and identify any special-status plants that may occur in the proposed construction zone.</p> <p>If special-status plants are located during the surveys, exclusionary buffer zones (recommend a minimum 20-foot buffer, where feasible) shall be established around each population site. Mesh fencing shall be installed at the boundary of the exclusionary buffer zone prior to initiation of construction activities.</p> <p>If complete avoidance cannot be achieved, the City shall submit a site-specific mitigation and compensation program for the affected plants in consultation with the CDFG. The mitigation program shall include the results of the surveys, delineation of suitable habitats for restoration or planting of rare species, procedures for obtaining seed before construction, and performance standards for success of the mitigation program. Sufficient areas exist along Ellis Creek and elsewhere on the site to create or restore plant communities if needed.</p>
Lead Agency:	City of Petaluma
Implementing Agency:	City of Petaluma Public Works & Utilities Department
Timing:	Start: After certification of the EIR start of construction Complete: Upon completion of construction
Monitoring Agency:	City of Petaluma
Validation:	Annual report

BIO-2a Active Raptor and Migratory Bird Nest Protection Program

Description: The City shall retain a qualified biologist to conduct pre-construction surveys to determine if any active raptor or migratory bird nests occur within 500 feet of the project area at least two weeks prior to initiation of construction activities.

If active nests are located in the study area, construction exclusion zones shall be established around each active nest. Appropriate construction exclusion zones shall be established through consultation with CDFG. Construction activities shall be prohibited within exclusion zone until the end of the nesting season.

During construction, a qualified biologist shall monitor each nest to evaluate potential nesting disturbances caused by the construction activities. The monitor shall have the authority to stop construction if it appears to be having a negative impact on the nesting raptors. The monitor shall also monitor the nest to determine when the young have fledged and submit weekly reports to the CDFG and the City of Petaluma throughout the nesting season.

Lead Agency: City of Petaluma

Implementing Agency: City of Petaluma Public Works & Utilities Department

Timing: **Start:** Before start of construction

Complete: Upon completion of construction

Monitoring Agency: City of Petaluma and Construction Manager

Validation: Annual report

Resolution No. 2022-XXX N.C.S.
of the City of Petaluma, California

AUTHORIZING AWARD OF CONTRACTOR FOR THE ELLIS CREEK OUTFALL RELOCATION PROJECT TO NBC ENGINEERING & CONSTRUCTION INC.

WHEREAS, the City of Petaluma owns and operates the Ellis Creek Water Recycling Facility (ECWRF), located at 3890 Cypress Drive, Petaluma California; and

WHEREAS, City staff has prepared construction bid documents and advertised for construction for the Ellis Creek Water Recycling Facility Outfall Relocation Project (“project”); and

WHEREAS, in accordance with the City of Petaluma Charter and Municipal Code, California Public Contract Code Section 20162, and other applicable law, City staff solicited bids for the project; and

WHEREAS, the project was bid on June 30, 2022, and no bids were received on July 20, 2022, the date scheduled for the opening of bids, in accordance with applicable law; and

WHEREAS, even though the City did not receive any bids, the City did comply with its Charter and Municipal Code by following the process for bidding out the project; and

WHEREAS, California Public Contract Section 20166 authorizes cities that receive no bids on their construction projects to “have the project done without further complying with” the Local Agency Public Construction Act; and

WHEREAS, the common law recognizes a bidding exception for circumstances where competitive bidding of public contracts otherwise required by statute may be excused, including circumstances where the contract is such that competitive proposals would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible, *Graydon v. Pasadena Redevelopment Agency* (1980) 104 CA3d 631; and

WHEREAS, as the City already formally bid out this project and received no bids on the project, re-advertising the project for competitive bids again would be undesirable; and

WHEREAS, the City has received no protests concerning the result of no bids received, the time to protest proposal has lapsed; and

WHEREAS, the City solicited a response from listed plan holders, and NBC Engineering & Construction expressed such interest upon further review of the project; and other listed plan holders did not indicate any continued interest; and

WHEREAS, NBC Engineering & Construction Inc. submitted a responsible base bid proposal of \$929,403, with additive alternative 1 of \$86,411 and was found by staff to be fair and reasonable; and satisfies the bidding requirements for the project; and

WHEREAS, staff has verified that NBC Engineering & Construction Inc. possesses a valid California Contractor’s License, Class A (General Engineering Contractor), number 857964 that qualifies the Contractor to perform the project; and

WHEREAS, on August 8, 2022, by a concurrent resolution the City Council certified the Water Recycling Facility and River Access improvements Environmental Impact Report Outfall Relocation Addendum, approved the project, and adopted a Mitigation Monitoring Plan; and

WHEREAS, the grant is expected to be awarded to the City of Petaluma within a few months from the application submission date as the project underwent a grant pre-application process and was approved to proceed for bidding; and

WHEREAS, an Environmental Impact Report (EIR) for the ECWRF (State Clearinghouse #2001052089) was certified on August 5, 2002, by City Council as Resolution No. 2002-135, with addenda prepared in 2004, 2005, 2006, 2007, and twice in 2016; and

WHEREAS, under California Environmental Quality Act (CEQA) Guidelines section 15164, a lead agency may prepare an addendum to a previously certified EIR to analyze changes in a project, or in circumstances surrounding a project, where the record indicates that a supplemental or subsequent EIR or negative declaration is not required; and

WHEREAS, a construction contract contingency of \$152,372 is approximately fifteen percent (15%) of the construction contract; and

WHEREAS, the FY 22/23 Capital Improvement Program (CIP) budget is sufficient to complete the project as bid.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Petaluma hereby:

1. Declares that the above recitals are to be true and correct and are incorporated into this resolution as findings of the City Council.
2. Finds that as the City received no bids for the Ellis Creek Water Recycling Facility Outfall Relocation Project, project No. C66501838, Public Contract Code Section 20166 authorizes the City to not comply with the Local Agency Public Construction Act in awarding this project and that re-advertising the project for competitive bids again would be undesirable.
3. Finds that the City complied with the City of Petaluma Charter and Municipal Code, the California Public Contract Code Section, and other applicable laws waive any and all non-conformance in the bid of NBC Engineering & Construction Inc. for the Ellis Creek Water Recycling Facility Outfall Relocation Project, project No. C66501838 finds that NBC Engineering & Construction Inc. is responsible with a base bid of \$929,403, and an additive alternate 1 bid of \$86,411.
4. Awards the contract for the Ellis Creek Water Recycling Facility Outfall Relocation Project, project No. C66501838, to NBC Engineering & Construction Inc. in the amount of \$1,015,814, the amount of bid plus additive alternate 1 conditioned on NBC Engineering & Construction Inc.'s timely executing of the project contract and submitting all required documents, including but not limited to, executed bonds, certificates of insurance, and endorsements, in accordance with the project bid documents.
5. Authorizes and directs the City Manager to execute the project contract on behalf of the City of Petaluma contingent upon timely submission by NBC Engineering & Construction Inc., of the signed project contract and all other required documents, including but not limited to, executed bonds, certificates of insurance, and endorsements, in accordance with the project bid documents.
6. Approves a construction contract contingency of \$152,372.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 8th day of August 2022, by the following vote:

Approved as to form:

City Attorney

AYES:

NOES:

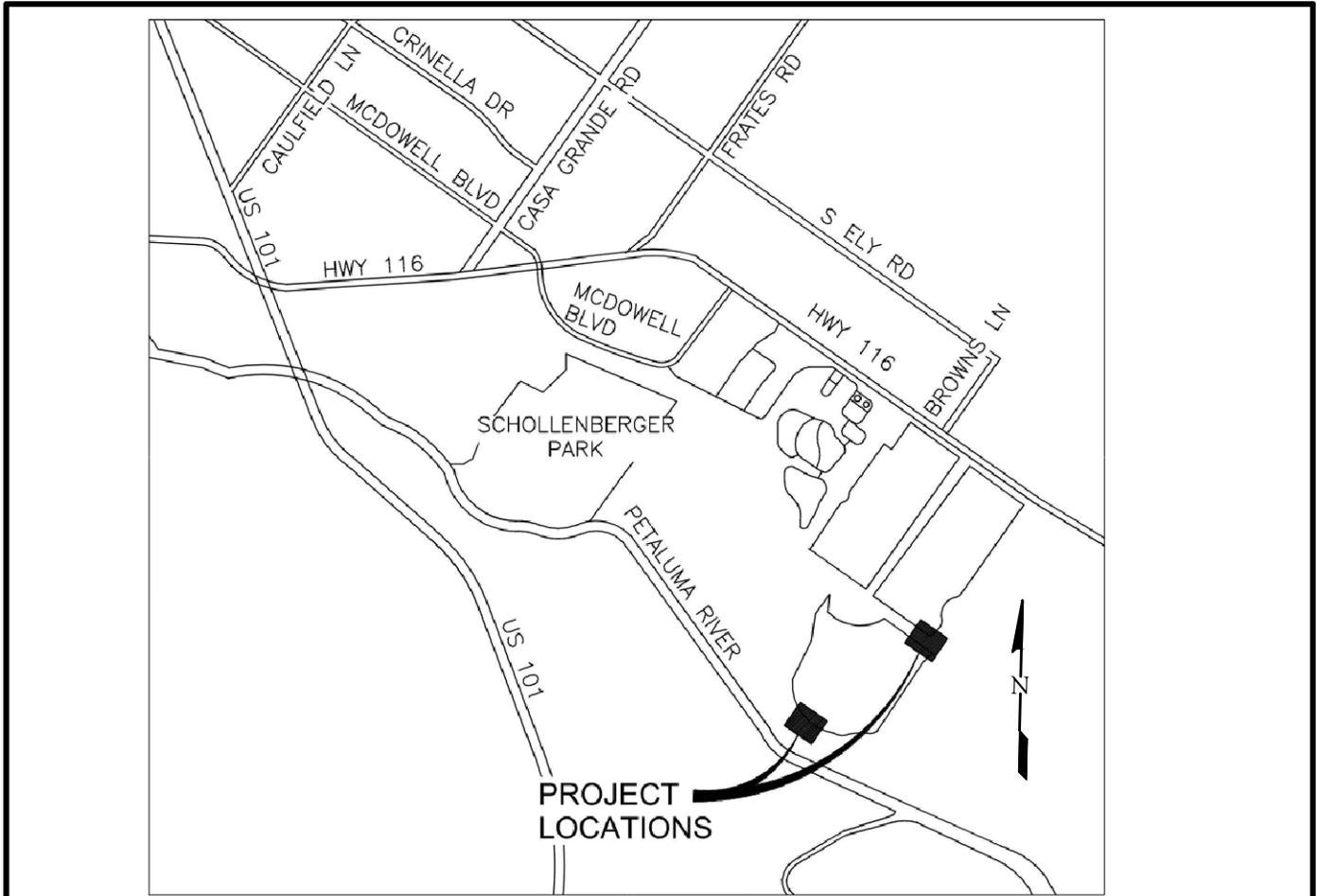
ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor



	<p align="center">CITY OF PETALUMA PUBLIC WORKS & UTILITIES UTILITIES DIVISION</p> <p>202 N. McDOWELL BLVD. TEL. 707-778-4546 PETALUMA, CALIFORNIA 94954 FAX. 707-778-4508</p>	<p align="center">ELLIS CREEK WATER RECYCLING FACILITY OUTFALL RELOCATION Location Map</p>	DATE: AUGUST 2022	SCALE: N.T.S.
			<p> </p>	
			DRAWN BY: JM	C66501838



DATE: August 8, 2022

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Lisa Cameli, Associate Civil Engineer, Public Works & Utilities
Gina Benedetti-Petnic, PE, Asst. Director of Public Works & Utilities
Christopher J. Bolt, MPA, PE, ICMA-CM, Director of Public Works & Utilities

SUBJECT: Resolution Accepting Completion of the Biomass to Biofuel Project at the Ellis Creek Water Recycling Facility Contract with Myers and Sons Construction, Approving a Final Contract Change Order and Authorizing the City Manager to Sign on Behalf of the City a Settlement Agreement with Myers and Sons Construction Resolving the Claims of the Parties

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution Accepting Completion of the Biomass to Biofuel Project at the Ellis Creek Water Recycling Facility Contract with Myers and Sons Construction, Approving a Final Contract Change Order and Authorizing the City Manager to Sign on Behalf of the City a Settlement Agreement with Myers and Sons Construction Resolving the Claims of the Parties.

BACKGROUND

The Ellis Creek Water Recycling Facility (ECWRF) has been in operation since early 2009 and currently processes an average dry weather daily flow of 4.8 million gallons per day. In January 2016, the City accepted a \$3 million grant from the California Energy Commission to transform methane gas produced in the anaerobic digestion process at the ECWRF into compressed natural gas (CNG), for use to fuel City refuse collection vehicles. This CNG generated from the anaerobic digestion of bio-solids from the treatment of wastewater is also known as Renewable Natural Gas (RNG) or Bio-CNG.

In response to wastewater loading increases since the ECWRF's completion in 2009 and the need for process redundancy, the City Council approved the construction of a second anaerobic digester and other ancillary improvements to the ECWRF, which were completed in 2019 as part of the Ellis Creek Solids Upgrade project. The addition of a second digester at the ECWRF also provided the excess capacity to receive high-strength waste (HSW) liquid feedstock from local food and beverage industries. The ability to process HSW at the ECWRF benefits the local food and beverage industries and reduces greenhouse gas emissions with reduced hauling of the waste to receiving facilities outside of Petaluma. The HSW feedstock to be fed directly to the digester is also expected to significantly increase bio-methane production and allow for additional BioCNG

to be generated to fuel refuse collection vehicles to reduce reliance on diesel. The project is estimated to reduce greenhouse gas emissions by at least 784 tons/CO₂ a year. This is equivalent to nearly 80,000 gas gallons consumed. The construction of a high-strength waste receiving facility, bio-methane processing equipment, and CNG fueling station make up the B2B Project.

The City solicited bids for two wastewater capital improvement (CIP) projects, the CNG Fueling Station (CIP Project C66501518) and Ellis Creek High Strength Waste Facilities (CIP Project C66401728). These projects were originally planned to be executed sequentially, but time constraints on the CEC grant and economy of scale efficiencies led to both construction phases to be executed simultaneously. The scope of the projects included the following:

- Improvements to the headworks facility with a second grit classifier;
- High-strength waste receiving station;
- Reconfiguration of an existing acid digester to make a high-strength waste storage tank;
- High-strength waste transfer station;
- Additional conveyor and bio-solids load-out bay;
- Replacement of the existing screw press with a higher capacity screw press;
- Replacement of bio-filter media for foul air system;
- Gas treatment and vehicle fueling system;
- Remote fueling station at refuse hauler facility;
- New enclosed flare for waste gas;
- Electrical system maintenance;
- Restroom facility in the plant; and
- Various site maintenance and upgrades.

Bids for the construction contract were opened on November 16, 2017. On December 18, 2017, the City Council authorized award of the construction contract to Myers & Sons Construction, LP, in the amount of \$8,272,100. Construction was substantially completed in February 2020.

DISCUSSION

The final construction contract cost is \$9,449,992.53, which included 16 change orders. The change orders are described in the table below:

Change Order #	Value	Summary
1	\$78,260.20	During Construction additional electrical work for HSW receiving station and Screw Press building was discovered to be needed as well as additional steel reinforcement to HSW storage tank.
2	\$39,000.00	During Construction additional electrical, masonry work, roofing and plumbing work was determined to be needed as part of the assembly and construction of an owner-supplied, pre-engineered single-user bathroom being constructed in the main process area of the Ellis Creek Facility.
3	\$38,200.00	During construction, it was determined that there was insufficient space for the specified variable speed pump control panels. that the screw press control panel needed to be renewed, and additional speed switches were needed for the bio-solids conveyor system.

4	\$47,972.77	During construction, it became apparent that additional hardware was needed to accommodate the termination of communications and controls in the programmable logistics computer to integrate new equipment into the plant SCADA system.
5	\$202,496.25	The biofilter media replacement work included tasks to investigate and determine the scope of repairs of the biofilter bed systems. It was known going in that this aspect of the project may need added scope to properly complete the repairs. Foul air piping and irrigation system repairs were found to be needed and a new media system with better performing and longer-lasting materials was installed.
6	\$75,665.53	During construction it was determined that additional work was needed for concrete encasement and additional piping work for drain and HSW piping; installation of two truck scales at bio-solids load out, and a credit was received for the salvage of old screw press and truck scale.
7	\$54,808.43	Additional electrical work: change in conduit materials to match plant standard; additional work needed to accommodate design changes in grinding pumps for HSW.
8	\$15,828.71	During construction, it was determined that thickening of the concrete slab to accommodate H2S vessel footings was needed, as well as an additional light pole at the fueling station, pressure reducing valves on process water, and additional work to provide power to level indicating transmitter on Digester #2. Credit for the elimination of pull boxes for low-pressure gas storage vessels was included in this change order.
9	\$151,837.86	During submittal review, the addition of a compressor and a heater to increase efficiency and reliability at the remote fueling was determined to be needed. These equipment additions also necessitated an increase in concrete slab size. Additional electrical safety disconnects to meet fire protection requirements were realized to be needed during construction.
10	\$185,978.75	During construction, the need for automated valve control for HSW feed lines to the digesters was realized to meet EPA alternative fuel credit requirements, an offsetting revenue for the B2B project. During construction, it was identified that modifications to the slab in way of the gas processing equipment panel and a control panel for the waste gas burner to address personnel safety issues.
11	\$139,176.33	During construction additional electrical and communications work was identified to be needed for the new enclosed waste gas burner, screw press, and bio-solids conveyor system. Contaminated soil was identified at the remote fueling site and required additional costs associated with project delays as the soil was safely handled and removed. During the permitting process with the Bay Area Air Quality Management District, it was determined that the City would need to be able to abate the entirety of digester gas produced at the facility with the new Enclosed Waste Gas Burner, instead of the facility's original candlestick flare. A means to bypass the new CNG gas treatment system to send all of the digester gas produced at the facility to the new Enclosed Waste Gas Burner was designed and constructed.
12	\$82,135.74	An alternative bid item was a new dry polymer system, during bidding it was determined the availability of dry polymers would not allow the City to achieve acceptable dewatering efficiencies with the Screw Press and the bid alternative was not selected. During construction, a new liquid polymer blending unit that would increase the efficiency of the system was identified

		and supplied. It was discovered during construction that an existing 8" digester gas line had reverse fall, allowing the accumulation of condensate. The Contractor excavated and adjusted the elevations of this section of pipe to allow condensate to drain to the appropriate sediment trap. During construction, the Contractor removed City fall protection equipment from storage for use at another job site. The Contractor agreed to replace this equipment. A credit to the City was negotiated to cover the cost of additional inspection and safety oversight services to ensure a safe workplace for the Contractor and Staff following an incident with the catastrophic failure of a digester gas pressure regulator during pressure testing.
13	TERMS	Much of the project was determined to be substantially complete in February 2020, with training, field testing, and start-up of systems impacted by a stop work order when the COVID-19 pandemic occurred. A partial release of retention on completed work was made with this change order.
14	\$2,531.96	Additional electrical work was needed to troubleshoot and correct signal noise from the owner-supplied gas processing control plan. City requested repairs be made to the HSW pump station and new insulation be installed once repairs were completed.
15	\$149,000	A.) A second partial release of retention funds for specific items and areas of work that have been determined to be complete and ready for operation by the City. The early release of these retention funds is in response to a potential claim settlement between Myers & Sons and the City. All other items of work are considered substantially complete. This Change Order released \$129,947.85 in retention. The remaining retention funds will be released based on Final Settlement Agreement with Myers and Sons. B.) Settlement of potential claim submitted by Myers and Sons for interest on late payments and excessive retention withheld. Settlement agreement price is \$149,000 to be paid to Myers & Sons.
16	\$(85,000)	Negotiated settlement of potential claim by the City against Myers & Sons for non-conforming and incomplete work associated with completion of the Biomass to Biofuel project. The agreement includes an \$85,000 credit to the City to be withheld from retention release. Current remaining retention held by the City is \$210,000. Therefore, the City will release in full to Myers & Sons the amount of \$125,000 (\$210,000 less \$85,000). This amount shall be the full compensation and retention release for completion of the project.
Total Value		\$1,177,892.53

In addition to these change orders, a settlement agreement was negotiated on contractor claims for interest on retention held and late payment interest. This settlement agreement was brought before Council in closed sessions on January 25, 2021, and July 18, 2022. The final settlement agreement is attached hereto as Attachment E.

The following components of the project have completed start-up and are fully operational: screw press, secondary grit classifier, conveyor system, foul air bio-filter media bed, restroom, and electrical system upgrades. The gas processing equipment and fueling stations have been in a start-up phase since the spring of 2020. The restrictions from the COVID-19 pandemic and outstanding issues with the enclosed flare delayed the final project close-out and full operation of the system.

The City will continue delivery of CNG to Recology after the system is reliably operating and the City has secured a final operating agreement with Recology.

Although the construction contract with Myers & Sons is considered complete for the B2B project, staff continues to work through unanticipated permitting requirements from the Bay Area Air Quality Management District and a design issue with the HSW receiving pumps and enclosed flare.

Once these issues are addressed, staff will be following a measured plan based on bench testing to introduce HSW to the digesters to minimize the possibility of upsetting the anaerobic digestion process or impacting the plant processes involved in dewatering the bio-solids.

PUBLIC OUTREACH

In Spring 2020 the City provided an Open House tour of the operation of the CNG system and associated improvements.

COUNCIL GOAL ALIGNMENT

This action is consistent with the Council approved Goals and Priorities for FY 20/21 of “Our Environmental Legacy,” Objective 1 “Preserve and Protect Petaluma’s Environment with Smart and Efficient Use of Resources.” Specifically, this action assists with climate change adaptation by reducing greenhouse gas emissions and the reuse of a renewable resource, the methane gas generated from the anaerobic digestion of wastewater biosolids. The specific workplan items addressed are:

- Workplan Item #42 – “Find ways for City operations to reduce greenhouse gas emissions, conserve water, decrease waste, and minimize the use of fossil fuels and investigate and pursue options for carbon sequestration.”
- Workplan Item #51 – “Complete B2B project at the City’s Ellis Creek Water Recycling Facility.”
- Workplan Item #52 – “Develop a framework to move the City and Transit vehicle fleet from fossil-fuel based to hybrid, renewable compressed natural gas, and/or electric vehicles; continue pursuing grant funding opportunities for electric vehicles.”

CLIMATE ACTION/SUSTAINABILITY EFFORTS

Once fully operational, this project will reduce greenhouse gas emissions by 784 tons of CO₂/year and reuse a renewable resource—the methane gas generated from the anaerobic digestion of wastewater biosolids—to provide RNG for the City’s refuse fleet.

ENVIRONMENTAL COMPLIANCE

On January 4, 2016, the City Council, by Resolution No. 2016-007 N.C.S. certified the Water Recycling Facility and River Access Improvements EIR January 2016 Addendum, which evaluated the Biomass to Biofuel (B2B) project. The off-site fueling operation was included in the description of the project in the EIR Addendum. A subsequent review to review the compliance of CEQA requirements was completed by an engineering consulting firm, GHD, in June 2017 and verified no substantial changes to the project description as evaluated in the approved EIR Addendum.

FINANCIAL IMPACTS

Both the CNG Fueling Station Project (CIP C66501518) and the Ellis Creek High Strength Waste Facilities Project (CIP C66401728) are funded with Wastewater Capital funds and a \$3,000,000 California Energy Commission grant.

Total projected costs associated with completion of the entire B2B project (CIP Projects C66401728 and C66501518), including, but not limited to, the Myers & Sons contract is estimated at \$14,622,000, which is within the overall approved project budget.

ALTERNATIVES

No consideration for alternatives is part of this action.

ATTACHMENTS

1. Resolution
2. Location Map
3. Change Order 16
4. Settlement Agreement

Resolution No. 2022-XXX N.C.S.
of the City of Petaluma, California

**ACCEPTING COMPLETION OF THE BIOMASS TO BIOFUEL PROJECT AT THE ELLIS CREEK
WATER RECYCLING FACILITY CONTRACT WITH MYERS AND SONS CONSTRUCTION,
APPROVING A FINAL CONTRACT CHANGE ORDER AND AUTHORIZING THE CITY
MANAGER TO SIGN ON BEHALF OF THE CITY A SETTLEMENT AGREEMENT WITH MYERS
AND SONS CONSTRUCTION RESOLVING THE CLAIMS OF THE PARTIES**

WHEREAS, in accordance with Section 68 of Article X of the City of Petaluma Charter, Section 20162 of the California Public Contract Code, and other applicable law, the City of Petaluma solicited bids for the Biomass to Biofuel project (“Project”); and

WHEREAS, bids for the Project were opened on November 16, 2017, in accordance with California Public Contract Code Section 4104.5 and other applicable law; and

WHEREAS, the apparent low bid for the Project was the bid of Myers & Sons Construction, LP in the amount of \$8,272,100; and

WHEREAS, by Resolution No. 2017-181 adopted on December 18, 2017, the City Council of the City of Petaluma found the bid of \$8,272,100 for the Project to be the lowest responsive bid and awarded the Project to Myers & Sons Construction, LP in the amount of \$8,272,100 conditioned on Myers & Sons Construction’s timely executing the Project contract and submitting all required documents and authorized and directed the City Manager to sign the Project contract on behalf of the City upon such timely submission and to execute on behalf of the City any change orders and other amendments to the Project contract that is necessary to effectively complete the project and/or to realize the Project and/or cost benefits for the City so long as such change orders or amendments do not result in an increase in excess of \$1,214,000; and

WHEREAS, the following change orders affecting the Project amount have been approved:

Change Order #1	\$ 78,260.20
Change Order #2	\$ 39,000.00
Change Order #3	\$ 38,200.00
Change Order #4	\$ 47,972.77
Change Order #5	\$202,496.25
Change Order #6	\$ 75,665.53
Change Order #7	\$ 54,808.43
Change Order #8	\$ 15,828.71
Change Order #9	\$151,837.86
Change Order #10	\$185,978.75
Change Order #11	\$139,176.33
Change Order #12	\$ 82,135.74
Change Order #13	no cost, partial retention release
Change Order #14	\$ 2,531.96
Change Order #15	\$149,000.00
<u>Change Order #16</u>	<u>\$(85,000) credit</u>
Total Change Orders:	\$1,177,892.53; and

WHEREAS, the final contract amount as amended including all change orders is \$9,449,992.53; and

WHEREAS, Myers & Sons Construction, LP threatened to file a lawsuit against the City for interest on retention held and late payment interest; and

WHEREAS, a settlement agreement was negotiated on contractor claims, attachment E; and

WHEREAS, City staff have inspected the Project and determined that it has been completed in accordance with the contract requirements subject to the Contractor’s continuing warranty and other obligations pursuant to the contract; and

WHEREAS, compliance with the California Environmental Quality Act for this project was previously completed on January 4, 2016, the City Council, by Resolution No. 2016-007 N.C.S. certified the Water Recycling Facility and River Access Improvements EIR January 2016 Addendum, which evaluated the Biomass to Biofuel (B2B) project; and

WHEREAS, based on the foregoing, staff recommends acceptance of the Project on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Petaluma as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. Compliance with the California Environmental Quality Act for this project was previously completed on January 4, 2016, the City Council, by Resolution No. 2016-007 N.C.S. certified the Water Recycling Facility and River Access Improvements EIR January 2016 Addendum, which evaluated the Biomass to Biofuel (B2B) project.
3. The contract entitled Biomass to Biofuel, Project No. C66501518 & C66401728 with a final contract amount of \$9,382,992.53 is accepted as complete subject to the Contractor’s continuing warranty and other obligations pursuant to the contract.
4. The City Clerk is hereby authorized and directed to file a Notice of Completion concerning the Project with the Sonoma County Clerk’s Office within ten (10) days of the date of this Resolution.
5. Staff is hereby authorized and directed to release all undisputed retention not subject to pending change orders within sixty (60) days of the date of this Resolution and in accordance with the terms of the Project contract, the Petaluma City Charter, California Public Contract Code Section 7107, and applicable law.
6. The City Manager is authorized to sign the settlement agreement, attachment E, with Myers & Sons Construction, LP.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 8th day of August 2022, by the following vote:

Approved as to form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

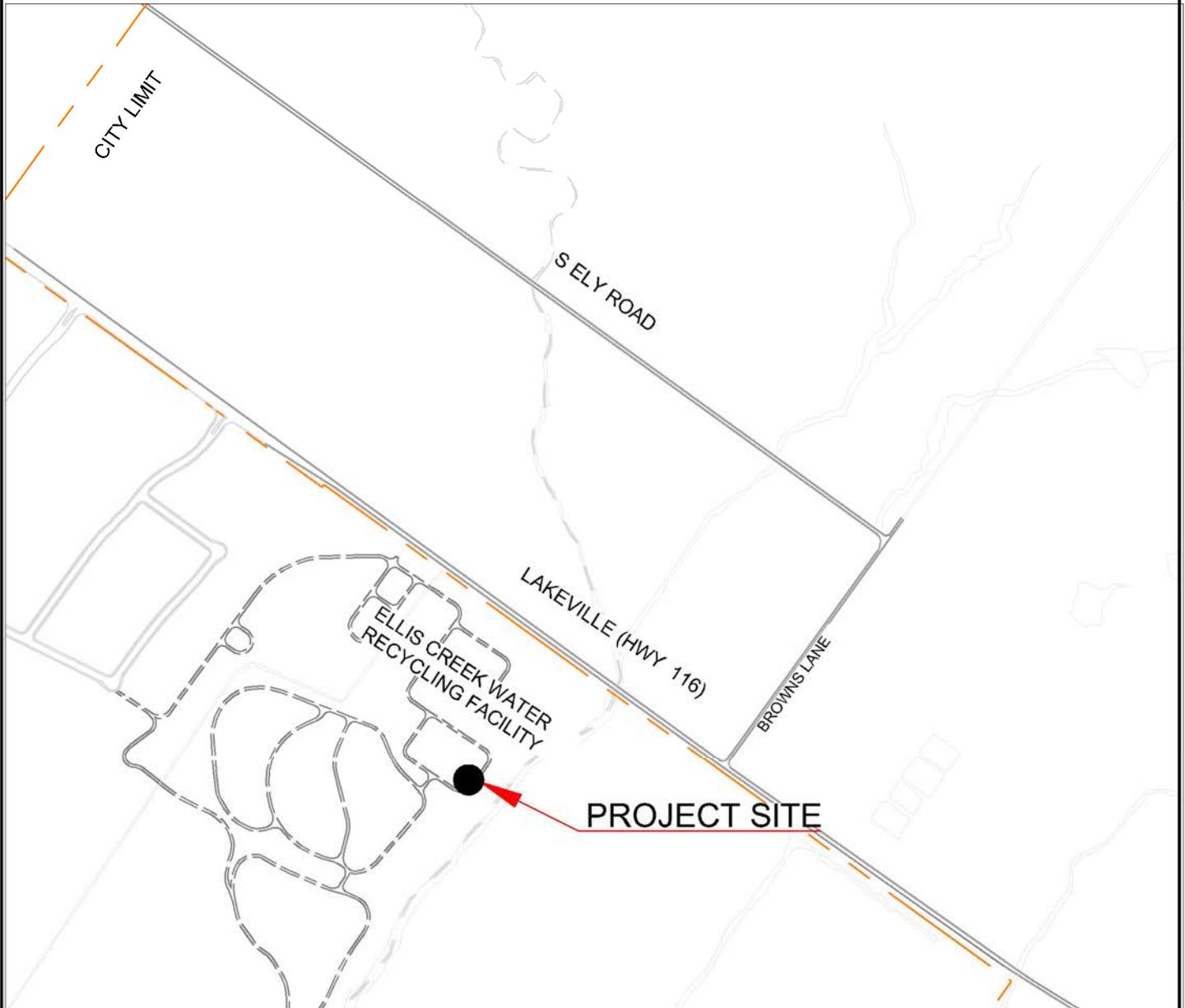
ATTEST:

City Clerk

Mayor

BIOMASS TO BIOFUEL (B2B) PROJECT

LOCATION MAP



Date : December 4, 2017

● PROJECT SITE



City of Petaluma
Public Works and Utilities
Department



**CITY OF PETALUMA
PUBLIC WORKS AND UTILITIES DEPARTMENT**

**CONTRACT NO. C66401728 & C66501518
CONTRACT CHANGE ORDER NO. 16**

Sheet [1] of [1]

PROJECT NAME: CITY OF PETALUMA BIOMASS TO BIOFUEL PROJECT- Project No. C66401728 & 66501518

To: Myers and Sons Construction, LP
4600 Northgate Blvd., Ste. 100
Sacramento, CA 95834

You are hereby directed to make the herein described changes to the plans and specifications or do the following described work not included in the plans and specifications on this contract. Upon execution by representatives authorized to bind the parties, this Change Order will become a part of the contract. The consideration specified in this Change Order (whether an adjustment of the contract price, an adjustment of time, and/or other consideration) is the full and sole compensation owed to the contractor as a result of the changes and issues described in this Change Order. Such consideration includes, but is not limited to, any and all direct and indirect costs incurred by the contractor as a result of the changes and issues described in this Change Order for any labor, equipment, materials, overhead (additional, extended, field and home office), profit, or time adjustments. By signing this Change Order the contractor waives and releases the owner from any and all claims for additional compensation concerning any of the changes and issues specified in this Change Order.

NOTE: This Change Order is not effective until approved by the Director.

To follow is the description of work to be performed, estimate of quantities and prices to be paid, segregated between additional work at contract price, agreed price and force account. Unless otherwise stated, rates for rental of equipment cover only such time as equipment is actually used and no allowance will be made for idle time. Change requested by City.

SCOPE OF WORK:

Negotiated settlement of potential claim by the City against Myers & Sons for non-conforming and incomplete work associated with completion of the Biomass to Biofuel project. The agreement includes an \$85,000 credit to the City to be withheld from retention release.

Current remaining retention held by the City is \$210,000. Therefore, the City will release in full to Myers & Sons the amount of \$125,000 (\$210,000 less \$85,000). This amount shall be the full compensation and retention release for completion of the project.

Myers & Sons acceptance of this change order is conditioned on City Council approval of the negotiated settlement between Myers and Sons and the City. This Change Order is subject to and shall be construed in accordance with the negotiated settlement between Myers and Sons and the City.

METHOD OF PAYMENT: Options: Lump Sum, Extra Work at Force Account, Increase Unit Price, Decrease Unit Price, Agreed Unit Price

Estimated Cost: Decrease \$ 85,000.00 or Increase \$

By reason of this order, the time of completion will be adjusted as follows: 0 days

We, the undersigned contractor, have given careful consideration to the change proposed and hereby agree, if this proposal is approved, that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment the prices shown above.

By: _____ Title: _____ Date: _____
Contractor

Prepared by: Lisa Cameli, Project Manager; Date: August 4, 2022

Approval Recommended by: _____, Division Manager; Date: _____

[PW, Parks, other] Funding Authorized by: _____, [Other Funding Dept] Date: _____

Approved by (up to \$20,000): _____, Dept. Director; Date: _____

Approved by (over \$20,000): _____, City Manager; Date: _____

Originals: Contractor, City Clerk

cc: City Manager

S:\CIP\Projects\EC B2B Project (Solids, CNG & HSW)\EC CNG C66501518\Construction\05 Contract CO's\CCO #16

SETTLEMENT AND RELEASE AGREEMENT

This Settlement And Release Agreement (“**Agreement**”) is made as of _____, 2022, by and between the City of Petaluma, a California charter city (“**City**”), and Myers and Sons Construction, LP, a California limited partnership (“**Contractor**”) (collectively, the “**Parties**”).

RECITALS

A. WHEREAS, The Parties entered into a construction contract for the City of Petaluma Biomass to Biofuel (B2B) Project dated February 5, 2018 (“**Contract**” or “**Project**”); and

B. WHEREAS, Contractor, as the general contractor on the Project, agreed to furnish all tools, equipment, apparatus, facilities, labor, and materials necessary to perform and complete the Project in a good and workmanlike manner; and

C. WHEREAS, disputes arose between the City and the Contractor concerning a variety of issues including allegations relating to (1) the City’s inability to close-out the Project due to the Bay Area Air Quality Management District (BAAQMD) refusal to issue a Permit to Operate for the B2B Project; (2) incomplete close-out submittals from Contractor; (3) incomplete work items by Contractor; (4) incurred costs to complete the Project (for which, the City withheld \$102,480 from Contractor); and (5) Contractor’s claim for the release of the Contract balance, retention and claimed prompt penalties related thereto (“**Claims**”); and

D. WHEREAS, it is now the desire and intention of the Parties to compromise, settle, and resolve their differences, disagreements, and disputes arising from the Project and the Claims, and to close-out the Project and accept the Project as complete, according to the terms herein. Both Parties dispute the allegations and contentions of the other Party and no admission is made by either relating to the disputes asserted.

TERMS OF AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above, inclusive, are incorporated herein by this reference as though fully set forth herein at length.

2. **City Council Approval.** The Parties hereto acknowledge that this Agreement is subject to approval by the City’s City Council (“**Council**”) at its August 1, 2022, Council meeting. In the event that the Council rejects this Agreement, neither the City nor Contractor shall be deemed to have waived any rights with respect to the matters in dispute.

3. **Final Payment to Contractor.**

3.1. In liquidation of all asserted issues and Claims of both Parties arising from the Project, and as full and final settlement of any and all of those claims, City shall release and

pay to Contractor the sum of One Hundred Twenty-Four Thousand Nine Hundred Forty-Seven Dollars and Eight-Five Cents (\$124,947.85) (the "Settlement Payment"). City shall pay Contractor the Settlement Payment no later than fourteen (14) calendar days after the City Council approves this Agreement.

4. Contractor's Assignment of Varec Flare Contract Rights to City/Cooperation

As a condition of this Agreement, and by executing this Agreement, Contractor, without warranty, other than the warranty that it has not previously assigned and such rights to any other party, assigns to the City any and all rights and responsibilities Contractor has to the contract between Contractor and Varec. As a further condition of this Agreement, upon reasonable notice by the City, Contractor shall reasonably cooperate with, and assist the City, on any City claim relating to the Project against Varec. The City shall fully defend, indemnify and hold harmless Contractor, its surety, insurers, subcontractors and suppliers (individually and collectively the "Indemnities") arising from any claims asserted by the City against Varec, including any cross-claims, arising therefrom. As a condition of this Agreement and payment of the Settlement Payment, Contractor shall provide to the City Contractor's complete Project subcontractor files relating to the Varec Flare.

5. Project Completion/Warranties. Notwithstanding the provisions of Public Contract Code § 7107, and Contractor's close-out Contract obligations prior to Final Completion as specified in Specification Section 01770 of the Contract, the City Council shall accept the Project as complete at its next meeting following the execution of this Agreement by Contractor. The date on which the Council accepts the Project as complete shall be listed as the Date of Completion in the Notice of Completion that shall be recorded with the Sonoma County Recorder's office. Given the fact that the acceptance of the Project has been delayed due to issues with the Varec flare, the parties agree that only those Manufacturer's Warranties as defined in Contract Specification Section 01783, Article 1.05 which have a required duration in excess of one year, shall remain unexpired, with a credit of one year's operation effective on the date the City Council accepts the Project. Contractor's General Warranty and Guarantee (as defined in Article 6.16 of the Contract) are agreed as being satisfied as of the date the City Council accepts the Project under this Agreement.

6. Survival of Obligations. All other express obligations owed to the City by Contractor pursuant to (a) the Contract and (b) the Contractor's payment bond and performance bond, to the extent not waived or released by this Agreement and/or the passage of time, shall remain in full force and effect as specified in the Contract, including payment, satisfaction, and indemnity, and defense to any claim(s) from subcontractors, suppliers, and/or workers. Concurrently, to the extent that there are any express obligations owed to the Contractor pursuant to the Contractor, to the extent not waived or released by this Agreement and/or the passage of time, shall remain in full force and effect as specified in the Contract.

7. Contractor Release. Subject to reserved rights, consistent with California Public Contract Code section 7100, Contractor hereby releases and forever discharges City, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way

concerned with the Claims and/or the Project, except as provided below in the section "Claims Not Released or Waived".

8. City Release. City hereby releases and forever discharges Contractor from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Claims and/or the Project, except as provided below in the section "Claims Not Released or Waived."

9. Waiver.

9.1. Except as provided above, the Parties hereby waive the provisions of California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9.2. The Parties acknowledge that a material part of this Agreement is the deliberate extinguishing of any claims which currently are unknown so that there is no possibility of future claims beyond those identified in Paragraph 10 herein.

10. Claims Not Released or Waived. Notwithstanding the releases set forth above, the Parties understand and agree that the following claims are specifically reserved and are not released, waived, or discharged:

10.1. Latent Defects. Other than any and all issues relating to the Varec Flare portion of the Project, for which there are no reserved rights whatsoever, each Party reserves and does not waive or release any existing rights or defenses it may have regarding claims for any latent defect in the work performed by Contractor on the Project, as defined under Code of Civil Procedure Section 337.15. Each Party warrants that, as of the date of this Agreement, it is unaware of any facts triggering the perception that any such claims are known, threatened and/or pending.

10.2. Indemnity Concerning Third-Party Claims. The Parties reserve and do not waive or release any existing rights they may have against the other Party with regard to future third-party claims for personal injury and/or property damages arising out of the Project. The Parties represent that they are unaware of any claims, demands, conditions or incidents, or actions currently existing that would be covered by the provisions of this Paragraph and/or trigger any such reserved rights.

10.3. Express Warranties. Each Party reserves and does not waive or release any existing rights or defenses it may have under any unexpired express warranty, if any, relating to the Project. The Parties represent that they are unaware of any claims,

demands, conditions or incidents, or actions currently existing that would be covered by the provisions of this Paragraph and/or trigger any such reserved rights.

10.4. Agreement Obligations. Any rights, duties or obligations of the Parties under this Agreement.

10.5. Subcontractor/Laborer Claims. Notwithstanding the releases described herein and excluding claims and contentions relating to the Varec Flare, Contractor shall indemnify, defend, and hold harmless City from any claim, demand, damage, cost, loss or liability arising from any claim, demand, damage, cost, loss or liability asserted by any lower-tier subcontractor, laborer, or supplier to Contractor for payment on the Project.

11. Ownership of Rights. Each Party warrants that it has full ownership of the claims released by it and that the person executing this Agreement has full authority to execute this Agreement on behalf of the named Party.

12. Compromise of Dispute. This Agreement embodies a compromise of disputed issues and is made in good faith. The Parties understand that no Party hereto admits any negligence, breach of contract, or any wrongdoing in connection with the matters herein referred to, and that the compromise embodied in this Agreement is not an admission of any fault, liability, or culpability by any Party.

13. All Acts to Enforce. The Parties shall do or perform any and all such further acts and things and execute and deliver any and all such documents and instruments as may be reasonably necessary to carry out the provisions of this Agreement, including execution of an assignment of Contractor's rights under its contract for the purchase of the Varec Flare for the Project and Contractor's providing its subcontractor files for the Varec Flare to the City.

14. Entire Agreement. This Agreement sets forth the entire understanding of the Parties. No other agreements, covenants, representations or warranties, whether express or implied, oral or written, have been made by any Party concerning the matter concluded herein. All prior and contemporaneous communications, negotiations, offers, or purported agreements, representations, covenants, and warranties with regard to such matters are waived. This Agreement cannot be modified except in a writing signed by all Parties.

15. Severability. The provisions of this Agreement are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the remaining provisions of this Agreement shall also remain in full force and effect, and shall be enforceable.

16. Notice. Any notice, consent, demand or other communication required or permitted to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile, one business day after being deposited for next-day

delivery with a nationally recognized overnight delivery service, or three (3) days after being deposited as first class mail with the United States Postal Service, all charges or postage prepaid, properly addressed, as follows:

If to Contractor, to:

Clinton W. Meyers
Vice President & Partner
Myers & Sons Construction, LP
4600 Northgate Blvd., Ste. 100
Sacramento, California 95834
Tel.: 916-283-9950

If to City, to:

City Clerk
City of Petaluma
Post Office Box 61
Petaluma, California 94953
Tel. 707-778-4360

With a copy to:

D. Michael Schoenfeld:
MSchoenfeld@murphyaustin.com

With a copy to:

Eric Danly: EDanly@cityofpetaluma.org
Kimble Cook: kcook@ohhlegal.com

Either Party may change such Party's address by written notice hereunder to the other Party.

17. Binding on Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns, whether herein so expressed or not. This Agreement is not intended, nor shall it be construed, to confer any enforceable rights on any person that is not a Party.

18. No Assignment. Each Party represents and warrants that it has not assigned, transferred, or attempted to assign or transfer, voluntarily, involuntarily, or by operation of law, any matter released pursuant to this Agreement, or any part or portion thereof, to any person or entity not a party to this Agreement.

19. Dispute Resolution. If a dispute arises that is related, in any way, to this Agreement or the Contract, the Parties agree to attempt to first resolve the dispute through negotiations. If negotiations are unsuccessful, the Parties agree to mediate the dispute prior to initiating legal action.

20. California Law / Venue. This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The county in which the City office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

21. Parties to Bear Own Costs. Each Party shall bear its own costs and fees, including attorneys' fees, related to the Contract, the Project, the Claims, and this Agreement, and enforcement of this Agreement.

22. **Voluntary Action by Parties.** The undersigned individuals and agents of the respective parties to this Agreement freely and voluntarily execute the same with the approval and advice of the counsel who represent them, and further represent and warrant to each other that they have executed this Agreement after independent investigation and without fraud, duress, or undue influence. This Agreement is the result of negotiations between the Parties who have negotiated and reviewed its terms. The fact that one Party may have drafted some, most, or all of this Agreement shall not be used to interpret any ambiguity or dispute.

23. **Counterparts / Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The Parties agree that the signatures on this Agreement will be exchanged by facsimile and that the original signature pages will be exchanged by U.S. Mail.

24. **Headings.** The section headings in this Agreement are included for convenience of reference only and are not part of this Agreement.

WHEREFORE, City and Contractor have executed this Agreement by their authorized representatives.

Date: _____

Date: 7/29/22

CITY OF PETALUMA

MYERS AND SONS CONSTRUCTION, LP

City Manager

By 
[NAME]

City Clerk

Clinton Myers, VP
[TITLE]

APPROVED AS TO FORM:

City Attorney



DATE: August 8, 2022

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Jared Hall – Transit Manager, Public Works & Utilities
 Christopher J. Bolt, MPA, PE, ICMA-CM – Director, Public Works & Utilities

SUBJECT: Resolution Authorizing the City Manager to Exercise the First Year Option to Extend the Petaluma Transit and Operations Agreement with MV Public Transportation and Execute Amendment No. 1

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution Authorizing the City Manager to Exercise the First Year Option to Extend the Petaluma Transit and Operations Agreement with MV Public Transportation and Execute Amendment No. 1.

BACKGROUND

The City of Petaluma has contracted for its transit operations since the inception of Petaluma Transit and Paratransit in the 1970s. To ensure continued operations of the Transit system, a Request for Proposal (RFP) was issued in 2018 resulting in the award of the current operations and maintenance agreement to MV Public Transportation (MV) starting July 1, 2018. The existing agreement is attached hereto as Attachment 2. The term of the contract is four base years (FY19-22) with three additional option years included (FY23, FY24, FY25). Under this agreement, MV provides operations and maintenance services for the Petaluma Transit and Paratransit programs as outlined in the Operations Agreement and associated scope of work.

Amendment No. 1 extends the terms of this agreement for one additional year of FY 23 (July 1, 2022 – June 30, 2023) and includes an adjustment to compensation to account for additional wage negotiated with the contractor as noted within Addendum A.

DISCUSSION

Heading into the COVID-19 pandemic, the transit/transportation industry in the Bay Area and beyond has experienced widescale difficulty hiring and retaining drivers and other transit-related positions. Over the past several months, however, rapid wage increases for the transportation industry paired with strong competition amongst other employers to hire and retain employees has made it increasingly difficult to hire and retain staff. As a result, the contracted MV staff positions for the Petaluma Transit Operations Agreement currently have a 45% vacancy rate. These vacancies have started impacting the Petaluma Transit/Paratransit service levels and risk

Petaluma Transit's ability to maintain current service levels or expand service levels in the future.

For these reasons, City staff began researching current transit-related wages throughout the North Bay region to help determine competitive wage levels needed to help fill and retain staff. Accordingly, City staff members conducted an FY22 survey of 10 nearby transit agencies to compare current wages for several of their positions, including Operator/Driver and Mechanic, to Petaluma Transit. The results indicated that Petaluma Transit had the lowest bus operator wages of any agency surveyed. Average driver wages across these agencies were found to be between \$22.42 and \$28.15 per hour. By comparison, drivers for Petaluma Transit/MV currently earn between \$19.25 and \$22.50 per hour and are initially hired at a \$16.25 "trainee wage" until they have completed their training period (a process that takes approximately one month). Following this analysis, City staff negotiated an agreement with MV to provide appropriate wage levels. The agreement also included adjustments to the fixed monthly contract costs and hourly service rates needed to provide the agreed-upon wage adjustments before considering the execution and amendment of the FY23 operations agreement.

Through negotiations with MV, staff created an updated pricing structure for the Operations Agreement per Amendment No. 1, attached to the proposed Resolution as Exhibit A. Per the revised wage schedule in Amendment No. 1, drivers' pay would increase to between \$25.25 and 28.72 per hour in FY23. In addition, the "trainee wage" would be eliminated so that all newly hired drivers would begin at \$25.25 per hour. Similar wage shortages across the other various MV positions within the contract would also receive adjustments to bring them closer to market wages, including Mechanic, Dispatcher, Road Supervisor, and other positions.

Per the wages and cost increases outlined in the existing Operations Agreement, staff acknowledges that an increase in the contract costs is necessary to achieve these needed wage increases. These increases could not have been predicted when the initial agreement was bid/awarded to MV in 2018. Per the negotiated terms between the City and MV, staff estimates that additional costs for FY23 would be \$497,747 (\$389,000 beyond what is currently included in the FY23 budget). This would increase the estimated FY23 operations cost with MV to \$2,439,000. Based on anticipated service levels included in the budget for FY23, staff estimates that MV will operate approximately 25,000 annual hours of service under this extension.

Beyond the initial wage/salary increases in FY23 included within Amendment No. 1, wages for all impacted positions would adjust salaries by an average of approximately 5% annually going forward if the two additional option years of the agreement are approved for FY24 and FY25. Future option years would be brought before Transit Advisory Committee (TAC) and the Council for approval if desired.

No changes to the agreement or its scope of work are proposed beyond the cost adjustments noted in Amendment No. 1.

All wages paid to MV employees within the revised agreement comply with the City of Petaluma Living Wage Ordinance.

PUBLIC OUTREACH

The initial MV Operations contract was presented to the Council for approval in FY18.

Per goals previously discussed with the TAC and the City Council, expansion of transit service was identified as a major goal for the City and is vital to achieving its goal of being climate neutral by 2030.

This item was discussed at the July 2022 meeting of the TAC, which approved a recommendation that the Council adopts the included resolution. Additionally, this item was noticed in compliance with the California Brown Act. Per completion of union negotiations between MV and the union representing hourly MV staff, the final wages and service costs were adjusted accordingly.

Example: This agenda item appeared on the City's tentative agenda document on December 16, 2019, which was a publicly-noticed meeting.

COUNCIL GOAL ALIGNMENT

This action supports the following City Council Goals:

- Workplan item #8 – “Recruit, hire, retain, and advance a workforce that is diverse, skilled, talented, and prepared to meet the demands of a full-service City.”
- Workplan item #23 – “Expand transit service on primary corridors.”

CLIMATE ACTION/SUSTAINABILITY EFFORTS

This proposed action is necessary to help meet existing and provide future service levels of public transit throughout Petaluma. Providing efficient and reliable public transportation reduces single occupancy vehicle trips and subsequently, vehicle miles traveled leading to reduced greenhouse gas emissions. This will help the City fulfill its goal of being climate neutral by 2030.

ENVIRONMENTAL COMPLIANCE

This action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378, as approving an agreement with the MV to perform operations and maintenance services for the Petaluma Transit and Paratransit programs as outlined in the Operations Agreement and associated scope of work does not meet CEQA's definition of a “project,” because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, because it is a fiscal activity and that will not increase the level of services from those that already exist.

FINANCIAL IMPACTS

For FY23, \$2,050,000 is currently budgeted for the MV Operations agreement. Upon the proposed revisions for Amendment No. 1, staff anticipates spending \$2,439,000 for FY23 (an increase of \$497,747 beyond the anticipated costs under the existing agreement for FY23). This results in an anticipated \$389,000 increase beyond the amount included in the approved FY23 City budget for the MV Operations Agreement.

Increases in costs per the amendment will be paid for with Transportation Development Act (TDA) funding. TDA funding reserves are currently estimated to be \$4.6 million as of January 2022.

The additional \$389,000 in anticipated costs will be included in the next City quarterly budget adjustment presented to the Council (estimated Nov 2022).

ALTERNATIVES

The recommended action to approve Amendment No. 1 will renew the operations contract with MV for FY23 and make amendments to the existing agreement as noted in this report.

Staff has identified two alternatives to the recommended action:

1. Not award the FY23 contract renewal to MV
 - a. This is not recommended as it would leave the City without an operator for the Petaluma Transit/Paratransit system in FY23 and would cause significant service interruptions until different solutions for operating the system could be enacted.
2. Award the FY23 contractual option to MV as outlined within the existing agreement without including the wage/cost changes as outlined in Amendment No. 1 (Addendum A)
 - a. This option would not have an additional cost beyond what is included in the FY23 budget. However, this would mean that FY23 MV wages would only increase by an average of 2 to 3% beyond FY22 wages without further increases needed to bring staff wages in line with other north bay transit/transportation companies.

For these reasons, staff recommends that the Council approve awarding the FY23 option to MV and enacting Amendment No. 1.

ATTACHMENTS

1. Resolution with Exhibit A (Amendment No. 1)
2. Existing FY19-25 Petaluma Transit Operations and Maintenance Agreement

Resolution No. 2022-XXX N.C.S.
of the City of Petaluma, California

**AUTHORIZING THE CITY MANAGER TO EXERCISE THE FIRST YEAR OPTION TO EXTEND
THE PETALUMA TRANSIT AND OPERATIONS AGREEMENT WITH MV PUBLIC
TRANSPORTATION AND EXECUTE AMENDMENT NO. 1**

WHEREAS, the City of Petaluma seeks to “Provide for a range of attractive and viable transportation alternatives, such as bicycle, pedestrian, rail, and transit” as a guiding principle in the 2025 City General Plan; and

WHEREAS, the City of Petaluma Department of Public Works and Utilities has identified transit as a vital piece of achieving multimodal accessibility through Petaluma; and

WHEREAS, the City of Petaluma has provided fixed route transit service (“Petaluma Transit”) and paratransit service (“Petaluma Paratransit”) service throughout the city for over four decades; and

WHEREAS, the City of Petaluma contracts for operations and maintenance of its public transportation services, and periodically conducts a competitive Request for Proposal (RFP) process for these services; and

WHEREAS, the City of Petaluma previously awarded the FY19-25 Petaluma Transit and Operations Agreement (Agreement), attached to the concurrent staff report as Attachment 2, to MV Public Transportation upon completion of a competitive RFP process in June 2018; and

WHEREAS, the term of the Agreement is four base years (FY19-22) with three additional option years included (FY23, FY24, FY25); and

WHEREAS, the City wished to maintain a healthy workforce for its Transit and Paratransit systems in order to provide adequate transit service needed to fulfill the City goal of climate neutrality by 2030; and

WHEREAS, City staff negotiated a revised, contracted wage scale and cost structure for the FY23 Petaluma Transit Operations Agreement with MV Public Transportation; and

WHEREAS, the City of Petaluma seeks to exercise the first-year option to extend the Petaluma Transit and Operations Agreement with MV Public Transportation for FY23 including adjustment to the wage schedule and cost structure as noted in Amendment No. 1, which is attached hereto as Exhibit A; and

WHEREAS, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378, as approving an agreement with the MV Public Transportation to perform operations and maintenance services for the Petaluma Transit and Paratransit programs as outlined in the operating agreement and associated scope of work does not meet CEQA's definition of a “project,” because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, because it is a fiscal activity and that will not increase the level of services from those that already exist.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Petaluma as follows:

1. Declares the above recitals are hereby declared to be true and correct and are incorporated into this resolution as findings of the City Council.
2. This action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378, as approving an agreement with the MV Public Transportation to perform operations and maintenance services for the Petaluma Transit and Paratransit programs as outlined in the operating agreement and associated scope of work does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, because it is a fiscal activity and that will not increase the level of services from those that already exist.
3. Authorizes the City Manager to execute all required documents to exercise the first-year option to extend the Petaluma Transit and Operations Agreement with MV Public Transportation (Agreement) and execute Amendment No. 1, attached hereto as Exhibit A.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 8th day of August 2022, by the following vote:

Approved as to
form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor

**ONE YEAR RENEWAL AND AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT FOR
Petaluma Transit Operations & Maintenance**

WHEREAS, on June 28, 2018, the City of Petaluma, a municipal corporation and a charter city (hereinafter referred to as “City”) and MV Public Transportation, Inc., (hereinafter referred to as “Consultant”) (collectively the “Parties”) entered into an Agreement by and between the Parties, and effective as of June 28, 2018; and

WHEREAS, on page 26 of the Agreement there is a provision entitled “TERM OF CONTRACT” that states, “The successful Proposer will complete all applicable training requirements during the month of June 2018, commence operations on July 1, 2018, and operate and maintain the service for a four-year period ending on June 30, 2022”; and

WHEREAS, the provision entitled “TERM OF CONTRACT” also states, “If and only if mutually agreeable by both parties, the contract may be extended for up to three additional years, in one-year increments, subject to the City of Petaluma City Council approval.”

THEREFORE, in consideration of the mutual covenants contained in the Agreement and in this Renewal & Amendment No. 1, the Parties agree as follows:

1. That it is mutually agreeable by both Parties, subject to the City of Petaluma City Council approval, to extend the Agreement for an additional year, ending on June 30, 2023.
2. That Attachment 7 of the Agreement, entitled “MV Public Transportation, Inc. Wage Chart & Benefit Summary” is deleted in its entirety and is replaced with Attachment A to this Amendment No 1.
3. This Renewal & Amendment is deemed to be effective as of June 30, 2022, regardless of when it is executed by both parties.
4. Except as amended herein all other provisions remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this document the ____ day of _____, 20____.

CITY OF PETALUMA

CONSULTANT

City Manager

By _____
Signature

ATTEST:

Name and Title

City Clerk

Address

APPROVED AS TO FORM:

City State Zip

City Attorney

Taxpayer I.D. Number

Petaluma Business Tax Certificate Number

Attachment A,

MV Public Transportation, Inc. Wage Chart & Benefit Summary

Form 1.1.2: BUDGET PROPOSAL
 OPERATIONS AND MAINTENANCE
 Fixed Route and Paratransit

	OPTION YEARS		
	FY23	FY24	FY25
Variable Cost Per Hour: Fixed Route	\$ 46.18	\$ 48.65	\$ 51.62
Variable Cost Per Hour: Paratransit	\$ 43.86	\$ 46.21	\$ 49.04
Monthly Fixed Fee	\$ 84,746	\$ 88,543	\$ 92,847
Monthly Liability Insurance (General & Auto)	\$ 9,992	\$ 10,478	\$ 10,987
Total Monthly Fixed Cost (Fixed Fee + Insurance)	\$ 95,719	\$ 100,012	\$ 104,893
One-Time Start-Up Expenses			
Elements of Cost/Hour			
Operator Wages	\$ 31.07	\$ 32.72	\$ 34.68
Operator Benefits	\$ 14.37	\$ 15.15	\$ 16.12
Other Hourly Operating Costs (specify and list):			
1. Describe			
2. Describe			
3. Describe			
4. Describe			
5. Describe			
TOTAL MONTHLY COST PER HOUR	\$ 45.44	\$ 47.87	\$ 50.80
Elements of Monthly Fixed Fee			
General Manager Salary	\$ 8,611	\$ 9,042	\$ 9,494
General Manager Benefits	\$ 1,376	\$ 1,451	\$ 1,529
Safety & Training Supervisor/Road Sup. Salary	\$ 6,155	\$ 6,463	\$ 6,786
Safety & Training Supervisor/Road Sup. Benefits	\$ 1,169	\$ 1,233	\$ 1,301
Road Supervisor Salary	\$ 5,308	\$ 5,574	\$ 5,852
Road Supervisor Benefits	\$ 490	\$ 513	\$ 536
Dispatchers Salary	\$ 15,867	\$ 16,663	\$ 17,491
Dispatchers Benefits	\$ 1,487	\$ 1,555	\$ 1,625
Paratransit scheduling/dispatching software (lease)	\$ 1,980	\$ 2,040	\$ 2,101
Trapeze Self Service Trip Booking	\$ 136	\$ 141	\$ 145
Trapeze Text Notification	\$ 244	\$ 252	\$ 260
Subtotal (Monthly Operations)	\$ 42,824	\$ 44,924	\$ 47,119
Mechanic Salary	\$ 7,733	\$ 8,120	\$ 8,525
Mechanic Benefits	\$ 1,599	\$ 1,682	\$ 1,768
Fleet Technician Salary	\$ 6,335	\$ 6,652	\$ 6,986
Fleet Technician Benefits	\$ 1,374	\$ 1,445	\$ 1,520
Fueler/Washer/Utility/Bus Shelter Helper Salary	\$ 4,677	\$ 4,912	\$ 5,156
Fueler/Washer/Utility/Bus Shelter Helper Benefits	\$ 1,106	\$ 1,164	\$ 1,224
Other Salary 1- Describe			
Subtotal (Monthly Maintenance)	\$ 22,824	\$ 23,975	\$ 25,179
Non-Vehicle Insurance	\$ 365	\$ 376	\$ 387
Office Expenses	\$ 429	\$ 442	\$ 455
Uniform Expenses	\$ 287	\$ 295	\$ 304
Training Expenses	\$ 1,123	\$ 1,157	\$ 1,192
Incentives/Liquidated Damages	\$ -	\$ -	\$ -
Letter of Credit	\$ -	\$ -	\$ -
Contract Overhead- Describe	\$ 8,180	\$ 8,585	\$ 9,063
Other Expenses (specify):	\$ -	\$ -	\$ -
1. Mobile Eye Install	\$ -	\$ -	\$ -
1a. Mobile Eye	\$ -	\$ -	\$ -
1b. Drive Cam	\$ -	\$ -	\$ -
2. Equipment Depreciation	\$ 270	\$ -	\$ -
3. Interest	\$ 507	\$ 502	\$ 502
4. Software & Cell Phone	\$ 310	\$ 320	\$ 329
5. Business Tax & License	\$ 77	\$ 79	\$ 82
6. Bus Passes	\$ 1,114	\$ 1,148	\$ 1,182
7. Employment Verification	\$ 419	\$ 431	\$ 444
8. Tool Allowance	\$ 56	\$ 58	\$ 60
9. Service Supplies	\$ 120	\$ 124	\$ 128
Profit	\$ 5,839	\$ 6,128	\$ 6,421
Subtotal (Contract Expenses)	\$ 19,098	\$ 19,645	\$ 20,548
TOTAL MONTHLY FIXED FEE	\$ 84,746	\$ 88,543	\$ 92,847

**Form 2.1.1: WAGE PROPOSAL
OPERATIONS AND MAINTENANCE
Fixed Route and Paratransit**

	FY23	FY24	FY25
DRIVER			
Training	\$ 25.25	\$ 26.51	\$ 27.84
In-service start	\$ 25.25	\$ 26.51	\$ 27.84
1 year	\$ 25.50	\$ 26.78	\$ 28.11
2 years	\$ 27.25	\$ 28.61	\$ 30.04
3 years	\$ 28.72	\$ 29.93	\$ 31.42
NON-DRIVER			
Maintenance Supervisor (ASE A)	\$ 41.50	\$ 43.58	\$ 45.75
Mechanic (ASE C)	\$ 34.00	\$ 35.70	\$ 37.49
Fueler/Utility	\$ 25.10	\$ 26.36	\$ 27.67
Dispatcher	\$ 24.33	\$ 25.55	\$ 26.82
Road Supervisor	\$ 59,254.00	\$ 62,216.70	\$ 65,327.54
Safety Manager	\$ 73,860.80	\$ 77,553.84	\$ 81,431.53
General Manager	\$103,334.40	\$108,501.12	\$ 113,926.18

PROFESSIONAL SERVICES AGREEMENT
Petaluma Transit Operations & Maintenance
 (Title of Project)

FY _____ Fund # _____ Cost Center _____ Object Code _____ Project # _____ Amount \$ _____

For multi-year contracts or contracts with multiple accounts:

FY <u>19</u>	Fund # <u>6500</u>	Cost Center <u>65200-65300</u>	Object Code <u>54111</u>	Project # _____	Amount <u>\$1,732,426</u>
FY <u>20</u>	Fund # <u>6500</u>	Cost Center <u>65200-65300</u>	Object Code <u>54111</u>	Project # _____	Amount <u>\$1,768,347</u>
FY <u>21</u>	Fund # <u>6500</u>	Cost Center <u>65200-65300</u>	Object Code <u>54111</u>	Project # _____	Amount <u>\$1,827,584</u>
FY <u>22</u>	Fund # <u>6500</u>	Cost Center <u>65200-65300</u>	Object Code <u>54111</u>	Project # _____	Amount <u>\$1,884,265</u>
FY <u>23</u>	Fund # <u>6500</u>	Cost Center <u>65200-65300</u>	Object Code <u>54111</u>	Project # _____	Amount <u>\$1,941,962</u>
FY <u>24</u>	Fund # <u>6500</u>	Cost Center <u>65200-65300</u>	Object Code <u>54111</u>	Project # _____	Amount <u>\$1,994,959</u>
FY <u>25</u>	Fund # <u>6500</u>	Cost Center <u>65200-65300</u>	Object Code <u>54111</u>	Project # _____	Amount <u>\$2,052,040</u>

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into and effective as of JUNE 28, 2018 (“Effective Date”), by and between the City of Petaluma, a municipal corporation and a charter city (“City”) and MV Public Transportation, Inc., a Contractor (“Consultant”) (collectively, the “Parties”).

WHEREAS, the Parties enter into this Agreement for the purpose of Consultant providing professional services to City under the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **Services.** Consultant shall provide the services as described in and in accordance with the following documents attached as Exhibit A and incorporated herein by reference (collectively, the “Agreement”). Consultant shall provide the services as described in and in accordance with the Agreement (“Services”).

1. Exhibit A

Attachment 1 MV Public Transportation, Inc. Scope of Services

(vendor name)

Attachment 2 MV Public Transportation, Inc. Cost Proposal

2. Exhibit B

B-2 Contract Insurance Requirements

3. Exhibit C

Attachment 3 Request for Proposal

Attachment 4 MV Public Transportation, Inc. Proposal

Attachment 5 MV Public Transportation, Inc. Clarification to questions

Attachment 6 MV Public Transportation, Inc. Best and Final Offer Narrative

Attachment 7 MV Public Transportation, Inc. Wage Chart & Benefit Summary

2. **Compensation; Business Tax Certificate.**

- A. For the full performance of the Services as described herein, City shall compensate Consultant under the following terms: Exhibit A.
- B. Consultant shall submit detailed monthly invoices reflecting all services performed during the preceding month, and including a revised schedule for performance and additional documentation requested by City, as applicable.
- C. Consultant shall be compensated for services in addition to those described in Exhibit A, only if Consultant and City execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services. In no case shall the total compensation under this Agreement exceed the compensation described in Exhibit A without prior written authorization of the City Manager. Further, no compensation for a section or work program component attached with a specific budget shall be exceeded without prior written authorization of the City Manager.
- D. Notwithstanding any provision herein, Consultant shall not be paid any compensation until such time as Consultant has on file with the City Finance Department a current W-9 form available from the IRS website (www.irs.gov) and has obtained a currently valid Petaluma business tax certificate.
- E. City's obligation to pay compensation to Consultant as provided herein is contingent upon Consultant's performance of the Services pursuant to the terms and conditions of this Agreement and any amendments thereto.

3. **Term.** The term of this Agreement commences on the Effective Date, and terminates on June 30 2022, with options to extend through June 2025, unless sooner terminated in accordance with Section 4. Upon termination, any and all of City's documents or materials provided to Consultant and any and all of the documents or materials prepared for City or relating to the performance of the Services, shall be delivered to the City as soon as possible, but not later than fourteen (14) days after termination of the Agreement.

City in its sole discretion may, in the case of a termination for cause, allow Consultant thirty days (30) in which to cure the defect. In such case, the notice of termination will state the default requiring cure, the time period in which cure is permitted and other appropriate conditions. After receipt of a notice of termination, except as otherwise directed, Consultant shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders for Services, except as necessary for completion of such portion of Services not termination; and settle all outstanding liabilities and claims.

4. **Termination.** City may terminate this Agreement without cause upon ten (10) days' written notice. City may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Consultant or Consultant's bankruptcy or insolvency. Upon receipt of notice of termination or suspension for cause, Consultant shall immediately stop all work in progress under this Agreement. In the event of early termination of this Agreement by City, Consultant shall be entitled to payment for all Services performed to

the date of termination to the extent such Services were performed to the satisfaction of City in accordance with the terms and conditions of this Agreement. If City terminates this Agreement for cause, Consultant shall be liable to City for any excess cost City incurs for completion of the Services.

5. **Consultant's Representation; Independent Contractor.** Consultant represents that Consultant possesses distinct professional skills in performing the Services. City has relied upon said representation as a material inducement to enter into this Agreement. Consultant shall, therefore, provide properly skilled professional and technical personnel to perform all Services under this Agreement. It is expressly understood that Consultant and its agents and employees, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of City. This Agreement shall not be construed as an agreement for employment. not as officers, employees or agents of City. This Agreement shall not be construed as an agreement for employment.
6. **Facilities and Equipment.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing Services pursuant to this Agreement except as provided in Exhibit A, Attachment 1. Consultant shall not operate, lease or charter City-furnished equipment for any purpose other than performance of its obligations pursuant to this Agreement, unless the City otherwise authorizes such use in writing.
7. **Licenses, Permits, Etc.** Consultant shall, at Consultant's sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits or other such approvals which are legally required for performing the Services.
8. **Time.** Consultant shall devote such time to the performance of the Services as may be reasonably necessary for satisfactory performance of Consultant's obligations pursuant to this Agreement.
9. **Inspection.** Consultant shall provide the City every reasonable opportunity to ascertain that the Services are being performed in accordance with the requirements and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to inspection and approval by the City. The inspection of such work shall not relieve Consultant of any of its obligations pursuant to this Agreement.
10. **Progress Reports.** Upon the City's request, Consultant shall provide, in a form acceptable to City, written progress reports of all oral and written observations, opinions, recommendations, analyses, progress and conclusions related to Consultant's performance of the Services.
11. **Confidentiality.** In the course of Consultant's employment, Consultant may have access to trade secrets and confidential information, disclosure of which is protected or limited by law. Consultant shall not directly or indirectly disclose or use any such confidential information, except as required for the performance of the Services.
12. **Conflict of Interest.** Consultant represents that it presently has no interest, and covenants that it shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services

hereunder. Consultant further covenants that, in the performance of this Agreement, it shall not employ any subcontractor or person having such a conflict of interest. Consultant represents that no one who has or will have any financial interest under the Agreement is an officer or employee of City. If such conflict of interest arises during this Agreement or any extension, Consultant will immediately advise City and City may, at its sole discretion, immediately terminate this Agreement. Certain Consultants are subject to the requirements, including the disclosure and reporting requirements, of the City's Conflict of Interest Code adopted pursuant to the Political Reform Act. Such Consultants subject to the City's Conflict of Interest Code include those whose work may involve: making government decisions regarding approval or adoption of rates, rules, or regulations, action on permits or other applications, authorization to enter into or modify contracts, or approval of plans, designs, reports, or studies. Consultant agrees to comply fully with all such requirements to the extent they apply to Consultant's performance of the Services.

13. **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
14. **Standard of Performance.** Consultant shall perform all the Services in a manner consistent with the standards of Consultant's profession. All instruments of service of whatsoever nature, which Consultant delivers to City pursuant to this Agreement, shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of Consultant's profession. All such instruments of service shall become the sole and exclusive property of City upon delivery of the same.
15. **Assignment/Transfer.** No assignment or transfer in whole or in part of this Agreement shall be made without the prior written consent of City.
16. **Subcontractors.** Consultant shall directly perform all Services, and shall not subcontract any portion of performance of the Services without the prior written consent of City. Any such subcontractors shall be required to comply, to the full extent applicable, with the terms and conditions of this Agreement, including but not limited to, procuring and maintaining insurance coverage as required herein and which shall name City as an additional insured.
17. **Compliance With All Laws.** Consultant shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to the performance of the Services required hereunder, including but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, and any laws and regulations related to any copyright, patent, trademark or other intellectual property right involved in performance of the Services. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the Services hereunder shall constitute a material breach of this Agreement. To the extent that any other government agency or entity provides compensation for any Services, Consultant shall comply with all rules and regulations applicable to such fiscal assistance.

18. **Prevailing Wages.** This Agreement is subject to the requirements of the California Prevailing Wage Law, California Labor Code Section 1720 et seq., and the Services as described in Exhibit A will be performed in accordance with all applicable requirements of the California Prevailing Wage Law, including, but not limited to, all applicable requirements contained in Exhibit C, which is attached to and made a part of this Agreement.
19. **Living Wage Ordinance.** Without limiting the foregoing Section 17, Consultant shall comply fully with all applicable requirements of Petaluma Municipal Code, Chapter 8.36, Living Wage (the “Living Wage Ordinance”), as the same may be amended from time to time. Upon the City’s request Consultant shall promptly provide to the City documents and information verifying Consultant’s compliance with the requirements of the Living Wage Ordinance, and shall within fifteen (15) calendar days of the Effective Date of this Agreement, notify each of its affected employees as to the amount of wages and time off that are required to be provided to them pursuant to the Living Wage Ordinance. The Acknowledgement and Certification Pursuant to City of Petaluma Living Wage Ordinance, attached to this Agreement at Exhibit C, shall be a part of this Agreement for all purposes, and Consultants that are subject to Living Wage Ordinance requirements, as determined by the City, must provide a properly completed Exhibit C in accordance with the requirements of the Living Wage Ordinance. Consultant’s noncompliance with the applicable requirements of the Living Wage Ordinance shall constitute cause for City’s termination of this Agreement pursuant to Section 4 hereof.
20. **Discrimination.** During the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, gender, sexual orientation, age or physical or mental disability in violation of any applicable law.
21. **Notice.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:
- (i) personal delivery, in which case notice is effective upon delivery;
 - (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
 - (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
 - (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient’s time or on a nonbusiness day.

City: City Clerk
City of Petaluma
Post Office Box 61
Petaluma, California 94953
Phone: (707) 778-4360
Fax: (707) 778-4554
Email: cityclerk@ci.petaluma.ca.us

And:
Petaluma Transit
555 N. McDowell Blvd
Petaluma, CA 94954
Phone: 707-474-7784
Fax: _____
Email: jhall@ci.petaluma.ca.us

Consultant:
MV Public Transportation, Inc.
2711 N. Haskell Avenue
Suite 1500, LB2
Dallas, TX 75204
Phone: 972-391-4600
Fax: _____
Email: ted.navitskas@mvtransit.com

22. **Ownership of Documents.** All original papers, documents or computer material on disk or microfilm, and copies thereof, produced as a result of this Agreement, shall be the property of City and may not be used by Consultant without the written consent of City. Copies of such documents or papers shall not be disclosed to others without the written consent of the City Manager or his or her designated representative.
23. **Indemnification.** the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all alleged liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Consultant's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense

and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first. In the event that the City must file responsive documents in a matter tendered to Consultant prior to Consultant's acceptance of tender, Consultant agrees to fully reimburse all costs, including but not limited to attorney's fees and costs and fees of litigation, incurred by the City in filing such responsive documents.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement. The Consultant's responsibility of such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code Section 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

24. **Insurance.** Consultant shall comply with the "Insurance Requirements for Consultants" in Exhibit B-2, attached hereto and incorporated herein by reference. [*Indicate attached exhibit, e.g., "B-1," "B-2," "B-3," or "B-4."*]

City reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. City's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or City's failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

25. **Amendment.** This Agreement may be amended only by a written instrument executed by both Parties.
26. **Litigation.** If litigation ensues which pertains to the subject matter of Consultant's services hereunder, Consultant, upon request from City, agrees to testify therein at a reasonable and customary fee.

27. **Construction.** This Agreement is the product of negotiation and compromise on the part of both Parties and that the Parties agree that, notwithstanding Civil Code Section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.
28. **Governing Law; Venue.** This Agreement shall be enforced and interpreted under the laws of the State of California and the City of Petaluma. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.
29. **Non-Waiver.** The City's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.
30. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
31. **No Third Party Beneficiaries.** The Parties do not intend to create, and nothing in this Agreement shall be construed to create any benefit or right in any third party.
32. **Mediation.** The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.
33. **Consultant's Books and Records.**
 - A. Consultant shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum period of three (3) years or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.
 - B. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of termination or completion of this Agreement.
 - C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at Petaluma City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
 - D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers,

require that custody of the records be given to the City and that the records and documents be maintained in Petaluma City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor in interest.

- 34. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.
- 35. **Survival.** All obligations arising prior to the termination or expiration of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination or expiration of this Agreement.
- 36. **Entire Agreement.** This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

IN WITNESS WHEREOF, the parties hereto have executed this document the day, month and year first above written.

CITY OF PETALUMA

CONSULTANT



City Manager

By 
Name Gary Richardson

ATTEST:

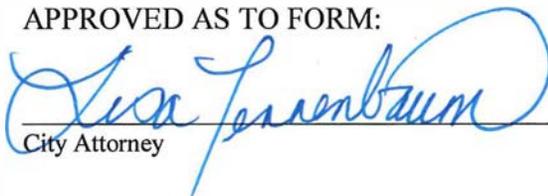
Co-Interim CFO
Title


City Clerk

2711 N. Haskell, Suite 1500
Address

APPROVED AS TO FORM:

Dallas, TX 75204
City State Zip


City Attorney

11-3706367
Taxpayer I.D. Number

L-0801812
Petaluma Business Tax Certificate Number

file name:

FINAL SCOPE OF SERVICES

PROJECT DESCRIPTION

This scope of services outlines terms for providing operations and maintenance services for the Petaluma Transit (PT) and Paratransit program. The term of this project will be for four years beginning July 1, 2018 with three additional option years, to be considered and executed one year at a time, if at all.

Any revisions to this Scope of services will be issued and distributed as Addenda.

CONTRACTING AGENCY

The City of Petaluma/Public Works & Utilities Department, Transit Division will administer the contract associated with this scope of services.

DEFINITIONS

1. "City" refers to the City of Petaluma, a California Charter City and municipal corporation.
2. "Days" refers to working days of the City of Petaluma when used in context to working days of the Federal Government when used in context with FTA.
3. "File" or "submit" refer to the date of receipt by the City and/or FTA.
4. "Exhaustion of administrative remedies at the grantee level" means any action or inaction on the part of The City which is prejudicial to the position taken in a written protest filed with The City. It may include, but is not limited to:
 - A final Agency decision on the merits protest.
 - A procurement action such as the award of a contract despite the pendency of a protest.
 - Agency acquiescence in and active support of continued and substantial contract performance despite the pendency of a protest.
5. "Local" as used herein, refers to the City of Petaluma, County of Sonoma, and the State of California. When used in conjunction with the phrase "laws and regulations" it is construed to mean only those laws or regulations associated with the provision of public mass transportation and the use of public funds. It is not construed to include the purchasing and/or protest procedures used by either of the aforementioned entities.
6. Deleted
7. "RFP" or "Request For Proposals" as used herein, also includes the term "offer" or "RFP" as used in the context of negotiated procurements.
8. "Transit Manager" as used herein, refers to the Transit Division Manager of the City of Petaluma.

9. "Violation of Federal law or regulation" is defined as the infringement of any valid requirement imposed by Federal statute or regulation, which governs the letting of contracts pursuant to a grant agreement. However, any protests involving a local matter and/or determinations that are clearly within the discretionary powers of The City include, but are not necessarily limited to, determinations of responsiveness and responsibility, the revision of specifications to incorporate the evaluation of life-cycle costing (LCC) factors in connection with any given procurement and determinations regarding bonding requirements. In other words, the protestor must be able to demonstrate or establish a clear violation of the prohibition against unduly exclusionary and restrictive specifications, or a violation of the Buy America requirements.

10. "TAC" refers to the Transit Advisory Committee of the CITY of Petaluma.

11. "FTA" as used herein, refers to the United States Federal Transit Administration.

12. "Deadhead time/miles" as used herein, refers to the miles and hours that a **vehicle** travels when out of revenue service. Deadhead includes vehicles leaving or returning to the garage or yard facility, or when there is no expectation of carrying revenue passengers between revenue timepoints, but does NOT include any costs for providing driver reliefs, shift changes, shuttling vehicles to off-site fueling, driver sign-on/sign-off, etc. Deadhead does not include charter service, school bus service, operator training, or maintenance training. **The City DOES pay contractor for approved fixed route vehicle deadhead time incurred.** City approves the amount of deadhead time paid each month (reported by CONTRACTOR) based upon the existing fixed route schedule and runcut.

13. "Revenue Vehicles" refers to Petaluma Transit buses and paratransit vehicles used to operate the service, and provided to CONTRACTOR by CITY. CITY owns all said vehicles.

14. "Fixed Route Revenue Service" refers to scheduled transit service transporting fare-paying customers. Revenue Service for fixed route is the City published bus schedules, not including deadhead, or providing driver reliefs, shift changes, etc. The City pays for the exact number of hours contained in the published schedule, *plus approved deadhead*, with adjustments to billing only upon City approval.

15. "Paratransit Revenue Service" for ADA paratransit begins with the first passenger pickup on a bus and ends at the time the last passenger is dropped off, on a per vehicle billing basis. Revenue service does not include lunches. Deadhead from yard to first pick up, from last drop off to yard, and to and from lunch is reported by CONTRACTOR and paid by CITY.

16. "Contractor" refers to the entity being awarded this contract for providing any or all of the products and services described herein.

17. "Headway(s)" refers to the frequency of fixed route bus operations on any given route. A bus every 30 minutes is a 30-minute headway.

18. "ADA Paratransit" refers to Americans with Disabilities Act complementary paratransit service for those eligible individuals unable to utilize the fixed route transit service on some or all trips due to certified disabilities.

19. "Farebox Recovery" refers to the percentage of transit operating costs recovered from transit users through the sale of passes and fares.
20. "Transit Operating Costs" refers to the total costs incurred in operation of the service including administrative overhead.
21. "Timed-transfer System" & "Timed-pulse System" both refer to the style of fixed route transit systems where routes depart and return to one or more central hubs to facilitate transferring of passengers at set times throughout the service day.
22. "Tandem Bus" refers to an additional "shadow" bus added to the fixed route system and operating on a published timetable to handle temporary capacity needs at certain times of day.
23. "Spare Ratio" refers to the total number of fixed route buses available versus the maximum peak hour bus pullout requirements of the system. For example if 10 buses are needed during peak operations, having 12 buses in the fleet would constitute a 20% spare ratio (2 spares/10 bus maximum pullout requirement).
24. "Fare Media" refers to all instruments used to board Petaluma Transit buses, including but not limited to monthly unlimited ride passes, Clipper Cards, Petaluma Transit and outside agency transfers, and any new CITY-approved piece of fare media.
25. "Overloads" and "Full Buses" refers to anytime passengers wishing to board a vehicle are turned away or optionally decline to board due to excessive crowding on the vehicle, manifested by standees beyond the bus manufacturer's official standing capacity limits.
26. "Standees" refers to passengers who board but are forced to stand during movement of vehicle due to lack of available seating.
27. "Road calls" refers to a specific vehicle failing to complete its scheduled revenue trip or start its next scheduled revenue trip. This is true even when another vehicle is substituted and no revenue service is lost. The failures may occur in revenue service including layover or recovery time, or during deadhead operations.
28. "Pull-outs" refers to a bus departing the Petaluma Transit yard (555 N. McDowell) towards its first scheduled time-point in revenue service on a new shift or service day.
29. "Trips" refers to a bus departing its initial scheduled time-point in revenue service. A new trip begins each time the bus leaves this time point during the day.
30. "Missed Trips" refers to a trip that is scheduled as part of normal revenue service but is never made for any reason, without prior approval of CITY Transit Manager.
31. "Late Trips" refers to a trip that begins more than fifteen (15) minutes after its scheduled departure time.

32. “Non-Revenue Vehicles” refers to any vehicles not used in revenue service. CITY does NOT provide non-revenue vehicles for contractor operations as part of this agreement. City authorizes the use of one (1) spare revenue vehicle by the CONTRACTOR’s Road Supervisor to enable quick relief bus service in case of a late bus, an accident, incident, or other existing or potential service disruption. CITY does NOT provide vehicles for routine shuttling of drivers back and forth for breaks, or for other purposes. CONTRACTOR must provide at least (2) vehicles for these purposes.
33. “Spare Revenue Vehicle” a Petaluma Transit revenue vehicle provided to the CONTRACTOR by the CITY which is not being used at that particular time for revenue service.
34. “Incumbent Contractor” refers to the operations contractor currently providing Petaluma Transit and Paratransit service, which is MV Public Transportation, Inc. (MV).
35. “Scheduled Timepoint(s)” are bus stops with departure times specifically noted in the Petaluma Transit route schedules distributed for public consumption.
36. Deleted
37. “PETALUMA TRANSIT Operations and Maintenance Facility” and “PETALUMA TRANSIT Maintenance and Operations Facility” refer to the City-Owned Public Transit Facility at 555 N. McDowell Blvd. This City facility houses activities of the Contractor and City Transit staff.
38. “Petaluma Transit”, refers to the City’s Fixed Route operations.
39. “Petaluma Paratransit” refers to the City’s paratransit operations.
40. “Contract Year” refers to the years within the contract term. In the case of this contract, the Contract Years shall be aligned with the City’s Fiscal Year calendar, starting on July 1, and ending on June 30th. For example, Contract Year #1 starts on July 1, 2018, and ends on June 30, 2019.
41. “Selection Committee” may include members of the Transit Advisory Committee members, community at large, other transit industry representatives, and CITY staff, as solely determined by the Director
42. “VTT” stand for Verification of Transit Training Certificate.
43. “Operators”, “bus operators”, and “drivers” refer to persons employed by CONTRACTOR under this RFP/agreement to drive Petaluma Transit and Petaluma Paratransit vehicles in revenue service.
44. “Living Wage Ordinance or LWO” refers to the City’s existing Living Wage Ordinance, which governs wages paid to non-union represented persons employed within Petaluma City Limits under a City contract. This contract includes provisions for compliance with the City’s LWO for non-unionized employees.

45. "Eastside Transit Center" or "ETC" refers to the City's busiest transfer hub, located on Maria Drive just east of S. McDowell Road, adjacent to the Washington Square shopping center.

46. "Copeland Transit Mall" refers to the bus mall shared by Petaluma Transit, Sonoma County Transit, and Golden Gate Transit, located on Copeland Street between E. Washington and D Streets, 1 block west of the SMART Downtown Petaluma commuter rail station.

47. "SMART Station" refers to the Downtown Petaluma SMART (Sonoma Marin Area Rail Transit) commuter rail station located adjacent to Lakeville Street, between E. Washington and D Streets, one block east of the Copeland Transit Mall.

48. "AVL/CAD or Automatic Vehicle Location System, or AVL CAD (computer assisted dispatching) refers to the City's Avail Technologies AVL/CAD system that supports and is integral to Petaluma Transit fixed route services.

49. "Paratransit scheduling software" refers to any number of industry leading software and hardware systems that automate the process of managing clients, scheduling trips, batching runs, recording daily operations data, generating NTD and other operations reports on a daily, weekly, monthly, or annual basis.

LEGAL RESPONSIBILITIES

This contract and any subsequent revisions must be submitted, filed, made, and executed in accordance with State of California and Federal laws relating to contracts of this nature, whether the same or expressly referred to herein or not.

By executing this contract, CONTRACTOR certifies that they will comply with all Federal laws and requirements, including, but not limited to, Equal Employment Opportunity, Disadvantaged Business Enterprise, Labor Protection, and other laws and regulations applicable to contracts utilizing Federal funds.

The CITY does not currently meet the Federal funding threshold requiring a DBE Program, and so there is no DBE Goal set for this contract. No Good Faith Effort is required; however, CONTRACTOR is required to adhere to the FTA Contract Provisions.

INSURANCE

CONTRACTOR and any subcontractor shall not commence work under this Agreement until CONTRACTOR shall have obtained all insurance required under this paragraph and such insurance shall have been approved by the City Attorney as to form and carrier and the City Manager or his designee as to sufficiency, nor shall CONTRACTOR allow any contractor or subcontractor to commence work on this contract or subcontract until all similar insurance required of the CONTRACTOR and/or subcontractor shall have been so obtained and approved.

All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

CONTRACTOR shall procure and maintain for the duration of the contract all necessary insurance against claims for injuries to persons or damages to property, which may arise from or in connection

with the performance of the work hereunder by the CONTRACTOR, the CONTRACTOR agents, representatives, employees and subcontractors.

MINIMUM SCOPE AND LIMITS OF INSURANCE

Commercial General Liability and Property Damage: The CONTRACTOR shall maintain insurance for protection against all claims arising from injury to person or persons not in the employ of the CONTRACTOR and against all claims resulting from damage to any property due to any act or omission of the CONTRACTOR, his agents, or employees in the operation of the work or the execution of this contract. Such insurance shall include products/completed operations liability, owner's and CONTRACTOR's protective, blanket contractual liability, personal injury liability, and broad form property damage coverage. CITY shall not be responsible for any increases in insurance costs incurred by CONTRACTOR in any future scenario. The minimum shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage (per occurrence) \$10,000,000 Combined Single Limit.

Commercial Automobile Public Liability and Property Damage: The CONTRACTOR shall maintain Automobile Public Liability and Property Damage Insurance for protection against all claims arising from the use of vehicles, owned, hired and non-owned, or any other vehicle in the prosecution of the work included in this contract. Such insurance shall cover the use of automobiles and trucks on and off the site of the project. CITY shall not be responsible for any increases in insurance costs incurred by CONTRACTOR in any future scenario. The minimum amounts of Automobile Public Liability and Property Damage Insurance shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage (per occurrence)
\$10,000,000 Combined Single Limit.

All Risk Physical Damage Vehicle Insurance – Stated Value

Such other insurance coverages and limits as may be required by the CITY

Workers' Compensation Insurance: The CONTRACTOR shall maintain Workers' Compensation Insurance with statutory limits and Employers Liability Insurance with limits of not less than \$1,000,000 per accident. Such insurance shall comply with all applicable state laws.

CONTRACTOR shall provide the CITY with a Certificate of Insurance showing proof of insurance acceptable to CITY. Certificates containing wording that release the insurance company from liability for non-notification of cancellation of the insurance policy are not acceptable. Policy(s) are to be endorsed to include a waiver of subrogation against the CITY, its officers, officials, agents and employees. CONTRACTOR and its employees are independent

CONTRACTORS and not employees of the City of Petaluma. CONTRACTOR and/or its insurers are responsible for payment of any liability arising out of Worker's Compensation, unemployment

or employee benefits offered to its employees. CITY shall not be responsible for any increases in Worker's Compensation costs incurred by CONTRACTOR in any future scenario.

The insuring provisions, insofar as they may be judged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of the insuring provisions herein may be within public policy and enforceable.

Additional Insured: The General Liability and Auto Liability policy(s) are to contain, or be endorsed to name the CITY, its officers, appointed and elected officials, agents, volunteers, and employees as Additional Insured as respects the liability arising out of the activities performed in connection with this Contract. The coverage shall (a) be primary with respect to any insurance or self-insurance programs maintained by the CITY; (b) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and (c) contain Standard Cross-Liability provisions. Such additional insured endorsements maintained by the CONTRACTOR and its SUBCONTRACTORS shall not be required to provide coverage for CITY for the sole active negligence of CITY. Original endorsements, signed by a person authorized to bind coverage on its behalf, shall be furnished to the CITY by the CONTRACTOR. In addition the City shall be named as an additional Loss Payee under any policy of Property and Vehicle Insurance.

Deductibles and Self-insured Retention: Any deductibles or self-insured retention must be declared to, and approved by, the CITY. Payment of all deductibles and self-insured retentions will be the responsibility of CONTRACTOR.

Separate endorsements are required, naming the CITY as additional insured, for liability insurance and providing a waiver of subrogation for Worker's Compensation Insurance and as Loss Payee under Vehicle Physical Damage coverage.

The successful Proposer shall maintain the insurance for the life of the contract, unless CITY chooses to provide insurance (see below). Said insurance shall contain a provision that coverage afforded under the policies will not be canceled unless and until thirty (30) days prior written notice has been given to the CITY.

Endorsements are to be received and approved by the CITY before work commences. Should CONTRACTOR cease to have insurance as required during any time, all work by CONTRACTOR pursuant to this agreement shall cease until insurance acceptable to the CITY is provided.

Original insurance certificates and endorsements are to be mailed or delivered to:

City of Petaluma
Transit Division Manager
555 N. McDowell Blvd.
Petaluma, CA 94954

City Provided Insurance: CITY reserves the right to provide Commercial General Liability, and Property Damage and Commercial Automobile Public Liability and Property Damage, and Vehicle Physical Damage coverage at any point in the contract term.

AWARD OF CONTRACT

Proposer agrees and so stipulates in executing this contract that:

1. CONTRACTOR is an independent contractor, not an employee, agent, or officer of the CITY.
2. Contract shall be interpreted, construed, and given effect in all respects according to the laws of the State of California.
3. CONTRACTOR shall not assign contract, or any part thereof, or any moneys due, or to become due thereunder without the prior express written authorization and consent from City.
4. CONTRACTOR shall hold the CITY harmless from liability of any nature or kind, including cost and expenses for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished, or used in connection with the contract.
5. CONTRACTOR warrants that no gratuities, in the form of gifts, entertainment, or otherwise, were offered or given by the CONTRACTOR to any officer, representative, elected official or employee of the CITY with a view toward securing the contract or securing favorable treatment with respect to any determination concerning the performance of the contract. For breach or violation of this warranty, the CITY shall have the right to terminate the contract, either in whole or in part. The rights and remedies of the CITY provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

TERMINATION OF CONTRACT

The nature of this contract requires that the CITY and the CONTRACTOR must work closely as a mutually supporting team without conflict. The CITY shall retain the right to terminate this agreement at any time the CITY believes this working relationship has been impaired, or should the CITY no longer have complete confidence and satisfaction in the quality and performance of services by the CONTRACTOR.

This contract may be terminated for convenience, without cause by the CITY, in whole or in part, by giving the CONTRACTOR ninety (90) days written notice of the intent to terminate whenever the CITY determines that termination is in the best interest of the CITY. Should the contract be terminated for convenience, the CONTRACTOR shall be paid for all authorized services provided, including reasonable charges for demobilization. However, the CONTRACTOR shall not be paid any anticipated profit or fees for services not provided.

If the CONTRACTOR fails to provide services or perform satisfactorily the work required by the terms and conditions of the contract, including data reporting responsibilities, or materially breaches any of its obligations under this agreement the CITY may terminate the contract, in whole or in part.

Any assignment, subletting, or transfer of the interest of the CONTRACTOR, without prior written authorization from the CITY, either in whole or in part, shall be cause for the CITY to immediately terminate the agreement for default.

The CITY in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR thirty days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

After receipt of a notice of termination, except as otherwise directed, the CONTRACTOR shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders for services, except as necessary for completion of such portion of the services not terminated; and settle all outstanding liabilities and claims.

PROTESTS

A copy of the City of Petaluma's written protest procedures may be requested from the City.

RIGHT TO REQUIRE PERFORMANCE

The failure of the CITY at any time to require performance by the CONTRACTOR of any provisions hereof shall in no way affect the right of the CITY thereafter to enforce the same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be waiver of any succeeding breach of such provision or as a waiver of any provision itself.

OMISSIONS

The CONTRACTOR shall be responsible for providing all services, equipment, and functions which are necessary for the safe, reliable, efficient and well-managed operation of either or both fixed-route and paratransit systems for people with disabilities in compliance with the Americans with Disabilities Act, within the general parameters described in this contract, consistent with established industry practices, regardless of whether those services, equipment, and functions are specifically mentioned in this contract or not.

ETHICS IN PUBLIC CONTRACTING

The CONTRACTOR certifies that it is not a party to any collusive action or any action that may be in violation of the Sherman Antitrust Act by executing this contract, the offeror certifies that its Proposal was made without fraud; that it has not offered or received any kickbacks or inducements from any other offeror in connection with the offer; and that it has not conferred on any public employee, public member, or public official having responsibility for this procurement transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value. The offeror further certifies that no relationship exists between itself and the CITY or another person or organization that interferes with fair competition or constitutes a conflict of interest with respect to a contract with the CITY.

CONTRACTOR certifies that no relationship exists between the CONTRACTOR and any CITY employee, officer, official, or agent that is a conflict of interest with respect to a contract with the CITY.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of the contract, CONTRACTOR agrees to the following:

CONTRACTOR shall comply with all the requirements, where applicable, of the California Fair Employment Practice Commission and provisions of, when applicable, all Federal, State of California, County of Sonoma, and City of Petaluma laws and ordinances related to employment practices. This includes City of Petaluma's Living Wage Ordinance.

CONTRACTOR shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, gender, age, handicap, national origin, or ancestry, except when such a condition is a *bona fide* occupational qualification reasonably necessary for the normal operations of the CONTRACTOR. The CONTRACTOR agrees to post in conspicuous places, visible to both employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

CONTRACTOR, in all solicitations or advertisements for employees, placed by, or on behalf of the CONTRACTOR, shall state that CONTRACTOR is an Equal Opportunity Employer.

PETALUMA MUNICIPAL CODE CHAPTER 8.36

This contract shall comply with the requirements of the City of Petaluma Municipal Code, Chapter 8.36, "Living Wage" Ordinance (LWO). The LWO is adjusted annually by City Council and CONTRACTOR shall modify wages each year accordingly. It is the responsibility of the CONTRACTOR to track and adjust for any changes to the LWO impacting their fulfillment of this contract.

PROJECT OVERVIEW

INTRODUCTION

The CITY of Petaluma, a municipal corporation, currently operates the following public transit services:

Fixed-Route. A public transit service named Petaluma Transit that currently consists of six (6) all-day weekday routes (three (3) on Saturday and Sunday), plus additional school-bell hour oriented routes serving the City of Petaluma. The peak bus pullout is currently 9 buses in the school-day PM peak, 6 on non-school days weekdays in the PM peak.

Petaluma Transit Paratransit Service (demand-response). A complementary door-to-door paratransit service operating generally anywhere within the Petaluma city limits (regardless of

proximity to fixed-route) for ADA-eligible individuals only. Peak bus pullout for paratransit is 7 weekdays/2 on weekends.

TERM OF CONTRACT

The successful Proposer will complete all applicable training requirements during the month of June 2018, commence operations on July 1, 2018 and operate and maintain the service for a four-year period ending on June 30, 2022. If and only if mutually agreeable by both parties, the contract may be extended for up to three additional years, in one-year increments, subject to City of Petaluma City Council approval.

FUNDING AVAILABILITY

This contract is financed primarily with funds available under Article 4.0 of the California Transportation Development Act (TDA). This contract is contingent upon the receipt of these and other state and local transit funds, including Measure M. In the event that funding from these sources is eliminated or decreased, CITY reserves the right to terminate any contract or modify it accordingly, including but not limited to service reductions.

This project is financed in part by funds from the Federal Transit Administration (FTA). Accordingly, Federal requirements apply to this contract and if those requirements change then the most recent requirements shall apply to the project as required.

The FTA Certification Forms completed by CONTRACTOR will be required as part of this contract.

COMPLIANCE WITH CALIFORNIA LABOR CODE SECTIONS 1070 ET SEQ.

Contractor and any subcontractors will be responsible for full compliance with California Labor Code Section 1070, et seq. The law establishes incentives to those contracting for public transit service contracts, including those involving paratransit services that will retain qualified employees of the prior contractor or its subcontractor to perform the same or similar work for a period of at least 90 days. These incentives protect against the significant economic dislocation of qualified public transit employees. CONTRACTOR and its subcontractor(s) declare it will retain such employees and will be responsible for the duties and obligations provided in California Labor Code Section 1072, including making a written offer of employment to each employee to be retained and in the event fewer employees are necessary under this contract, retaining qualified employees by seniority within the job classification.

Contractor will be subject to the enforcement provisions of California Labor Code Section 1073 for any violations of this law.

In order to facilitate the provisions of the law, CITY requires that throughout the full term of this Agreement, that CONTRACTOR and its subcontractor(s) maintain a list of all employees providing the services required under the Agreement, which includes the information above and must indicate which employees were employed by the prior contractor and its subcontractor(s), if any.

CONTRACTOR and its subcontractor(s) must also maintain a list of all employees of the prior contractor and its subcontractor(s) that were not retained by Contractor or its subcontractor(s), and such list must indicate the reasons why such employees were not retained.

Upon request from CITY, CONTRACTOR and its subcontractor(s) must provide such lists to CITY within 10 days of such request. CITY has the ability to request such lists throughout the term of this Agreement. CONTRACTOR shall be responsible for defending, and shall hold CITY harmless from, any claims or controversies alleging any violation or breach of Labor Code

Section 1070 et seq., whether made by CONTRACTOR's own employees, the employees of its subcontractor(s), or employees of the prior contractor or its subcontractor(s), arising from or related to the terms and conditions of employment of employees hired to work for CONTRACTOR as of the effective date of this Agreement. Notwithstanding any other provision of this Agreement, no cost of liability for which CONTRACTOR is responsible under this paragraph shall be deemed an allowable cost payable to CONTRACTOR or claim or liability for which CONTRACTOR is entitled to indemnification or reimbursement from CITY. CONTRACTOR shall be exclusively responsible for satisfaction of all obligations that may be owed to its employees of the prior contractor, pursuant to Labor Code Section 1070 et seq., both during and subsequent to the term of the Agreement.

At least six months before the end of the Agreement, CONTRACTOR and its subcontractor(s) will be required to provide CITY a list of employees working at CITY location(s). This list of employees shall indicate the length of service of each employee, their job title and description, and their current salary. This information may be distributed by CITY to future Proposers for a new contract that will commence whenever the current contract term ends. CONTRACTOR and its subcontractor(s) must provide updates on a monthly basis of the employee lists after the original employee list has been submitted. CONTRACTOR's and its subcontractors' obligation to provide monthly updates of the employee lists will last until the end of the Agreement term. If a new contract is awarded to a different contractor at the end of CONTRACTOR's Agreement, CONTRACTOR must provide to the new contractor the name, address, date of hire, wages, benefit level, and job classification of each employee employed at CONTRACTOR's locations covered by CONTRACTOR's Agreement within three working days after CONTRACTOR has been notified by CITY of the identity of the new contractor.

CITY shall have the right, in its sole discretion, to reject or require the removal either temporarily or permanently, by notice to CONTRACTOR, any operator furnished by CONTRACTOR, including any operator previously furnished by Contractor and accepted by CITY. With respect to the service provided under this Agreement, CONTRACTOR shall promptly replace any operator not acceptable to or rejected by CITY.

COMPLIANCE WITH SECTION 13(C) OF FEDERAL TRANSIT LAW (49 U.S.C. 5333.)

The CONTRACTOR is hereby notified that CITY receives federal mass transit funds, and that, under Section 13(c) of the Federal Transit Act (49 U.S.C. Section 5333(b)), it must protect covered mass transit employees affected by any "project" that CITY initiates that uses the federal mass transit money. For covered employees, this includes: (a) continuing their collective bargaining

rights; (b) protecting them against a worsening of their employment conditions (including reductions in wages and benefits); (c) providing priority of reemployment if the employee is laid off or his job is eliminated; and (d) providing paid training.

No provision of the Contractor's Agreement will require CONTRACTOR to dismiss or displace any employee or to rearrange the workforce covered by any Section 13(c) agreement as a result of any "project" as defined by the Section 13(c) agreements to which Contractor hereby agrees to be bound. The Section 13(c) agreement requires the CITY to preserve and continue existing collective bargaining agreements, subject to any negotiated changes, and to staff positions for the operation of service in compliance with the 13(c) agreements. CONTRACTOR will be responsible for defending, and shall hold CITY harmless from, any claims or controversies alleging any violation or breach of the Section 13(c) agreement (including alleged worsening of their employment conditions), whether made by CONTRACTOR's own employees, the employees of its subcontractors, employees of any former of CITY, or any other employees that allege to have been affected by the project, arising from or related to any organization or reorganization of workforce or any modification of the terms and conditions of employment of employees hired to operate the service on the effective date of the Agreement or as a result of any increases or reductions in the level of those services thereafter. A copy of the existing 13(c) agreement is available from CITY upon request.

Notwithstanding any other provision of the Agreement, no cost or liability for which CONTRACTOR is responsible under this paragraph shall be deemed an allowable cost payable to CONTRACTOR or a claim or liability for which CONTRACTOR is entitled to indemnification by CITY.

CONTRACT INCORPORATION

CONTRACTOR shall be aware that the contents of this contract the "FTA Grant Contract Provisions" as well as the CITY of Petaluma's "Professional Service Agreement" are part of this contract. Any modifications to this contract will require prior negotiations and approval of the CITY. Failure of a proposer to accept this obligation may result in the rejections in cancellation of this contract.

ABILITY TO PERFORM AND MEET REQUIREMENTS OF THE CONTRACT

- CONTRACTOR shall maintain fluency in Spanish and English from at least one personnel who greets the riding public (e.g. dispatch or office staff) and basic knowledge of conversational, transportation related Spanish for bus operators. CONTRACTOR is to develop a basic Transportation Spanish course to be taught to all positions that greet the riding public (see above) and provide a training schedule that leads to overall improved relations with Petaluma Transit's Spanish speaking riders.
- CONTRACTOR will maintain the following staffing levels in operations at a minimum: (1) General Manager (GM), (1) FTE Safety & Training Supervisor/Road Supervisor (RS), (1) Road Supervisor, (2) FTE Dispatchers, and (2) Part-Time Dispatchers. The City requires at least two dispatchers (one can be the GM or RS if they are property trained in all aspects of dispatching, including paratransit reservations/software systems) be on duty every weekday

from 9am to 5pm. The City requires at least one Road Supervisor or Manager be present during all hours of operations.

- CONTRACTOR shall integrate the CITY's Avail AVL/CAD fixed route operations software system into daily operations and communication operational and maintenance information to stakeholders (e.g. CITY, drivers, riders, shop personnel), acted upon, and finalized in performance reports.
- CONTRACTOR shall utilize electronic Enterprise Asset and Fleet Management and software system to track maintenance activities, work-orders, parts, and inventory for the Petaluma Transit/Paratransit bus fleet.
- CONTRACTOR shall fully integrate the paratransit scheduling into daily operations. Information based on events in the field (operations and/or maintenance) shall be communicated, acted upon, and finalized in performance reports. Mobile computing devices shall be provided by the CONTRACTOR and integrated into the paratransit software scheduling system (e.g. tablets, cell phones, or mobile data terminals).
- CONTRACTOR shall provide reports including: daily, weekly, and monthly route level data, including boardings by route, by fare type, and productivity by route.
- CONTRACTOR shall adhere to all provided *detailed maintenance strategy information* and anticipated daily functions of all shop personnel, included in this contract.
- Road Supervisor position primary responsibilities shall be in assisting operations, train operators, etc. Driving of vehicles for revenue service in place of a bus driver shall be minimized and utilized on a contingent, temporary basis.
- CONTRACTOR shall secure, reconcile, and prepare deposits of fares directly into the City's revenue account, documenting fares on the daily ridership reports and on the monthly service billing/reports. Fare reconciliation (cash, pass purchased, Clipper Card transactions, etc.) shall occur on a daily basis. CITY shall provide regular cash collection services via armored car at a minimum of once per week.
- CONTRACTOR shall maintain data collection, record keeping, and reporting to meet the ridership and National Transit Database Report (NTD) requirements. CITY is working with Avail (AVL/CAD) to achieve NTD certification of the ridership data collected by the Avail system, in hopes of avoiding further manual sampling during this contract term.
- CONTRACTOR shall maintain at a minimum the following staffing levels in maintenance at a minimum: (1) FTE Mechanic, (1) FTE Fleet Technician and (1) FTE Fueler/Washer, Utility/Bus Shelter Maintenance Helper.
- CONTRACTOR shall conform to all aspects of fueling, washing, utility, and bus shelter maintenance as outlined in this contract. The fueler, washer, utility, bus shelter maintenance helper is responsible for interior and exterior bus cleaning (using CITY drive-through automatic bus wash on site), maintenance shop janitorial, bus stop janitorial (rarely), bus shelter maintenance (as needed/occasional) and other duties. This includes conformance to staffing plan, frequency per day and per vehicles, equipment, personnel ratio for the number of vehicles, and detailing process and schedules.
- CONTRACTOR shall provide one (1) FTE dedicated to the "fueler washer, utility, bus shelter maintenance helper" at a minimum. This position shall be trained and possess and maintain a valid California Commercial Driver's License with air brake certification so that the position may operate buses in non-revenue service (fueling).
- CONTRACTOR shall maintain ASE A and H series Master Technician certifications for the for Maintenance Manager Mechanic position within one year of contract starting and within

six months of any subsequent fillings of the position. CONTRACTOR shall provide additional and ongoing training(s) as needed that will enable the Mechanic to meet the challenges of both vehicle maintenance and the wide variety of managerial and administrative duties that is expected of this position at Petaluma Transit and to maintain the ASE Master Technician certifications.

- CONTRACTOR maintenance staff shall maintain sufficient experience and certification with Cummins powered heavy-duty buses, including proficiency with Cummins InSite software, Diesel-Electric hybrid buses, including BAE hybrid drives, air brakes (DOT certification), and other desired experience, including familiarity and training on wheelchair lifts and ramps and AVL/CAD systems at a minimum. Maintenance staff shall become familiarized with and acquire skill necessary to maintain the Petaluma Transit fleet over the course of the contract as emerging technologies are implemented (items such as Bus Electric Vehicle and bus automation technology).
- CONTRACTOR shall attempt to reduce towing of vehicles and reduce service interruptions when possible when vehicle operational issues arise while accounting for safety of operators and passengers.
- CONTRACTOR shall engage in discussions related to labor relations for employees represented by Amalgamated Transportation Union (ATU) Local #1575. The current Collective Bargaining Agreement (CBA) covering 3 years was ratified in November, 2016 and covers the term July 1, 2016 to June 30, 2019.
- CONTRACTOR shall fully integrate Avail AVL system into daily operations including monitoring for methods for improving service.
- CONTRACTOR shall maintain a competitive pay structure for bus drivers to ensure adequate driver staffing, including a recruitment and retention plan incorporating a sign-on bonus plan or other similar considerations. Other indirect compensation, retention and morale-building items such team building events, shall be included in the employee compensation/retention package.
- CONTRACTOR shall maintain a program to equitably share the incentive monies obtainable by meeting or exceeding performance criteria contained this contract with drivers and dispatchers as outlined in their proposal to this contract.
- CONTRACTOR shall provide mobility for drivers shuttling between the Operations and Maintenance Facility, Eastside Transit Center (ETC), Copeland (downtown/SMART Station) Transit Center and other on-street relief locations. This includes providing an adequate number of vendor-provided vehicles for this function and not utilizing city owned vehicles or buses for this purpose. CITY will NOT pay for costs of providing driver lunches and on-street reliefs.

PRICING AND INVOICING

Firm fixed prices per month and variable prices per revenue hour are requested are included in the contract.

The Total Cost, invoiced to CITY on a monthly basis, will be the CONTRACTOR's variable costs per hour for each mode (fixed route and paratransit), fixed costs to operate the vehicles and provide maintenance for both modes, and the monthly liability insurance (auto & general), in accordance with the Scope of Services and as submitted on Form 1.1.2

The CITY pays for all fuel, parts, and outside repair services for revenue vehicles with the exception of warranty and accident repairs, provided that the repairs are not required due to CONTRACTOR negligence. The firm fixed-rate per hour shall remain unchanged during the entire period of each Contract Year.

ADA Eligibility Determination will be provided through separate contract between the City and CARE Evaluators, Inc. CONTRACTOR is not involved in the determination process but does work collaboratively with CITY and CARE staff to ensure paratransit rides are provided to and from the evaluation site on a weekly basis.

SERVICE DESCRIPTION

Petaluma Transit currently features six (6) fixed routes operating on thirty (30) and sixty (60), minute headways from 6:15am to 8:25pm Monday through Friday. Saturday service consists of a reduced three (3) route service platform running from 7:30am to 8:25pm. Sunday service is provided on 3 routes, with 2 buses from 8:30am to 5:25pm. The Service currently requires four (4) buses for the midday and majority of the service day, with seven buses (7) in the AM school peak (7-8:30am) and nine (9) buses in the PM peak. In Fiscal Year 2016-17 Petaluma Transit provided 19,797 fixed route revenue hours.

For Fiscal Year 2018-19 CONTRACTORS shall assume fixed route service levels for a BASELINE ANNUAL FIXED ROUTE HOUR TOTAL OF 19,797.

The CITY's required Americans with Disabilities Act (ADA) Complementary Paratransit Service that parallels all local fixed route bus service in the Petaluma Transit service area is called PETALUMA PARATRANSIT. The CITY requires all users of Petaluma Transit Petaluma Paratransit to establish eligibility by completing evaluation interviews with the CITY's third-party ADA Eligibility Evaluation Contractor (currently CARE Evaluators) prior to admission to the system. Petaluma Paratransit operates a "premium ADA" service, with the Petaluma City Limits as its service area boundaries, serving all eligible users within City Limits regardless of the presence (or lack of) an active fixed route.

PURPOSE

The City provides fixed route and ADA demand response paratransit service within the City limits. Separate contracts are led by the City for bus stop janitorial service and ADA Eligibility Determination functions.

Fleet

CITY provides a variety of bus types in its fixed-route, and Paratransit fleet for the service provided under this contract. See Attachment 9 for information on quantity, manufacturer, type, and operator. All fixed route buses are wheelchair accessible and operate on clean diesel or diesel-electric hybrid engines, and all paratransit vans operate on gasoline. **The CITY pays for all parts** (except warranty and insurance parts), provided that the repairs are not required due to

CONTRACTOR negligence), and fuel for the revenue vehicles, including: tires, oil and lubricants. Fuel is currently obtained at 482 Kenilworth Drive (Petaluma City School District Yard). CONTRACTOR shall supply sufficient vehicles for driver shuttle and road supervision purposes and shall supply fuel for these vehicles.

Fixed Route

Petaluma Transit's Fixed Route fleet currently uses both clean diesel and diesel electric hybrid engines (subject to change over life of contract). All revenue vehicles fuel will be provided by CITY to CONTRACTOR at a City provided fueling site within Petaluma (currently Petaluma City Schools Corporate Yard). The fueler/washer/utility/bus shelter maintenance helper shall shuttle vehicles to the fuel station to refuel vehicles as needed. CONTRACTOR shall provide adequate number of vehicles for purposes of driver mobility (shuttling employees for shift change over, relief breaks, etc.) function and not utilize city owned vehicles, transit or paratransit buses for this purpose. CITY will NOT pay for costs of providing driver lunches and on-street reliefs.

Petaluma Paratransit

All Petaluma Paratransit vehicles operate on gasoline. All revenue vehicle fuel will be provided by CITY to CONTRACTOR at a specified location within Petaluma (currently the Petaluma City Schools Corporate Yard located at 482 Kenilworth Road). The successful Proposer will manage all service operations and maintenance functions from the CITY's Operations and Maintenance Facility. This CITY facility is leased to the successful CONTRACTOR(s) for \$1 each per year and allows consolidation of Petaluma Transit activity into one centralized location. The CONTRACTOR must obtain and keep current all required licenses, including City Business license, and permits to operate in the Petaluma Transit (PT) service area within the scope of this contract service.

ADJUSTMENT TO SERVICE

Except as otherwise stated specifically in this contract Petaluma Transit reserves the right to adjust service at any time. Modifications to services may include, but are not limited to, extending, deleting or adding routes, or parts of routes, and expanding or decreasing revenue hours. Revenue hours begin at the first pick-up, even if that pick-up is a no show.

In the event that actual annual revenue hours fall below eighty percent (80%) or exceed one hundred twenty percent (120%) of the total projected annual revenue the CONTRACTOR or the CITY reserves the right to negotiate a revised unit cost per revenue hour or a revision of the monthly fixed rate.

In the event of a regulatory change that may significantly affect the ability of the CONTRACTOR to continue to provide service at the contractual rate, the CITY may at its own discretion, work with the CONTRACTOR to adjust rates to address the issue. The CITY would conduct a cost evaluation to ensure that any rate increases do not invalidate the price evaluation contained in the RFP selection process.

SERVICE HOURS

Service hours effective January 2018 will be as follows:

Monday – Friday: 6:15 a.m. – 8:25pm

Saturday: 7:30 a.m. – 8:25pm

Sunday: 8:30 a.m. – 5:25pm.

CONTRACTOR will be expected to provide dispatch service on-site during all hours stated above plus additional time prior to and subsequent of revenue service to assure all runs are covered by qualified drivers. Exact hours of operation are subject to change. CONTRACTOR shall conform to the dispatch & supervision staffing plan included in their proposal to this contract.

HOLIDAY SCHEDULE

Petaluma Transit reserves the right to operate modified schedules as it deems appropriate in conjunction with holidays or other extenuating situations, with one week notice to the CONTRACTOR. The modified schedules will in no way alter the Contract, nor will be considered an adjustment to service, nor will it result in compensation either to the CONTRACTOR or to CITY.

There will be NO SERVICE on the following holidays:

- New Year's Day
- Independence Day
- Thanksgiving Day
- Christmas Day

Petaluma Transit will operate on a SUNDAY schedule on the following holidays:

- Memorial Day
- Labor Day
- Presidents Day
- Martin Luther King, Jr. Day
- Day After Thanksgiving
- Veterans Day
- December 24th (Christmas Eve)

DESCRIPTION OF SERVICE

Petaluma Transit's fixed-route system consists of six routes on weekdays, five on Saturdays, and three on Sundays, operating on a dual-hubbed system with timed-transfers at the Eastside Transit Center (ETC) and, to a lesser extent, the Downtown Petaluma SMART Station/Copeland Transit Mall. The URL of the Petaluma Transit website is <http://transit.cityofpetaluma.net/routes/>. Four buses operate all day on weekdays, with additional buses deployed to expand school bell time capacity in the early morning and afternoon. Currently, three buses meet at the ETC twice an hour to transfer riders between routes. Since August 2016, two additional buses are added to the 2/11 interlined block to elongate the running time cycles on each route from 30 to 40 minutes (traffic

congestion) and increase frequency from 30 minutes to 20 minutes on these busiest of routes on weekday afternoons. This occurs on weekdays from 3:15pm to 5:15pm. Peak pull is 7 buses in the AM peak, 4 all-day, and then 9 in the PM peak around 2:30pm. Evening service extends to 8:25pm Monday through Saturday, and 5:25pm on Sundays.

On Weekends, fixed-route service features a three-bus deployment scheme throughout both days. Ridership is lighter on Saturdays and Sundays, averaging about 400 daily rides on Saturday, and around 200 on Sundays. Petaluma has experienced significant ridership growth in the past 10 years. Please see the Petaluma Transit Website at <http://transit.cityofpetaluma.net/routes> for full timetables.

Petaluma Transit Petaluma Paratransit's ADA service is in compliance with all ADA paratransit service standards. Revenue service for ADA Paratransit begins with the first passenger pick-up on a bus and ends at the time the last passenger is dropped off, on a per vehicle billing basis. Revenue service does not include lunches. Deadhead from yard to first pick up, from last drop off to yard, and to and from lunches or breaks, is approved by City, reported by CONTRACTOR and paid by CITY. Petaluma Paratransit operates the same hours as Petaluma Transit (fixed route) and serves eligible patrons with origins and destinations anywhere within Petaluma Urbanized Area, which is generally the City Limits, regardless of the presence or absence of an active fixed route (the ADA ¾ mile limit is disregarded except when serving slightly beyond city limits due to an active fixed route nearby).

The CONTRACTOR from time to time will be required to provide special event and marketing-related services. Special event services may vary from year to year. Special event and marketing event services shall be billed at no more than the fixed route revenue hour rate.

Total estimated hours, and miles for these services are:

<u>Baseline Annual FY 16-17 Revenue Hours</u>	<u>Miles</u>
PT Fixed-route 19,797	246,443
PT ADA Paratransit <u>9,250</u>	<u>75,496</u>
Baseline Totals Contract 28,047	321,939

These figures form the BASELINE CONTRACT HOURS from which Adjustment of Service criteria (see above, Section 2.1.3) shall be indexed.

SCHEDULES

The CONTRACTOR shall provide Petaluma Transit services in a safe, courteous, reliable manner, and in accordance with trip schedules provided by CITY. CITY representatives shall from time to time ride in CITY-furnished, CONTRACTOR-operated vehicles, with or without prior notice to the CONTRACTOR, to ensure compliance with this Contract. CITY staff consistently monitor the service remotely using the AVL/CAD system. Current schedules can be found here at <http://transit.cityofpetaluma.net/routes/>

FARES

The CITY establishes Petaluma Transit's fare structure and array of fare media. Petaluma Transit currently features (effective August 2014) the following fare structure:

- \$1.50 for adults
- \$1.00 for students
- \$.75 for seniors/disabled riders
- \$3.00 per one-way trip for Petaluma Paratransit.

Monthly (and Quarterly for Students) passes are available in each demographic. Passes are sold at an array of outlets in the community and online at the Petaluma Transit Website e-store <http://transit.cityofpetaluma.net/fares/>. Petaluma Transit accepts the Clipper Card, which is a regional stored value smart card, for payment on fixed route. The Transit Maintenance and Operations Center is a busy Clipper sales location and the volume of walk-in Clipper customers has the potential to impact daily dispatch activity. CONTRACTOR shall staff accordingly.

DRIVERS

Prior to the start of each month, CONTRACTOR shall purchase monthly bus passes for distribution via bus operators. CONTRACTOR shall purchase twenty-one (21) adult passes and eighteen (18) student passes and distribute to Petaluma Transit fixed-route bus operators.

QUALIFICATIONS AND STANDARDS

The CONTRACTOR shall conduct an adequate background check on each Petaluma Transit driver to ensure all drivers meet the following standards and are qualified to perform Petaluma Transit transportation services:

- All operators must be employees (full or part time) of the CONTRACTOR. The CONTRACTOR may not sub-contract with individuals to execute trip assignments.
- Continuous possession of a valid driver's license, a California DMV Transit Certificate, passenger endorsement, air brake endorsement (fixed-route only), VTT (fixed-route only) and current possession of a Class A, or B license (fixed-route only).
- Not more than two moving violations in the past five years and no DWI/DUI convictions within the last seven years.
- Ability to read, write, and speak English. Spanish-speaking drivers are desired.
- Sensitivity to passenger's needs. Petaluma Transit seeks drivers who are good with people and calm in the face of traffic and stressful conditions.
- Must pass Federal Drug and Alcohol Testing regulations. (See Appendix B)
- Candidates with felony conviction history must be identified by CONTRACTOR and made subject to review of conviction history and approval by CITY prior to hiring.

TRAINING

Fixed Route

CITY of Petaluma shall offer one training course at the start-up of the contract for CONTRACTOR's trainers and supervisors to instruct them in Petaluma Transit's unique policies and procedures. After the initial training course at contract start up, CONTRACTOR shall be responsible for all aspects of training, including the provision and payment for the required training.

CONTRACTOR must provide an orientation and training plan outlining how drivers with recent transit bus operating experience shall be trained in Petaluma Transit operations in order to ensure that these new experienced drivers are trained to an equivalent level as the new trainee program required below in 2.2.2 "a" and 2.2.2 "b."

All drivers, hired by the CONTRACTOR must attend, at a minimum, the following training:

- A minimum of one-hundred ten (110) hours of training per driver, of which at least sixty (60) hours shall be behind the wheel of a vehicle, including at least (16) hours of Petaluma Transit system & route training/cadeting. This training must be completed before a driver can enter unsupervised passenger revenue service.
- Within this required training period, CONTRACTOR shall instruct drivers in at least (3) three hours of disability awareness sensitivity training, which includes ADA regulations and procedures; a half hour (.5) of sexual harassment training; five (5) hours of passenger control/difficult passenger training; eight (8) hours of defensive driving training.
- CITY reserves the right to review all training materials, and monitor training sessions. The CONTRACTOR shall arrange and pay for this training.
- CONTRACTOR shall be required every year to ensure all operating personnel associated with this contract receive at least the required sixteen (16) hours of special Department of Motor Vehicles training and eight (8) hours of recurrent "transit certificate" training.
- The cost of driver's wages during all training shall be borne by the CONTRACTOR. Maximum class size shall be 10 operators.
- CONTRACTOR shall be required to ensure all operators and dispatch staff are aware of proper radio and direct customer communication practices required for polite customer assistance.
- CONTRACTOR shall ensure all operators complete training prior to their operation of an in-service bus. The CONTRACTOR will also be responsible for providing remedial training for any driver who demonstrates a lack of appropriate skills.

Written documentation of all training, including new hires, recurrent, and retraining, shall be maintained by the CONTRACTOR and furnished to the CITY Transit Division Manager upon request.

All training programs shall be subject to CITY approval within a reasonable timeframe.

UNIFORM SPECIFICATIONS AND APPEARANCE STANDARDS

a. Uniform Specifications

Fixed Route

The CONTRACTOR shall develop a dress code which will be subject to CITY approval. Such dress code will feature, at a minimum both shirt/blouse and slacks. Standardized dress shorts permitted with CITY prior approval. Drivers shall wear name tags clearly displaying their names at all times while performing their duties. The CONTRACTOR shall provide an adequate supply of uniforms for drivers and maintenance staff. CONTRACTOR shall provide regular cleaning of maintenance uniforms and shop cloths. Uniforms shall clearly separately display both the name of the contracting firm and of Petaluma Transit. Each driver shall have an accurate time piece available and in clear sight at all times during vehicle operations. It shall be the CONTRACTORS responsibility to create and include Petaluma Transit patches on all driver uniform shirts and ensure they are displayed prominently while drivers perform their duties. The CITY has previously provided Petaluma Transit polo shirts to drivers and dispatchers and those are also approved to be worn during work hours, but are NOT to be considered a substitute for CONTRACTOR provided uniforms.

This code shall include shoes which shall be solid, plain-toe oxford-style work shoes or athletic sports shoes. Sandals, cleated, or open-toe shoes will not be permitted.

Consideration for safety must be applied to all dress code components.

b. Appearance Standards:

General Appearance: At all times while on duty, drivers shall be well groomed, clean and in complete uniform. Drivers shall conform to the following standards of appearance at all times while on duty or when in uniform. All drivers must be neat in appearance, clothing/uniform clean and pressed, hair clean and neatly cared for. No colognes or perfumes are allowed on drivers and office staff while performing duties.

NO-SMOKING POLICY

Per compliance under CITY ordinance 8.20 "Regulation of Smoking and Tobacco Sales" CONTRACTOR bus drivers shall not smoke within 20' of any unit, enclosed area or common area/public space. This includes any building or entrance point to the 555 N. McDowell facility and any bus stop, transit facility, Park-n-Ride, or other public gathering location. The prohibition includes all: tobacco, cigarette, marijuana or e-cigarettes ("vaporizers").

REMOVAL

The CITY of Petaluma may require the CONTRACTOR to immediately, pending investigation, remove any driver from Petaluma Transit service for any one of, but not necessarily limited to, the following:

- Committing unsafe or inappropriate acts while providing service.
- Revocation, suspension, or non-renewal of a valid California driver's License or Conviction of any felony criminal offense.
- Unacceptable customer service as reported by customers, other drivers, or directly observed by CITY staff or agents thereof.
- Threat or abuse of another CITY or CONTRACTOR employee (verbal or physical)
- Operators not in the approved uniform.

PERSONNEL

The CONTRACTOR shall furnish all operators, the fueler washer/utility/bus shelter maintenance helper, fleet technician, dispatchers, road supervisors, administrative personnel, mechanic, and other personnel

necessary for providing the Petaluma Transit's fixed route, paratransit, and maintenance services in accordance with this Contract.

Petaluma Transit reserves the right to review the resumes of management personnel and the Mechanic assigned to this Contract. The CONTRACTOR's Designated Representative, shall meet weekly or as often as CITY requests with the CITY's Transit Division Manager and other Transit Division staff.

As part of this contract, CONTRACTOR shall include driver and non-driver wage and benefit packages which will be offered to each of the above employment classifications upon contract commencement.

REQUIRED MANAGEMENT PERSONNEL

The CONTRACTOR shall provide necessary managerial staff noted in this contract, including road supervision, dedicated solely to this Contract. The CONTRACTOR shall provide one management/road supervisor personnel on duty **at all times**, including prior to driver rollout to assure complete route coverage/schedule adherence. The CITY maintains the right of approval of any change in personnel at the General Manager level prior to any change. Should CONTRACTOR change General Manager (or equivalent) or Mechanic *without* CITY approval, CITY shall withhold \$1,000 of payments each week that the City is not provided with a FTE replacement for either position, as liquidated damages from CONTRACTOR. Should CONTRACTOR change General Manager or Mechanic *with* City approval, City shall withhold \$1,000 of payments each week after four weeks that the City is not provided with an FTE replacement for this position, as liquidated damages from CONTRACTOR.

The CITY shall hold right of refusal over CONTRACTOR assignment of the managerial team positions.

SUPERVISION

CONTRACTOR shall employ a minimum of two full time Training Manager/Road Supervisor positions to provide daily street supervision of contracted service including the monitoring of and assistance with schedule adherence, on-street operation, and on-route compliance. This supervision will include providing on-street schedule adherence support, conducting ride checks (on-board) to ensure operator adherence to procedures (i.e., fare collection, ADA compliance, technical driving, and passenger relations), and field response to any and all events. Such supervision will also include responses to investigation of accidents and incidents. The CITY of Petaluma also reserves the right to provide similar investigations and adherence checks of its own with or without notice to ensure compliance with terms of the Contract. Training Manager/Road Supervisor must be licensed to drive in revenue service. At times, the Road Supervisor will be expected to provide supervision in a revenue vehicle with the ability to carry passengers to aid on-route drivers in maintaining on time performance. In the event that a Road Supervisor/Safety & Training Supervisor/Road Supervisor or General Manager drives as a substitute in scheduled revenue service these hours will be deducted by CONTRACTOR from the billed hours for the month.

The CITY shall withhold \$600 of payments each week that the CITY is not provided with an FTE replacement for the Road Supervisor after 30 days that the City is not provided with an FTE replacement for this position, as liquidated damages from CONTRACTOR.

MAINTENANCE TECH & BUS WASHER/FUELER

CONTRACTOR shall maintain the following staffing levels in maintenance at a minimum: (1) FTE Mechanic, (1) FTE Fleet Technician and (1) FTE Fueller/Washer, Utility/Bus Shelter Maintenance Helper. The fueller washer, utility, bus shelter maintenance helper is responsible for interior and exterior bus cleaning (using CITY drive-through automatic bus wash on site), maintenance shop janitorial, bus stop

janitorial (rarely), bus shelter maintenance (as needed/occasional) and other duties. This includes conformance to staffing plan, frequency per day and per vehicles, equipment, personnel ratio for the number of vehicles, and detailing process and schedules.

The CITY shall withhold \$300 of payments per vacancy each week that the CITY is not provided with a maintenance technician or bus washer/ fueler after 30 days that the City is not provided with an FTE replacement for these positions, as liquidated damages from CONTRACTOR.

DISPATCHING: RADIOS & TELEPHONE SYSTEMS

CONTRACTOR shall provide at least one person in the office, answering telephone calls and providing dispatch support at all times of operations, with the exception of 9am-5pm on weekdays, when at least 2 persons must be providing dispatch services at all times. This calculation of 2 persons may include the General Manager, but only if he/she is trained in dispatching and available to take calls.

The CITY will provide working radios on all revenue Petaluma Transit fixed-route vehicles, and cell phones for all paratransit vehicles. The CITY will provide the phones and radio equipment, including base station and accessories. The CONTRACTOR will provide adequate dispatch and radio/phone monitoring personnel to enable effective driver/vehicle assignments and prompt responses to driver and/or vehicle problems which could impact Petaluma Transit service.

The CITY is providing a Cisco telephone system with adequate phone lines for the CONTRACTOR. CITY shall provide internet access for CONTRACTOR, CONTRACTOR is required to abide by CITY procedures and rules of internet usage and security.

CITY shall support and maintain all CITY-provided phone, computing, and radio equipment. As with all maintenance, the CONTRACTOR shall coordinate repair of all radio and base station equipment with CITY. CITY shall be responsible for payment for repair and purchase of any required new equipment, except in cases of lost equipment or damage due to CONTRACTOR negligence.

SAFETY AND SECURITY

The CONTRACTOR shall take all-reasonable and necessary precautions to provide security for the CITY's Operations and Maintenance Facility, staff, and any equipment provided by the CITY, as well as for records of Petaluma Transit operations. CONTRACTOR shall be responsible for safety and security of passengers during operations and CONTRACTOR's operational areas within the 555 N. McDowell Petaluma Transit Operations and Maintenance Facility. CITY has installed a card-access ID card key system that CONTRACTOR is required to participate in; new hires are issued unique access cards for exterior doors to regulate access. CONTRACTOR shall work collaboratively with City to ensure departing employees turn in access cards and new hires are submitted to CITY and issued access cards. CITY has video surveillance of Operations and Maintenance Facility and retain right to review video footage at any time and will share access with CONTRACTOR management to enhance security. Safety meetings shall be held with all employees at least once per month, and at least one (1) hour in duration (or every other month for 2 hours).

CONTRACTOR shall immediately report all hazardous conditions (e.g. trees, signs, slides, etc.) in the service area to the CITY and any other appropriate authority and take necessary precautions to safeguard passengers, personnel and equipment.

CITY provides electronic surveillance system (cameras) on site, and will likely invest in adding to this system in the future, and has recently equipped doors on the facility with electronic secured card-access locks to boost employee security. CONTRACTOR shall help support the function of these investments and

take all-reasonable and necessary precautions to provide security for this security equipment. CONTRACTOR shall bear any costs associated with issuance of cards to CONTRACTOR employees and repair of any damage to the equipment if caused by CONTRACTOR negligence.

CONTRACTOR shall not permit drivers to bear weapons of any type on CONTRACTOR, or CITY property, facilities, or vehicles while operating a vehicle under this contract.

INJURY AND ILLNESS PREVENTION PLAN

CONTRACTOR shall maintain and provide a copy of the firm's Injury and Illness Prevention Plan in compliance with Title 8 of the California Code of Regulation, Sec. 3203.

CITY-FURNISHED VEHICLES

FLEET

The CONTRACTOR shall be initially provided fourteen (14) ramp-equipped low-floor heavy-duty transit buses for fixed route service. City will attempt to make available an adequate number of vehicles to the CONTRACTOR to assure at least a twenty percent spare ratio. CONTRACTOR may utilize spare vehicles for official Petaluma Transit driver training. See Appendix B for November 2017 Petaluma Transit Fleet Roster. The CONTRACTOR shall be initially provided nine (9) lift-equipped paratransit vans.

RESPONSIBILITIES OF CITY-PROVIDED FLEET

The CITY shall pay for all repairs on CITY revenue vehicles with exception of warranty and insurance repairs, provided that the repairs are not required due to CONTRACTOR negligence.

The CITY will pay for all normal wear and tear items as identified by the City's maintenance contractor.

The CITY of Petaluma reserves the right to add/subtract or substitute vehicles for those described above, should the requirement arise during the term of the Contract, and negotiate any appropriate Contract modifications with CONTRACTOR.

The CITY does NOT provide CONTRACTOR with any non-revenue vehicles to conduct daily non-revenue service tasks. CONTRACTOR shall be responsible for providing any non-revenue vehicles that may be desired for running of errands, field review of operations, shuttling of drivers, driver reliefs, etc.

CITY will provide the fixed route CONTRACTOR a two-way radio system for each fixed route bus, including FCC frequency, 4 handhelds, and one (1) base station located at the CITY Operations and Maintenance Facility dispatch office. The radio equipment is to be available for normal dispatching as well as emergency situations (accidents, mechanical breakdowns, etc.), thereby enabling the CONTRACTOR to immediately dispatch substitute vehicles. CONTRACTOR assumes the responsibility of coordinating maintenance of the radio system. CITY shall be responsible for maintenance (parts & replacement) costs of the system. CONTRACTOR shall be responsible for maintaining proper radio etiquette at all times to ensure that the CITY's FCC broadcasting license is protected.

INITIAL VEHICLE ACCEPTANCE

At the beginning of this contract, CITY and its agents will jointly inspect each vehicle with the CONTRACTOR and sign off on an original inspection sheet to establish a baseline vehicle condition. CONTRACTOR will be required to bring the buses into a state of good repair acceptable to the CITY.

At the conclusion of contract, CITY and its agents will jointly inspect each vehicle with the outgoing CONTRACTOR and sign off on the original inspection sheet from when the CONTRACTOR originally inspected and accepted the vehicles.

After the CITY has accepted the vehicles, the CITY will jointly inspect the vehicles with the new CONTRACTOR. An inspection acceptance form will be generated at that time. It is the sole responsibility of the outgoing CONTRACTOR, at its expense, to ensure all CITY vehicles are in good operating condition, free of damage and/or neglect both inside and outside. Should the outgoing CONTRACTOR fail or refuse to meet this requirement, the City may, at its option, repair the vehicles at OUTGOING CONTRACTOR'S expense.

OPERATING MODE

The CITY of Petaluma provides all vehicles, fuel, and fare media required for scheduled service. The CONTRACTOR provides required drivers, supervisory/management services, and all other operational goods and services needed to provide the services described in this Scope of Services unless expressly stated that such goods and services would be provided by the CITY.

FACILITIES

CONTRACTOR shall occupy and perform services as required by this contract from the CITY's Petaluma Transit Maintenance & Operations Center, located at 555 N. McDowell Blvd. CONTRACTOR will share this facility with CITY staff who occupy a portion of the facility.

SOFTWARE/HARDWARE

The CITY will supply basic administrative office hardware and software, for this contract, with the exception of additional proprietary computers used for driver monitoring systems or other proprietary activities. Should CONTRACTOR desire to have proprietary software installed on CITY computers, it must be approved by CITY for installation on CITY computers. CITY provides high-speed internet access that is shared with CONTRACTOR at no cost. Should CONTRACTOR desire a separate computer network with CONTRACTOR computer hardware it will be at CONTRACTORS's expense.

CONTRACTOR shall provide TRAPEZE PASS paratransit scheduling software system. CONTRACTOR shall be responsible for ongoing maintenance, tech support, and hosting of said scheduling software and providing supporting hardware such as tablet computers, MDTs, etc.

High-speed internet access for CONTRACTOR is provided by CITY. Limited free Wi-Fi is provided for facility guests by CITY.

The Petaluma Paratransit client data generated and stored by any paratransit scheduling software system, whether CITY owned or provided and/or hosted by CONTRACTOR, is the property of CITY and shall be turned over to the CITY upon request or at the end of either the scheduling software lifecycle, or this agreement.

FARE COLLECTION

CONTRACTOR shall collect the fares and charges that have been and may be established by the CITY. CONTRACTOR shall train employees and provide pass sales at the Petaluma Transit M&O Facility (555 N. McDowell) as well as sell Clipper fare media and support add-value transactions, and most frequently,

sale of Senior and Youth Clipper cards. CONTRACTOR shall assist in the issuance of RTC (Regional Transit Discount Cards) Cards at the M&O Facility. Fare collection and all related security measures shall be solely the responsibility of the CONTRACTOR. The CONTRACTOR shall be required to provide the CITY with the following materials or information:

- Fares collected, which shall be deposited into CITY transit revenue account daily then summarized by day and route on monthly reports.
- Fare boxes (vault-style) for all fixed route buses shall be provided by the CITY and maintained by the CONTRACTOR. CITY is currently using bottom-loading Diamond non-electronic fareboxes.
- Paratransit vehicles currently do NOT have fareboxes, as fares are collected into bank bags by drivers during the course of the service day. It is possible, that CITY will purchase and equip paratransit vans with non-electronic fareboxes during this agreement. No change in billing rate will be considered.
- Fare media and pass sales summary data shall be collected and submitted to the CITY of Petaluma's Transit Division Manager monthly or upon request.

The CITY reserves the right to approve any fare collection/securement system implemented throughout the contract term. The CITY reserves the right to examine the books of fares collected at its discretion, including retaining the services of an independent third-party auditor.

TELEPHONE INFORMATION SERVICE

CONTRACTOR shall provide customer information service to the public in English and Spanish during all hours of system operation.

CONTRACTOR shall take paratransit client reservations every day between 9am and 5pm while providing general information (where is my ride?) during all times that revenue service is being operated (see Section 2.1.1. above).

CITY shall provide for CONTRACTOR sufficient telephone lines and telephone equipment dedicated to the Petaluma Transit operation to ensure effective communications. These phone lines shall be used solely for the purpose of conducting Petaluma Transit business and shall not be used by the CONTRACTOR for any other purpose. These telephones shall be answered as "Petaluma Transit" or "Petaluma Paratransit." This does not include mobile phones which if needed, are the responsibility of the CONTRACTOR to provide.

CITY-provided telephone lines (each offers multiple rollovers) and their respective phone equipment and telephone numbers shall remain the property of the CITY of Petaluma under conclusion or termination of the contract.

CONTRACTOR shall establish a phone answering method and "hold messages" for the CITY's Cisco Phone System that are approved by CITY. CITY reserves right to require the recording of various informational messages that CONTRACTOR will ensure are placed into the phone system to educate callers on Petaluma Transit services and events while caller is on hold.

EQUIPMENT CONDITION

CITY provides CONTRACTOR with access to a modern, indoor, drive-through bus wash onsite at the Operations and Maintenance Facility. Vehicles placed in service by CONTRACTOR must, without exception conform to the following:

- Exteriors shall be washed and detailed at least twice per week, per vehicle.
- Interiors shall be cleaned daily, including sweeping of floors and seats.
- Interiors shall be detailed thoroughly at least twice per month.
- Interior floors shall be mopped at least twice per week, or more often as needed in wet weather.
- Drivers' area will be wiped down at least twice per week. This shall include, but not be limited to, dash controls, dashboard, above the driver area, and along the front dashboard.
- Have fully operational heating and air conditioning, wheelchair ramps and lifts, securement belts, flip seats, radios, fareboxes, AVL systems, Wi-Fi, surveillance camera systems, and destination signs.
- Be free of body damage, have no missing or unpainted panels.
- Be free of graffiti on the exterior and on the interior of vehicles.
- Have all safety items fully operational; (i.e., lights, brakes, horn, tires, wheelchair tie downs, seat belts, etc.)
- No vehicle shall be cannibalized for parts for any reason without prior written consent of the CITY of Petaluma.
- No vehicle shall be retired or put into revenue service without CITY authorization. No vehicle shall be deployed outside its assigned mode (fixed route or paratransit) without CITY authorization.

DATA & REPORTS

MONTHLY REPORTS

The following performance indicators must be reported monthly:

- Ridership from each day of previous month, sorted by route and fare type
- Roadcalls with reason for call and summary (date, time)
- Number of missed/late trips, including route number, day/time, and cause
- Number of complaints, nature of complaint, resolution, video clip if relevant (See description in Section 2.9.5 below) & status of follow-up efforts
- Total accidents, sorted by preventable versus non-preventable
- Passenger incidents
- Wheelchair boardings
- Number of overloads experienced
- Number of Drug and Alcohol tests and outcome of tests
- Route performance, including ridership, fares collected, revenue hours and revenue miles by route, passengers per hour, deadhead hours and miles by route
- Driver/Dispatcher training activities
- Requests for services not currently being provided
- Summary of preventative maintenance cycles due and performed, with type of PM noted (maintenance)
- Summary of downed vehicles (unavailable for operations, beyond PMs) (maintenance) and estimated time for reinstatement to revenue service
- Vehicle Miles by vehicle – Fleet Roster update
- An array of accurate reports as produced by industry standard state-of-the-art paratransit scheduling software, including NTD reports.

For Petaluma Paratransit service, CITY will select the format and type of reports required. Key metrics that must be easily produced include:

- Daily booked trips
- Cancellations
- “No show” Trips
- Attendant/Companion Trips
- Revenue Miles
- Deadhead Miles
- Revenue Hours
- Deadhead Hours
- Fare breakdown (cash, tickets, free rides, institutional billed clients)
- Number of vehicles in service
- Number of Subscription Trips
- Evaluation Trips
- Trips utilizing a bus lift
- Number of denials due to insufficient capacity or adversarial denials
- Number of late trips
- Indication of excessively long trips and longest trip travel time.

OTHER PERIODIC REPORTS

- Written accident and incident reports must be submitted to the CITY within **one business day**. Report should include supervisor’s report and police report if these are available.
- Quarterly Distribution/Expenditure report on 2.9.9 incentive monies
- Annual parts inventory.

RIDERSHIP REPORTS

Ridership information will be collected on all Petaluma Transit services on a daily basis. Ridership shall be tallied on the Avail MDT Fare Screen, as well as tallied on the traditional clicker installed in each bus, then entered onto each drivers printed manifest. Ridership will be separated by route, trip, day, and fare category. This report will be e-mailed in Excel format as a part of the monthly report and may be requested more often at CITY discretion.

PASSENGER COMPLAINTS

CONTRACTOR will contact by telephone, and follow up with written correspondence (if necessary, as deemed by CONTRACTOR or CITY) to the complaint. If an investigation is required, CONTRACTOR will conduct an investigation and the initiator will be contacted by telephone or written correspondence regarding the results of the investigation. CONTRACTOR shall respond to passenger complaints within one (1) business day of receipt. The CONTRACTOR will be required to track and submit written report to CITY, all complaint information within two (2) business days of receipt. CONTRACTOR shall resolve all complaints within a timely manner and submit a summary of the resolution to the CITY. CONTRACTOR will be responsible for reviewing video recordings, making clips of incidents/complaints and providing said

video clips to the CITY upon request. The CITY may implement a new customer service tracking software and would require CONTRACTOR utilization of this system.

NTD REPORTING

All public transit service provided for CITY, including fixed route, and ADA paratransit must be reported annually to the Federal Transit Administration (FTA) in a completed National Transit Database (NTD) report. As part of the annual NTD reporting requirement, the CONTRACTOR shall conduct on-board data sampling in any year CITY is required to sample as directed by the FTA/NTD, to statistically compute valid passenger mile data. The CITY conducted a full-sampling in Fiscal Year 2016-17. The City of Petaluma is currently on a three year sampling cycle per FTA guidelines, so it is very possible that sampling will again occur in FY 2019-20. CITY is working with NTD and Avail (AVL/CAD system on its fixed route buses) to certify the ridership data being generated by Avail prior to FY 2019-20. If this is successful no further manual sampling will be required. CITY staff in collaboration with CONTRACTOR will perform NTD-compliant sampling per the following procedures.

CITY shall generate and provide to CONTRACTOR a list of all trips to be sampled in advance of the sampling period. The CONTRACTOR agrees to use the technique described in FTA Circular C 2710.1A (dated July 18, 1988) or any subsequent FTA Circular to perform the samples. The CONTRACTOR shall submit the daily random sample trip sheets no later than the tenth (10th) calendar day for the previous month's sampled trips. CONTRACTOR shall conduct any mandatory sampling that NTD may require of Petaluma Transit at any time during contract term. CITY staff assists with sampling of trips; however, CONTRACTOR shall cover trips that CITY staff are unable or unwilling to sample.

DRUG-FREE WORKPLACE POLICY

The CONTRACTOR is required to develop and implement procedures which comply with the CITY of Petaluma Drug-Free Workplace Policy and applicable FTA requirements.

PERFORMANCE SPECIFICATIONS

All performance specifications will be strictly adhered to in order to provide the highest level of service possible. The CITY of Petaluma will use its Avail AVL/CAD system, as well as whichever paratransit scheduling software is utilized, to monitor and evaluate CONTRACTOR in its performance of the Contract to ensure all performance specifications are adhered to.

To receive full compensation, the CONTRACTOR is required to meet or exceed the following standards of performance on a monthly basis:

Operating Performance Standards - Vehicles shall be operated with due regard for the safety, comfort and convenience of passengers and the general public. Service shall be provided as scheduled or according to any adjusted schedule established by CITY, including route modifications required as a result of a declared emergency. The CONTRACTOR shall strive to maintain on-time performance; however, CONTRACTOR shall not be held responsible for the failure to provide on-time service due to weather, unavoidable vehicle malfunctions, traffic congestion, or naturally occurring disasters, if sufficient documentation is provided to CITY.

Personnel Performance Standards

KNOWLEDGE OF SERVICE

All personnel are responsible for knowledge of the service. Project personnel must maintain a courteous attitude, answering to the best of their ability any questions from the public regarding the provision of service. Customer service training must include a focus on positive passenger relations, and working effectively with difficult customers/crowd control. Personnel must report passenger complaints and/or operation problems to the CONTRACTOR's designated representative/Manager who will be responsible to inform the Transit Division Manager, or his designee. All passenger complaints must be reported to CITY within one (1) business day of being received.

COLLECTION OF DATA

Drivers must diligently record operating data (fares, transfer requests) via the Avail AVL system and traditional paper manifests accurately and completely each shift, and submit the required operating reports each day. Drivers must also strive to make all timed connections using the AVL system and radios to coordinate passenger transfer opportunities.

INCENTIVES

It is the intention of the CITY to provide incentives for performance to encourage and stimulate expected transit service provision. Incentives will be measured via CONTRACTOR provided records and the existing Avail AVL system, plus whichever paratransit software system is deployed, and calculated and paid quarterly. Incentive payments must be spent at the site for the benefit of the employees. The incentives include:

- *Preventable Accidents:* The CONTRACTOR will be eligible for an incentive of \$500 per month if it meets the standard of ZERO preventable accidents per month.
- *ADA Paratransit Productivity:* The CONTRACTOR will be eligible for an incentive of \$700 per month if it exceeds the standard of 3.0 passengers per revenue hour, while still maintaining 90% on-time performance.
- *Road calls:* The CONTRACTOR will be eligible for an incentive of \$500 per month if it meets the standard of ZERO road calls per month.
- *Timely Provision of Trips:* The CONTRACTOR will be eligible for an incentive of \$300 per month if it meets the standard of ZERO late yard pulls/on-street reliefs per month. (Fixed Route) "LATE YARD PULL" is 10 minutes or more after specified time for yard departure.
- *Maintenance Manager certification:* The CONTRACTOR will be eligible for an incentive of \$80 per month for the Maintenance Manager position being fully occupied (without any vacancy) with employee holding ASE A and H Master Certifications over prior year while serving as Maintenance Manager for Petaluma Transit under CONTRACTOR.
- *Timely hiring:* The CONTRACTOR will be eligible for an incentive of \$500 per instance of filling a vacant driver, bus fueller/washer, or maintenance tech position and \$1,000 for Maintenance Manager or General Manager vacancy being filled **within 30 days** of the position being vacated and providing the newly hired employee is still employed after a period of 90 days from initial hiring date.

LIQUIDATED DAMAGES

The CITY has the right, in its discretion, to impose liquidated damages in accordance with this Section. The CONTRACTOR shall have the opportunity to contest any liquidated damages assessed, but this shall not affect the right of CITY to deduct the amount of liquidated damages from the monthly amount due the CONTRACTOR. Liquidated Damages events will be measured via CONTRACTOR provided records and the existing Avail AVL system, plus whichever paratransit software system is deployed, and calculated and paid quarterly.

From the nature of the services to be rendered, the CONTRACTOR and the CITY agree that it is extremely difficult to fix actual damages which may result from the failure on the part of the CONTRACTOR to perform certain of its obligations under the Agreement. CONTRACTOR and CITY agree that the following defaults under the Agreement will damage the reputation of the CITY's transit program. Such damage shall reduce the ridership, and, therefore the revenue for such program. Accordingly, it is hereby agreed that the CITY shall be entitled to the following liquidated damages as compensation for such damage. Liquidated Damages include:

- *Failure to Voluntarily Report*: \$100 for each occurrence of an action that would trigger liquidated damages per this contract that is NOT REPORTED TO THE CITY WITHIN the specified reporting window. This includes failure to deduct revenue hours driven by road supervisors and/or managers from monthly billing.
- *Falsification of Reports*: \$500 for each occurrence of the CONTRACTOR submitting knowingly false or misleading information to the CITY.
- *Late Yard Pull/Late Trip (Fixed Route)*: \$50 for each bus trip that is more than 10 minutes late departing its initial timepoint in revenue service, due to mechanical or staffing problems such as late reporting drivers.
- *Absent supervisory staff*: \$200 for each day of CONTRACTOR having less than one General Manager or Road Supervisor personnel on duty at all times during service operations, including prior to driver rollout to assure complete route coverage/schedule adherence.
- *Improper bus/van usage*: \$200 per day for each occurrence of CONTRACTOR usage of fixed-route bus or paratransit vehicle for purpose of driver relief, shift change or shuttling drivers, instead of using CONTRACTOR provided vehicle.
- *Early Trips, a.k.a. Bus Running "Hot"*: \$25 for each occurrence of bus departing from any designated time point earlier than its scheduled departure and/or from any time point within its published schedule. The CITY maintains a zero-tolerance policy on "running hot", and allows a one-minute (1) grace period, hence two (2) minutes early departing any timepoint constitutes "running hot".
- *Failure to Properly Train Drivers*: \$100 for each Failure to train each driver assigned to this Contract in accordance with CITY requirements and CONTRACTOR's training program approved by CITY. This may be enforced in cases of driver incompetence such as, but not limited to: off

route, missed stops, bypasses, poor customer service resulting in complaints, etc.

- *Failure to Properly Train Dispatchers*: \$500 for each Failure to train each dispatcher assigned to this Contract in accordance with CITY requirements and CONTRACTOR's training program approved by CITY. This includes failure to train dispatchers with regular training intervals included in CONTRACTOR training guide materials in Exhibit A.
- *Failure to Provide Service/Missed Trip (fixed route)*: \$150 for each missed trip, defined as 20 minute or more later than scheduled departure times from published timepoints, when CONTRACTOR are unable to provide regularly scheduled service due to a lack of available bus drivers or revenue vehicles that meet minimum vehicle standards. This includes having all safety items fully operational; (i.e., lights, brakes, horn, tires, wheelchair tie downs, seat belts, etc.), and having fully operational heating and air conditioning, wheelchair ramps and lifts, securement belts, flip seats, radios, fareboxes, and destination signs.
- *Failure to Provide Service/Missed Trip (Paratransit)*: \$150 for each missed trip, defined as arrival at a pickup more than 20 minutes or more past the assigned pickup window, when CONTRACTOR is unable to provide regularly scheduled service due to a lack of available bus drivers or revenue vehicles that meet minimum vehicle standards. This includes having all safety items fully operational.
- *Operator discourtesy*: \$75 per reported/verified occurrence.
- *Smoking violation*: \$50 per occurrence of CONTRACTOR employee violating smoking policy including but not limited to: smoking within 555 N. McDowell facility (excepting designated smoking area) or any bus stop, transfer point or Park-n-Ride.
- *Uniform violation*: \$50 per occurrence of CONTRACTOR employee violating uniform policy guidelines included within this contract.
- *Management*: Change of CONTRACTOR General Manager or Maintenance Manager/Mechanic with or without City approval; after 30 days of the position be vacated, City shall withhold \$500 of payments each week that the City is not provided with an FTE replacement for this position, as liquidated damages from CONTRACTOR.
- *Maintenance tech & bus washer/fueler* - \$300 for each week, after 30 days of the position being vacated, that the City is not provided with an FTE replacement for this position, as liquidated damages from CONTRACTOR.
- *Customer Complaints*: Failure to investigate, bring to resolution and document (report to CITY through the complaint management software) any passenger complaint within two (2) business days, \$75 per occurrence.

The CONTRACTOR shall deduct from its billing rate all missed hours of revenue service regardless of assessment of liquidated damages.

Failure of the CITY to assert any right which it has under any resultant contract, or to assess any liquidated damages as provided, shall not act as a waiver as to the CITY's right to enforce the

provisions of said Contract, or assess liquidated damages in the future. The assessment of liquidated damages and/or deductions as provided under this Contract shall in no way relieve the CONTRACTOR of its obligation to provide sufficient service, vehicles, or drivers, or to meet any of the terms of this contract.

MARKETING AND PUBLIC RELATIONS

The CITY of Petaluma shall be responsible for all marketing and public relations activities relating to Petaluma Transit.

CITY shall furnish all schedules, maps, transfers, passes and other printed materials required for marketing the service to the CONTRACTOR. The CONTRACTOR shall distribute Petaluma Transit passenger notices, cooperate, and participate in marketing promotions, advertising, public relations, and public education programs and projects undertaken by CITY from time to time. CITY shall be the exclusive public media spokesperson in connection with transportation service. Under no circumstances shall the CONTRACTOR or its employees be permitted to distribute any unauthorized printed or written materials pertaining to Petaluma Transit service without permission from the CITY of Petaluma.

CONTRACTOR shall bill CITY at the regular fixed route billing rate in effect at the time for all marketing events that require a non-regularly scheduled bus/driver.

ADVERTISING ON EXTERIOR AND INTERIOR OF BUSES AND IN BUS SHELTERS

The CITY of Petaluma may, during the course of this Contract, require the CONTRACTOR to allow prospective contractors contracted by the CITY access to all buses assigned to this contract to install and remove advertising material. All advertising materials are subject to CITY approval prior to being installed.

At this time, CITY administers the CITY's bus and shelter advertising program and provides signage to CONTRACTOR to install (in existing frames for fixed-route, and vinyl applied directly onto the exterior of the paratransit vans). CONTRACTOR shall support CITY in administering the advertising revenue program, including installing and removing signs/posters as requested. Shelter posters are installed and removed from CITY-owned shelters by a combination of CITY and CONTRACTOR staff. At this time, sales of (and activity involved with) shelter posters are minimal, but it is anticipated that these spaces will increase in activity during the term of this agreement. CITY is considering awarding a new third-party contract that will provide these services. CONTRACTOR will be responsible for working with contractors to ensure a successful bus exterior advertising contract program.

SIGNAGE

CONTRACTOR shall display required head, side, and tail signage, in plain view, in all Petaluma Transit vehicles, while in revenue service. CITY will supply CONTRACTOR with software programs for electronic head signage and update said at its discretion. CITY's Avail AVL software operates the headsigns for CONTRACTOR drivers when functioning normally. During times when the Avail system is not functioning normally, drivers are required to manually program the headsign controller unit. CITY Transit Division Manager reserves the right to direct CONTRACTOR as to which messages shall be displayed during revenue services as required. CONTRACTOR shall be responsible for ensuring proper function and display of revenue vehicle signage at all times.

OPERATING DURING AN EMERGENCY

In the event of an emergency, CONTRACTOR shall deploy vehicles in a manner described by the CITY. Emergency service does NOT constitute an expansion of service. CITY shall be obligated to compensate CONTRACTOR for emergency service that significantly exceeds the normal expense of operating the transit service during such period of declared emergency. CONTRACTOR shall be responsible for accurate tracking and reporting to CITY of all resources (labor & other) expended in the provision of emergency service.

CONTRACTOR employees are required to report for duty and participate in the role of government emergency response personnel.

EMERGENCY SERVICE PLANNING

The CONTRACTOR shall participate in CITY emergency preparedness planning and drills. Examples of emergencies shall include: electrical power failure, earthquakes, strikes, wildfires, and other natural disasters. Staff shall be appropriately trained in proper handling of these situations.

MODIFICATION OF SERVICE AND FARES

In the event of an emergency that is declared as such by local authorities or if decided by the CITY Transit Division Manager, the established notice of fare and service changes shall not apply, and CONTRACTOR will use its best efforts to effect at the earliest possible opportunity the modification of the existing service, or the addition of service that is ordered by the CITY to respond to the emergency.

FTA GRANT CONTRACT PROVISIONS (SERVICES)

The FTA Grant Contract Provisions set forth herein shall be incorporated into and become part of the contemplated contract documents executed in connection with an award of this contract to the CONTRACTOR. In case of any conflict or discrepancy, the FTA Grant Contract Provisions set forth herein shall prevail over all other terms and conditions contained in this Professional Services Agreement/contract. Parties referenced in the following clauses are defined as:

“Awarding Agency” is the sub-recipient of the State of California Department of Transportation.

“PROJECT” is the Awarding Agency’s federally supported project.

“CONTRACTOR” is the third-party prospective contractor who has entered into this third-party contract with the Awarding Agency to provide goods or services directly to the Awarding Agency for the accomplishment of the PROJECT.

“Sub-agreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

1. NO OBLIGATION TO THIRD-PARTIES BY USE OF A DISCLAIMER

- A. No Federal Government Obligation to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.
- B. Third-Party Contracts and Sub-agreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the sub-agreements of third-party contractors and the sub-agreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each sub-agreement financed in whole or in part with financial assistance provided by the FTA.
- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be fully responsible to the Awarding Agency for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and

omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the Awarding Agency's obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.

D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.

E. Awarding Agency Approval of Sub-agreements. The Awarding Agency shall approve in writing all proposed Sub-agreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Sub-agreements unless the same are approved in writing by the Awarding Agency. Any proposed amendments or modifications to such Sub-agreements must be approved by the Awarding Agency prior to implementation.

2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the federally assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 in the CONTRACTOR to the extent the Federal Government deems appropriate.

B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

C. The CONTRACTOR agrees to include the above two clauses in each sub-agreement financed in whole or in part with Federal Assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO RECORDS AND REPORTS

Access to Records

The Awarding Agency, the California Department of Transportation, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Contract of audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every sub-agreement entered into relative to the PROJECT.

Record Keeping

The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Contract. All parties shall make such materials available at their respective offices at all reasonable times during the performance and for three (3) years from the date of final payment under this Contract and all sub-agreements.

Accounting Records

The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR'S accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

4. FEDERAL CHANGES, AMENDMENTS TO STATE, AND LOCAL LAWS, REGULATIONS, AND DIRECTIVES

The terms of the most recent amendments to any federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless the California Department of Transportation provides otherwise in writing.

5. CIVIL RIGHTS (TITLE VI, EEO, & ADA)

During the performance of this Contract, the CONTRACTOR its assignees and successors in interest, agree to comply with all federal statutes and regulations applicable to grantee sub-recipients under the Federal Transit Act, including, but not limited to the following:

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment

opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation any issue.

- B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's Regulations, including employment practices when the Contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.
- C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a sub-agreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Awarding Agency or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the Awarding

Agency of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the Awarding Agency shall:

1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
2. Cancellation, termination, or suspension of the Contract, in whole or in part.

F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the Awarding Agency or the California Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the Awarding Agency to enter into such litigation to protect the interest of the Awarding Agency, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

6. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any California Department of Transportation requests which would cause the California Department of Transportation to be in violation of the FTA terms and conditions. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any Awarding Agency requests which would cause the Awarding Agency to be in violation of the FTA terms and conditions.

7. ENERGY CONSERVATION

The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. Section 6321 et seq.

8. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The CONTRACTOR agrees to comply with U.S. Department of Transportation regulations, "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26 and will cooperate with the California Department of Transportation with regard to maximum utilization of disadvantaged business enterprise, and will use its best efforts to ensure that disadvantaged business enterprise shall have the maximum opportunity to compete for sub contractual work under this Contract.

Prompt Payment and Return of Retainage

- A. All payments to the CONTRACTOR shall be made in accordance with California Government Code (GC), Chapter 4.5, commencing with Section 927, which is known as the California Prompt Payment Act. If an authorized disbursement is not made within the thirty (30) calendar-day departmental limit stipulated by the California Prompt Payment Act, interest penalties may be payable to the CONTRACTOR.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR must pay third-party contractors within 7 days of receipt of each undisputed progress payment from the STATE, unless the PROJECT is for Construction. In the case of a Construction project only, the CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the STATE. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

9. INTELLIGENT TRANSPORTATION SYSTEMS (ITS) NATIONAL ARCHITECTURE

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

10. ADDITIONAL TERMINATION PROVISIONS

- A. Termination for Convenience (General Provision). When it is in the Awarding Agency's best interest, the Awarding Agency reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the Awarding Agency. If the CONTRACTOR has any property in its possession belonging to the Awarding Agency, the CONTRACTOR will account for the same, and dispose of it in the manner the Awarding Agency directs.
- B. Termination for Default (General Provision). If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the Awarding Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Awarding Agency that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the Awarding Agency, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

- C. Mutual Termination. The PROJECT may also be terminated if the Awarding Agency and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

11. DEBARMENT AND SUSPENSION

- A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
- B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible

for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.

- C. Before entering into any sub-agreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that awarding agency and its “principals,” as defined at 49 CFR Part 29.
- D. Before entering into any third-party contract exceeding \$25,000.00, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its “principals,” as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any sub-agreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

12. BUY AMERICA

The CONTRACTOR shall comply with the Buy-America requirements of 49 U.S.C. 5323(j) and 49 CFR Part 661 for all procurements of steel, iron, and manufactured products used in PROJECT. Buy-America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000.00). Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

13. PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

The Awarding Agency and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the Awarding Agency Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The Awarding Agency Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have the opportunity to challenge in writing within ten (10) working days to the Awarding Agency’s Executive Director or his/her designee. If the CONTRACTOR’S challenge is not made within the ten (10) day period, the Awarding Agency Representative’s decision shall become the final decision of the Awarding Agency. The Awarding Agency and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the Awarding Agency shall be final, conclusive, and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

14. LOBBYING

- A. The CONTRACTOR agrees that it will not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, "New Restrictions on Lobbying." 49 CFR Part 20, if the bid is for an award for \$100,000.00 or more the Awarding Agency will not make any federal assistance available to the CONTRACTOR until the Awarding Agency has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal grant, cooperative agreement, or any other federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;
- B. If applicable, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the form instructions.
- C. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly.

This Contract is a material representation of facts upon which reliance was placed when the Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U.S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.

15. CLEAN AIR ACT

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each sub-agreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

16. CLEAN WATER ACT

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each sub-agreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

17. FLY AMERICA

- A. Shipments by Ocean Vessel. For third-party contacts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and sub-agreements must comply with 46 U.S.C. Section 55303 and 46 CFR Part 381, "Cargo Preferences-U.S. Flag Vessels."
- B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and sub-agreements must comply with the "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States of America Flag Carriers," and 41 CFR Section 301-10.131 through 301-10.143.
- C. Project Travel. In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, ("Fly America" Act), 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.

18. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

The CONTRACTOR agrees to comply with applicable transit employee protective requirements, as follows:

- A. The CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. 5333(b), and U.S.DOL guidelines at 29 CFR Part 215, and any amendments there to.
- B. The CONTRACTOR also agrees to include the applicable requirements in each sub-agreement involving transit operations financed in whole or in part with federal assistance provided by the FTA.

19. CHARTER SERVICE OPERATIONS

The CONTRACTOR agrees to comply with 49 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and awarding agencies of the FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR-Subpart B. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on federally assisted equipment) of providing the service. The CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this contract, and any violation of this contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

20. SCHOOL BUS OPERATIONS

Pursuant to 49 U.S.C. 5323(F) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(F) and implementing regulations, and (2) comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment of facilities acquired with federal assistance awarded by the FTA and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR Part 605 apply to any school transportation agreement, and a violation of the contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

21. DRUG AND ALCOHOL TESTING

The CONTRACTOR certifies by signing a Contract with the Awarding Agency that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with Government Code Section 8355, et seq. The CONTRACTOR is required to include the language of this paragraph in award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all awarding agencies shall disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any awarding agency at any tier, or their employees, perform a safety sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor at any tier, each affected awarding agency at any tier, and their employees with 49 U.S.C. Section 5331, and the FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations,” 49 CFR Part 655.

The follow drug and alcohol testing options are compliant with drug and alcohol rules. One of these options must be selected. Options 2 and Options 3 require additional information to be completed:

The CONTRACTOR agrees to:

Participate in the Awarding Agency's drug and alcohol program established in compliance with 49 CFR Part 655.

22. RECYCLED PRODUCTS

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**CITY OF PETALUMA
FEDERAL DRUG AND ALCOHOL TESTING REGULATIONS
CONTRACTOR COMPLIANCE GUIDELINES**

Effective January 1, 1995, all contract service providers that perform safety-sensitive functions (as defined by Federal Transit Administration (FTA) rules) for the CITY TRANSIT OPERATION-PETALUMA TRANSIT (PT) must comply with the FTA drug and alcohol testing regulations (49 CFR Part 653 and Part 654) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40). Non-compliance shall result in suspension or termination of contract and/or non-payment of outstanding invoices.

For purposes of this compliance program, **safety sensitive employees** are defined as follows:

Those employees whose job functions are, or whose job descriptions include the performance of functions, related to the safe operation of mass transportation service.

The following are categories of safety-sensitive functions:

- operating a revenue service vehicle, including when not in revenue service;
- operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License (CDL);
- controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service;
- maintaining (including repairs, overhaul, and rebuilding) revenue service vehicles or equipment used in revenue service; and
- carrying a firearm for security purposes.

Any supervisor who performs or whose job description includes the performance of any function listed above is also considered a safety-sensitive employee.

IMPLEMENTATION GUIDELINES

The Purchasing Officer shall ensure that all contracts for services that include the performance of safety-sensitive functions as defined above shall include a provision requiring compliance with mandated DOT/FTA drug and alcohol testing regulations. The City reserves the right to audit the CONTRACTOR's drug and alcohol testing program prior to awarding the contract.

Prior to start of work, the CONTRACTOR must certify to the Purchasing Officer that their firm is in compliance with the DOT/FTA regulations. (Compliance can be achieved through an in-house program or through a consortium.) The certification shall remain in effect during the term of the contract. A copy of the signed certification shall be sent by the Purchasing Officer to the Transit Division Manager.

Using the EZ format prescribed by the FTA for the annual report (see appendix B to 49 CFR Part 653 and Part 654), each covered contractor shall send a quarterly drug and alcohol testing report to the Transit Division Manager. The quarterly report must be submitted no later than the 15th of the month following the close of each quarter. Continued payment of contractor invoices by the CITY is contingent upon contractor submission of the required reports on a timely basis and compliance with FTA-mandated rules.

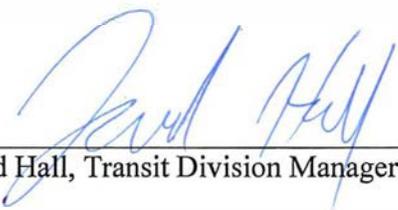
On an annual basis, and no later than February 15 of each year, each covered contractor shall submit to the Transit Division Manager annual drug and alcohol testing data using the appropriate FTA prescribed forms. The report shall cover testing conducted during the previous calendar year.

The Transit Division Manager shall be responsible for filing the contractor's annual reports with the FTA. The reports shall be submitted to the FTA no later than March 15 of each year.

The Transit Division Manager for each covered contract shall be responsible for the ongoing monitoring of contractor compliance with DOT/FTA regulations, including ensuring that the quarterly and annual reports as described above are submitted on time.

On an annual basis, the Transit Division Manager shall audit contractor compliance, which may include site visits.

The Transit Division Manager shall be responsible for coordinating contractor responses to the audit findings and ensuring the corrective actions are taken on a timely basis.



Jared Hall, Transit Division Manager

FTA CERTIFICATION FORMS

FORM

- 4A Certification of Restrictions on Lobbying
- 4B Certification Regarding Financial Contributions
- 4C Clean Air – Clean Water Certification
- 4D Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- 4E Disclosure of Lobbying Activities

Form 1.1.2: BUDGET PROPOSAL
 OPERATIONS AND MAINTENANCE
 Both Modes - Fixed Route and Paratransit

Instructions to Proposers: This Form 1.1.2 is to be used to submit the budget proposed for all work described in this RFP. The proposed budget must consist of fixed hourly costs, by mode of service, and fixed monthly costs. DO NOT ADD ADDITIONAL LINES TO FORM, EXCEPTING "OPTIONS" SECTION, IF

Base Years					Option Years		
Fiscal Year (FY19 means FY 18-19, July 2018 thru June 2019)	FY19	FY20	FY21	FY22	FY23	FY24	FY25
Variable Cost Per Hour: Fixed Route	\$ 31.48	\$ 33.06	\$ 34.33	\$ 35.57	\$ 37.05	\$ 38.16	\$ 39.26
Variable Cost Per Hour: Paratransit	\$ 29.90	\$ 31.40	\$ 32.61	\$ 33.78	\$ 35.19	\$ 36.25	\$ 37.30
Monthly Fixed Fee	\$ 63,896	\$ 63,080	\$ 64,933	\$ 66,567	\$ 67,761	\$ 69,473	\$ 71,545
Monthly Liability Insurance (General & Auto)	\$ 5,495	\$ 5,543	\$ 5,593	\$ 5,736	\$ 5,822	\$ 5,877	\$ 5,932
Total Monthly Fixed Cost (Fixed Fee + Insurance)	\$ 69,391	\$ 68,624	\$ 70,526	\$ 72,303	\$ 73,584	\$ 75,350	\$ 77,477
One-Time Start-Up Expenses							
Elements of Cost/Hour							
Operator Wages	\$ 20.75	\$ 21.74	\$ 22.49	\$ 23.22	\$ 24.13	\$ 24.74	\$ 25.34
Operator Benefits	\$ 10.22	\$ 10.78	\$ 11.29	\$ 11.78	\$ 12.33	\$ 12.81	\$ 13.30
Other Hourly Operating Costs (specify and list):							
1. Describe							
2. Describe							
3. Describe							
4. Describe							
5. Describe							
TOTAL MONTHLY COST PER HOUR	\$ 30.97	\$ 32.53	\$ 33.78	\$ 35.00	\$ 36.46	\$ 37.55	\$ 38.64
Elements of Monthly Fixed Fee							
General Manager Salary	\$ 6,375	\$ 6,567	\$ 6,764	\$ 6,967	\$ 7,176	\$ 7,391	\$ 7,613
General Manager Benefits	\$ 1,057	\$ 1,103	\$ 1,151	\$ 1,202	\$ 1,255	\$ 1,311	\$ 1,370
Safety & Training Supervisor/Road Sup. Salary	\$ 4,071	\$ 4,194	\$ 4,319	\$ 4,449	\$ 4,582	\$ 4,720	\$ 4,861
Safety & Training Supervisor/Road Sup. Benefits	\$ 386	\$ 396	\$ 407	\$ 418	\$ 429	\$ 441	\$ 453
Road Supervisor Salary	\$ 3,587	\$ 3,695	\$ 3,805	\$ 3,920	\$ 4,037	\$ 4,158	\$ 4,283
Road Supervisor Benefits	\$ 345	\$ 354	\$ 363	\$ 373	\$ 383	\$ 393	\$ 404
Dispatchers Salary	\$ 11,178	\$ 11,513	\$ 11,859	\$ 12,215	\$ 12,581	\$ 12,959	\$ 13,347
Dispatchers Benefits	\$ 1,090	\$ 1,119	\$ 1,148	\$ 1,178	\$ 1,210	\$ 1,242	\$ 1,275
Paratransit scheduling/dispatching software (lease)	\$ 1,887	\$ 1,915	\$ 1,966	\$ 1,923	\$ 1,980	\$ 2,040	\$ 2,101
Trapeze Self Service Trip Booking	\$ 121	\$ 125	\$ 129	\$ 133	\$ 136	\$ 141	\$ 145
Trapeze Text Notification	\$ 214	\$ 221	\$ 228	\$ 236	\$ 244	\$ 252	\$ 260
Subtotal (Monthly Operations)	\$ 30,313	\$ 31,207	\$ 32,140	\$ 33,011	\$ 34,013	\$ 35,046	\$ 36,111
Mechanic Salary	\$ 5,858	\$ 6,034	\$ 6,215	\$ 6,402	\$ 6,594	\$ 6,791	\$ 6,995
Mechanic Benefits	\$ 1,229	\$ 1,273	\$ 1,318	\$ 1,366	\$ 1,415	\$ 1,467	\$ 1,521
Fleet Technician Salary	\$ 3,559	\$ 3,666	\$ 3,776	\$ 3,889	\$ 4,006	\$ 4,126	\$ 4,250
Fleet Technician Benefits	\$ 858	\$ 890	\$ 924	\$ 960	\$ 997	\$ 1,037	\$ 1,078
Fueler/Washer/Utility/Bus Shelter Helper Salary	\$ 3,121	\$ 3,215	\$ 3,311	\$ 3,410	\$ 3,513	\$ 3,618	\$ 3,727
Fueler/Washer/Utility/Bus Shelter Helper Benefits	\$ 787	\$ 817	\$ 849	\$ 883	\$ 918	\$ 955	\$ 993
Other Salary 1- Describe							
Subtotal (Monthly Maintenance)	\$ 15,412	\$ 15,895	\$ 16,394	\$ 16,910	\$ 17,443	\$ 17,994	\$ 18,564
Non-Vehicle Insurance	\$ 324	\$ 334	\$ 344	\$ 354	\$ 365	\$ 376	\$ 387
Office Expenses	\$ 381	\$ 393	\$ 404	\$ 417	\$ 429	\$ 442	\$ 455
Uniform Expenses	\$ 255	\$ 262	\$ 270	\$ 278	\$ 287	\$ 295	\$ 304
Training Expenses	\$ 1,394	\$ 1,028	\$ 1,059	\$ 1,091	\$ 1,123	\$ 1,157	\$ 1,192
Incentives/Liquidated Damages	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Letter of Credit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contract Overhead- Describe	\$ 7,239	\$ 5,938	\$ 6,137	\$ 6,328	\$ 6,552	\$ 6,729	\$ 6,920
Other Expenses (specify):							
1. Mobile Eye Install	\$ 563	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
1a. Mobile Eye	\$ 459	\$ 459	\$ 459	\$ 409	\$ -	\$ -	\$ -
1b. Drive Cam	\$ 332	\$ 332	\$ 332	\$ 296	\$ -	\$ -	\$ -
2. Equipment Depreciation	\$ 402	\$ 402	\$ 402	\$ 336	\$ 270	\$ -	\$ -
3. Interest	\$ 642	\$ 596	\$ 560	\$ 523	\$ 499	\$ 494	\$ 494
4. Software & Cell Phone	\$ 276	\$ 284	\$ 292	\$ 301	\$ 310	\$ 320	\$ 329
5. Business Tax & License	\$ 67	\$ 69	\$ 72	\$ 74	\$ 76	\$ 78	\$ 81
6. Bus Passes	\$ 990	\$ 1,020	\$ 1,050	\$ 1,082	\$ 1,114	\$ 1,148	\$ 1,182
7. Employment Verification	\$ 372	\$ 383	\$ 395	\$ 406	\$ 419	\$ 431	\$ 444
8. Tool Allowance	\$ 50	\$ 52	\$ 53	\$ 55	\$ 56	\$ 58	\$ 60
9. Service Supplies	\$ 107	\$ 110	\$ 113	\$ 117	\$ 120	\$ 124	\$ 128
Profit	\$ 4,319	\$ 4,323	\$ 4,456	\$ 4,581	\$ 4,684	\$ 4,781	\$ 4,895
Subtotal (Contract Expenses)	\$ 18,172	\$ 15,984	\$ 16,399	\$ 16,646	\$ 16,305	\$ 16,433	\$ 16,870
TOTAL MONTHLY FIXED FEE	\$ 63,896	\$ 63,080	\$ 64,933	\$ 66,567	\$ 67,761	\$ 69,473	\$ 71,545

"Options" - Describe option (i.e. additional staff or software system) available in your proposal

2.							
3.							
4.							
5.							
6.							

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, Amy Barry, hereby certify on behalf of MV Transportation, Inc.
that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certificate is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Date Executed: January 17, 2018

SIGNATURE:  _____

Name/Title: Amy Barry, Assistant Secretary

ATTACHMENT 4-B

CERTIFICATION REGARDING FINANCIAL CONTRIBUTIONS

Certification to be executed by Proposer and each proposed first tier subcontractor whose subcontract exceeds \$100,000. Make additional copies of the Certification as necessary.

Proposer is responsible for collecting the Certification from each first tier subcontractor whose subcontract exceeds \$100,000 and submitting it along with its own Certification to RCTA with the proposal on the date proposals are due.

Proposer is advised that if all Certifications are not submitted on the date proposals are due, they must be submitted within five (5) calendar days thereafter. Failure to submit all Certifications within five (5) calendar days following the date proposals are due may render the proposal non-responsive. See instructions in the RFP for submitting Certifications after proposal due date.

The undersigned certifies that:

1. It will not make any monetary or in-kind contribution (including loans) to any RCTA Director, or any candidate for Director, from the date proposals are due until the award of the agreement.
2. It understands that the term "contribution" shall have the same meaning as defined in Government Code section 82015 and implementing regulations adopted by the Fair Political Practices Commission.
3. If Proposer is awarded the agreement, the undersigned shall continue to comply with this prohibition for three months following the award of the agreement.

Date: January 17, 2018

Name of Firm: MV Transportation, Inc

Signature: 

Print Name/Title: Amy Barry, Assistant Secretary

CLEAN AIR – CLEAN WATER CERTIFICATION

THIS CERTIFICATION APPLIES TO ALL CONTRACTS EXCEEDING \$100,000, INCLUDING INDEFINITE QUANTITIES WHERE THE AMOUNT IS EXPECTED TO EXCEED \$100,000 IN ANY YEAR.

The undersigned certifies that:

Clean Air Certification:

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clear Air Act, as amended, 42 U.S.C. §§7401, et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Water Certification:

- (1) The Contractor agrees to comply will all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Date: January 17, 2018

Name of Firm: MV Transportation, Inc.

Signature:  _____

Print Name/Title: Amy Barry, Assistant Secretary

ATTACHMENT 4-D

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

(Pursuant to 49 CFR Part 29, Appendix B)

- A. By signing and submitting this proposal, the Proposer is providing the signed certification set out below.
1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 2. The Proposer shall provide immediate written notice to RCTA if at any time the Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 3. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (49 CFR Part 29). You may contact RCTA for assistance in obtaining a copy of those regulations.
 4. The Proposer agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the department or agency with which this transaction originated.
 5. The Proposer further agrees by submitting this proposal that it will include the clause entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion”, as set out below in Subsection (B), in all subcontracts and in all solicitations for lower tier covered transactions as modified to identify the subcontractor.

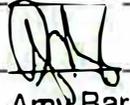
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under Paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

B. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

1. The Proposer certifies, by submission of this bid or proposal, that neither it nor its "principals," as defined at 49 C.F.R. § 29.105(p), is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. If Proposer is unable to certify to the statements in this certification, Proposer shall attach an explanation to this proposal.

Date: January 17, 2018

Name of Proposer: MV Transportation, Inc.

Signature: 

Print Name/Title: Amy Barry, Assistant Secretary

ATTACHMENT 3

SCHEDULE OF DBE

MV Transportation, Inc.

Name of Prime Contractor

Name of DBE	Street Address	City, State, Zip	Type of Work	Start/End Dates	Agreed Price
MV does not anticipate the use of DBE's in the provision of these services.					

The undersigned will enter into a formal agreement with Disadvantaged Contractors for work listed in this schedule conditioned upon the execution of a contract with the City of Petaluma.



 Name of Prime Contractor (signature) Amy Barry, Assistant Secretary

January 18, 2018

 Date

City of Petaluma Transit
Vehicle Roster 1/1/18

Petaluma Transit & Paratransit Fleet										Date:
										*Values to be updated annually or as buses in fleet are replaced
FIXED ROUTE FLEET										
VEH #	STATUS	YEAR	Manufacturer	Model	Length	Seats	FUEL	VIN #	Value*	W/C Spots
37	IN SERVICE	2011	Gillig	Gillig LF	29'	23	Diesel	15GGGE2718B1092152	\$ 95,687	2
38	IN SERVICE	2011	Gillig	Gillig LF	29'	23	Diesel	15GGGE271XB1092153	\$ 95,687	2
39	IN SERVICE	2011	Gillig	Gillig LF	29'	23	Diesel	15GGGE271B1092154	\$ 95,687	2
40	IN SERVICE	2011	Gillig	Gillig LF	29'	23	Diesel	15GGGE2713B1092155	\$ 95,687	2
33	IN SERVICE	2007	Gillig	Gillig LF	35'	34	Diesel	15GGGB2719T1077482	\$ 20,000	2
34	IN SERVICE	2007	Gillig	Gillig LF	35'	34	Diesel	15GGGB2710T1077483	\$ 30,000	2
35	IN SERVICE	2007	Gillig	Gillig LF	35'	34	Diesel	15GGGB2712T1077484	\$ 30,000	2
36	IN SERVICE	2007	Gillig	Gillig LF	35'	34	Diesel	15GGGB2714T1077485	\$ 30,000	2
41	IN SERVICE	1999	New Flyer	DLF-40	40'	38	Diesel	5FYD2LL04WU019306	\$ 14,048	2
42	IN SERVICE	1999	New Flyer	DLF-40	40'	38	Diesel	5FYD2LL05WU019301	\$ 14,048	2
43	IN SERVICE	1999	New Flyer	DLF-40	40'	38	Diesel	5FYD2LL03WU019300	\$ 13,434	2
31	IN SERVICE	2016	Gillig	Gillig LF	35'	34	DEH Hybrid	15GGGB3012G1186799	\$ 686,908	2
32	IN SERVICE	2016	Gillig	Gillig LF	35'	34	DEH Hybrid	15GGGB3012G1186800	\$ 686,908	2
44	IN SERVICE	2016	Gillig	Gillig LF	40'	40	DEH Hybrid	15GGGB3012G1186798	\$ 703,907	2
PARATRANSIT										
VEH #	STATUS	YEAR	Manufacturer	Model	Length	Seats	FUEL	VIN #	*Value	W/C Spots
Larger-Type II										
11	IN SERVICE	2013	Elkhart Coach	MG102	24	12	Gas	1DFDE4F59DDA50899	\$ 34,726	3
12	IN SERVICE	2010	ElDorado National	Aerotech	24	12	Gas	1DFDE4FL4ADA72376	\$ 10,617	3
13	IN SERVICE	2015	Elkhart Coach	MG102	24	11	Gas	1FDEE4FLOFDA08466	\$ 45,099	3
18	IN SERVICE	2017	Glaval	Universal	22	11	Gas	1FDEE4ES2HDC26567	\$ 76,614	3
19	IN SERVICE	2017	Glaval	Universal	22	11	Gas	1FDEE4ES7HDC24927	\$ 81,314	3
Smaller-Type I										
14	IN SERVICE	2011	ElDorado National	Aerotech	22	8	Gas	1FDEE3FS3BDA27086	\$ 15,995	3
15	IN SERVICE	2012	Elkhart Coach	MG101	22	8	Gas	1FDEE3FS3BDA27086	\$ 22,324	3
16	IN SERVICE	2012	Elkhart Coach	MG101	22	8	Gas	1FDEE3FLODDA62808	\$ 22,324	3
17	IN SERVICE	2015	Elkhart Coach	MG101	22	8	Gas	1FDC53FLOFDA09627	\$ 42,718	3
Shop Truck										
VEH #	STATUS	YEAR	MAKE	MODEL	Length	Seats	FUEL	VIN #	*Value	W/C Spots
3	shop truck	2002	Champion	Cut-a-way	22	6	Gas	1GBJG31G421166021	\$ 10,000	n/a

Cecilia,

Here is the additional insurance documentation from MV. A few notes to pass on per MV:

“These were updated to show the loss payee wording and address a few other items such as the excess coverage over the AL & GL policies.

Regarding the request for a separation of insureds endorsement- this is built into the standard ISO GL form so a separate endorsement is not required.”

Let me know if you have any questions.

Jared



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/08/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McGriff, Seibels & Williams of Oregon 1800 SW First Avenue, Suite 400 Portland, OR 97201	CONTACT NAME: PHONE (A/C, No, Ext): 503-943-6621 FAX (A/C, No): 503-943-6622 E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE NAIC #	
INSURED MV Transportation, Inc. and subsidiaries 2024 College Street Elk Horn, IA 51531	INSURER A :ACE American Insurance Company 22667	
	INSURER B :Gemini Insurance Company 10833	
	INSURER C :ACE Property and Casualty Insurance Company 20699	
	INSURER D :Indemnity Insurance Company of North America 43575	
	INSURER E :ACE Fire Underwriters Insurance Company 20702	
INSURER F :Lexington Insurance Company 19437		

COVERAGES **CERTIFICATE NUMBER:**HRLNPSTX **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			HDO G27874800	02/01/2018	02/01/2019	EACH OCCURRENCE	\$ 5,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$ 5,000,000
							GENERAL AGGREGATE	\$ 5,000,000
							PRODUCTS - COMPI/OP AGG	\$ 5,000,000
								\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED <input type="checkbox"/> NON-OWNED <input checked="" type="checkbox"/> AUTOS ONLY <input type="checkbox"/> AUTOS ONLY Excess of SIR			XSA H25155270	02/01/2018	02/01/2019	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			GVE100144803 G4686119A 001	02/01/2018	02/01/2019	EACH OCCURRENCE	\$ 20,000,000
							AGGREGATE	\$ 20,000,000
								\$
A D E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	WLR C64626139 (AOS) WLR C64626140 (AZ, MA) WCU C64626164 (CA, OH, WA) SCF C64626152 (WI)	02/01/2018	02/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
								\$
F	Auto Physical Damage			012-944-736	02/01/2018	02/01/2019	Each Occurrence	\$ 5,000,000
								\$
								\$
								\$
								\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
CITY, its officers, appointed and elected officials, agents, volunteers, and employees are named as an Additional Insured as respects the ongoing operations of the Named Insured with respects to General and Auto Liability coverage where required by written and signed contract subject to policy terms, conditions, limits and exclusions. Workers' compensation waiver of subrogation applies where required by written contract. The excess liability policy referenced above provides additional limits for the auto liability and general liability policies evidenced. Per the schedule of reported vehicles showing agreed values, the City of Petaluma is named a Loss Payee as pertains to the lease/rental of vehicles to the Named Insured while under its care, custody and control.

CERTIFICATE HOLDER

City of Petaluma
Attn: Transit Division Manager
555 N. McDowell Blvd.
Petaluma, CA 94954

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ENDORSEMENT #013

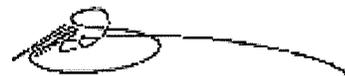
This endorsement, effective 12:01 AM, 02/01/2018
Forms a part of Policy No.: 012944736
Issued to: MV TRANSPORTATION, INC.
By: LEXINGTON INSURANCE COMPANY

LOSS PAYEES AND MORTGAGEES

This endorsement modifies insurance provided by the Policy:

It is understood and agreed that Mortgagees and Loss Payees are made a part of the Policy as their interest may appear as indicated per applicable certificates and/or schedules on file with the Company subject to the limitations and exclusions in the Policy.

All other terms and conditions of the Policy remain the same.



Authorized Representative

City of Petaluma Transit
Vehicle Roster 1/1/18

Petaluma Transit & Paratransit Fleet											
											*Values to be updated annually or as buses in fleet are replaced.
FIXED ROUTE FLEET											
VEH #	STATUS	YEAR	Manufacturer	Model	Length	Seats	FUEL	VIN #	Value*	W/C Spots	
37	IN SERVICE	2011	Gillig	Gillig LF	Transit Bus	29'	23	Diesel	15GGE2718B1092152	\$ 95,687	2
38	IN SERVICE	2011	Gillig	Gillig LF	Transit Bus	29'	23	Diesel	15GGE271XB1092153	\$ 95,687	2
39	IN SERVICE	2011	Gillig	Gillig LF	Transit Bus	29'	23	Diesel	15GGE2711B1092154	\$ 95,687	2
40	IN SERVICE	2011	Gillig	Gillig LF	Transit Bus	29'	23	Diesel	15GGE2713B1092155	\$ 95,687	2
33	IN SERVICE	2007	Gillig	Gillig LF	Transit Bus	35'	34	Diesel	15GGB271971077482	\$ 20,000	2
34	IN SERVICE	2007	Gillig	Gillig LF	Transit Bus	35'	34	Diesel	15GGB271071077483	\$ 30,000	2
35	IN SERVICE	2007	Gillig	Gillig LF	Transit Bus	35'	34	Diesel	15GGB271271077484	\$ 30,000	2
36	IN SERVICE	2007	Gillig	Gillig LF	Transit Bus	35'	34	Diesel	15GGB271471077485	\$ 30,000	2
41	IN SERVICE	1999	New Flyer	DLF-40	Transit Bus	40'	38	Diesel	5FYD2LL04WU019306	\$ 14,048	2
42	IN SERVICE	1999	New Flyer	DLF-40	Transit Bus	40'	38	Diesel	5FYD2LL05WU019301	\$ 14,048	2
43	IN SERVICE	1999	New Flyer	DLF-40	Transit Bus	40'	38	Diesel	5FYD2LL03WU019300	\$ 13,434	2
31	IN SERVICE	2016	Gillig	Gillig LF	Transit Bus	35'	34	DEH Hybrid	15GGB3012G1186799	\$ 686,908	2
32	IN SERVICE	2016	Gillig	Gillig LF	Transit Bus	35'	34	DEH Hybrid	15GGB3012G1186800	\$ 686,908	2
44	IN SERVICE	2016	Gillig	Gillig LF	Transit Bus	40'	40	DEH Hybrid	15GGB3012G1186798	\$ 703,907	2
PARATRANSIT											
VEH #	STATUS	YEAR	Manufacturer	Model	Vehicle Type	Length	Seats	FUEL	VIN #	*Value	W/C Spots
Larger-Type II											
11	IN SERVICE	2013	Elkhart Coach	MG102	Cut-a-way	24	12	Gas	1FDDE4FS9DDA50899	\$ 34,726	3
12	IN SERVICE	2010	EIDorado National	Aerotech	Cut-a-way	24	12	Gas	1FDDE4FL4ADA72376	\$ 10,617	3
13	IN SERVICE	2015	Elkhart Coach	MG102	Cut-a-way Ford E450	24		Gas	1FDDE4FL0FDA08466	\$ 45,099	3
18	IN SERVICE	2017	Glaval	Universal	Cut-a-way Ford E450	22	11	Gas	1FDDE4ES2HDC26567	\$ 76,614	3
19	IN SERVICE	2017	Glaval	Universal	Cut-a-way Ford E450	22	11	Gas	1FDDE4ES7HDC24927	\$ 81,314	3
Smaller-Type I											
14	IN SERVICE	2011	EIDorado National	Aerotech	Cut-a-way Ford E450	22	8	Gas	1FDDE3FS3BDA27086	\$ 15,995	3
15	IN SERVICE	2012	Elkhart Coach	MG101	Cut-a-way Ford E350	22	8	Gas	1FDDE3FS3BDA27086	\$ 22,324	3
16	IN SERVICE	2012	Elkhart Coach	MG101	Cut-a-way Ford E350	22	8	Gas	1FDDE3FL0CDA62808	\$ 22,324	3
17	IN SERVICE	2015	Elkhart Coach	MG101	Cut-a-way Ford E350	22	8	Gas	1FDCE3FL0FDA09627	\$ 42,718	3
Shop Truck											
VEH #	STATUS	YEAR	MAKE	MODEL	Length	Seats	FUEL	VIN #	*Value	W/C Spots	
3	shop truck	2002	Champion	Cut-a-way	22	6	Gas	1GBJG31G421166021	\$ 10,000	n/a	

POLICY NUMBER: HDO G27874800

Endorsement Number: 16

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
Any person or organization whom you have agreed to include as an additional insured under a written contract, provided such contract was executed prior to the date of loss.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

POLICY NUMBER: HDO G27874800

Endorsement Number: 29

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any person or organization whom you have agreed to include as an additional insured under a written contract, provided such contract was executed prior to the date of loss.	All locations where you are performing work for such additional insured pursuant to any such written contract.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

NON-CONTRIBUTORY ENDORSEMENT FOR ADDITIONAL INSURED

Named Insured MV Transportation, Inc.			Endorsement Number 28
Policy Symbol HDO	Policy Number G27874800	Policy Period 02/01/2018 to 02/01/2019	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**COMMERCIAL GENERAL LIABILITY COVERAGE****Schedule****Organization**

All persons or entities added as additional insureds through an endorsement with the term "Additional Insured."

Additional Insured Endorsement

(If no information is filled in, the schedule shall read: "All persons or entities added as additional insureds through an endorsement with the term "Additional Insured" in the title)

For organizations that are listed in the Schedule above that are also an Additional Insured under an endorsement attached to this policy, the following is added to Section IV.4.a:

If other insurance is available to an insured we cover under any of the endorsements listed or described above (the "Additional Insured") for a loss we cover under this policy, this insurance will apply to such loss on a primary basis and we will not seek contribution from the other insurance available to the Additional Insured.

POLICY NUMBER: HDO G27874800

2
Endorsement Number: 27

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization: Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

ADDITIONAL INSURED ENDORSEMENT

Named Insured MV Transportation, Inc.			Endorsement Number 8
Policy Symbol XSA	Policy Number H25155270	Policy Period 02/01/2018 to 02/01/2019	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

EXCESS BUSINESS AUTO COVERAGE FORM EXCESS TRUCKERS COVERAGE FORM

1. **WHO IS AN INSURED** (Section II) is amended to include any person(s) or organization(s) for whom you have agreed in a written contract to provide insurance but only for damages:
 - a. Which are covered by this insurance; and
 - b. Which you have agreed to provide in such contract.
2. The limits of insurance afforded to such person(s) or organization(s) will be:
 - a. The minimum limits of insurance which you agreed to provide, or
 - b. The limits of insurance of this policy
 whichever is less.

NON-CONTRIBUTORY ENDORSEMENT FOR ADDITIONAL INSUREDS

Named Insured MV Transportation, Inc.			Endorsement Number 10
Policy Symbol XSA	Policy Number H25155270	Policy Period 02/01/2018 TO 02/01/2019	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

EXCESS BUSINESS AUTO COVERAGE FORM

Schedule

Organization

All persons or entities where there is a contractual requirement for a Named Insured's auto policy to respond on either a primary or non-contributory basis, subject to satisfaction of the "retained limit".

For organizations that are listed in the Schedule above that are also an Additional Insured under an endorsement attached to this policy, the following is added to the Other Insurance Condition under General Conditions:

If other insurance is available to an insured we cover for a loss we cover under this policy, this insurance will apply to such loss and is primary (subject to satisfaction of the "retained limit"), meaning we will not seek contribution from the other insurance available to the Additional Insured. Your "retained limit" still applies to such loss, and we will only pay the Additional Insured for the "ultimate net loss" in excess of the "retained limit" shown in the Declarations of this policy.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

Named Insured MV Transportation, Inc.			Endorsement Number 9
Policy Symbol XSA	Policy Number H25155270	Policy Period 02/01/2018 to 02/01/2019	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

**EXCESS BUSINESS AUTO COVERAGE FORM
EXCESS TRUCKERS COVERAGE FORM**

We waive the right of recovery we may have against the person or organization shown in the Schedule below because of payments we make for injury or damage arising out of the use of a "covered auto". The waiver applies only to the person or organization shown in the Schedule.

SCHEDULE

Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.

RECOVERY FROM OTHERS

Named Insured MV Transportation, Inc.			Endorsement Number 2
Policy Symbol WCU	Policy Number C64626164	Policy Period 02/01/2018 to 02/01/2019	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

Specific Excess Workers Compensation and Employer's Liability Policy

Solely with respect to a written contract with the organization named in the Schedule below, the final paragraph of **I. Recovery From Others** in **PART SIX - CONDITIONS** is deleted and replaced with the following:

In the event of any payment under this policy for a Loss for which you have waived the right of recovery in a written contract entered into prior to the Loss, we hereby agree to also waive our right of recovery but only with respect to such Loss and only for the organization named in the Schedule below.

SCHEDULE

Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.

This endorsement does not apply to policies in Missouri where the employer is in the construction group of classifications.



DATE: August 8, 2022

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Heather Hines, Interim Community Development Director
Ingrid Alverde, Director of Economic Development and Open Government
Christina Paul, Principal Policy Planner

SUBJECT: Presentation from the Sustainable Design Assessment Team on findings and recommendations regarding 15-minute neighborhoods and livable streets

RECOMMENDATION

It is recommended that the City Council receive a presentation from the Sustainable Design Assessment Team summarizing their study, findings, and recommendations related to the concept of 15-minute neighborhoods and livable streets.

No action will be taken by the City Council.

BACKGROUND

The Sustainable Design Assessment Team (SDAT) is a community design program run by the American Institute of America since 1967. The program is grounded in key tenets that each community represents a unique place that is the product of its own history, tradition, and evolution, that successful community strategies require whole-system, integrated analyses and working together for the common good, and that Community development requires collective public work that encourages civic leadership, empowers resident partnership, and strives to build a platform for cross-sector collaboration.

To this end, the primary goals of the SDAT program include:

- Use citizen-driven community involvement in development processes, providing a new way of working together.
- Identify the community's values and vision for the future.
- Focus on a particular project, listening to the community's concerns and ideas.
- Develop a strategy and set of actions to realize that vision.
- Relate concepts to current practices and priorities of the community.

More detailed information about the SDAT program is outlined in the AIA SDAT Program Guide at Attachment 1.

In 2019 a group of community members applied for a SDAT program grant and was one of eight US communities awarded the grant from the AIA. The award provided pro-bono multi-disciplinary design assistance equivalent to approximately \$180,000 to explore a community driven design process specifically for Petaluma. Due to COVID the project has been on hold but reinitiated in 2022 with a revised focus on the concept of 15-minute neighborhoods.

Given Petaluma's commitment to carbon neutrality by 2030, as well as the vision articulated in the Climate Emergency Framework, and General Plan, the local SDAT steering committee along with AIA representatives developed a Petaluma specific focus on complete, 15- minute neighborhoods and complete, living streets. More specifically, the concept of the 15-minute neighborhood recognizes that people of all ages and abilities should have safe and convenient access to the goods and services, they need in daily life, within a short walk or bicycle ride. This includes:

- A variety of housing options
- Slow, safe, bike and pedestrian friendly streets
- Neighborhood retail: grocery stores and other commercial services
- Restaurants and event spaces
- Community gardens
- Quality public schools
- Public open spaces, parks, and recreational facilities
- Affordable public transportation options
- Civic amenities

As part of this focus, the SDAT steering committee sought to utilize the opportunity of the SDAT grant award to think freely and build a new understanding of what is possible and needed in today's environment, create human connections that open dialogue, and be creative and have fun in the process.

The desired outcome of the SDAT Petaluma process is to explore 15-Minute Neighborhoods and Living Streets through the lens of the Climate Emergency Framework and General Plan Vision, including the following take aways:

- Create a vision for Complete 15-minute Neighborhoods and Living streets in Petaluma.
- Design a 15-minute Neighborhood/Living Streets strategy and "template" that can be implemented city-wide, including recommendations for supporting policy, zoning changes and actions.
- Identify high-impact short-term (quick-build) projects, longer-term projects, goals, and metrics, and potential funding sources.
- Integrate these efforts with the General Plan, Active Transportation Plan and Climate Action Plan.

DISCUSSION

The SDAT Petaluma process followed the standard SDAT process template and kicked off on March 25, 2022, with an all-day meeting with AIA representatives, local SDAT steering

committee, and key stakeholders. The purpose of the meeting was to tour Petaluma, gather local information, and learn about the proposed project scope.

The AIA put together a multi-disciplinary team of experts specific to the Petaluma project. Each of these team members provides unique skills and expertise to touch on aspects of the Petaluma effort specifically. The SDAT panel for the Petaluma project includes the following individuals and background:

- **Michael R. Davis, FAIA, LEED AP**, Principal and President at Bergmeyer Associates, Inc., is a practicing architect and an advocate for sustainable public policy. He was 2013 President of the Boston Society of Architects and 2015-2016 Chair of the Board of Trustees of the BSA Foundation. For the American Institute of Architects, Mike currently serves as Advocacy ambassador for the National AIA Committee on the Environment and as a newly appointed member of the AIA Board Government Advocacy Committee. He participated on a national AIA Materials Knowledge and Transparency working group and was a contributing author for an April 2016 AIA sustainability white paper, “Materials Transparency and Risk for Architects”. Mike has participated on or led AIA Sustainable Design Assessment Team (SDAT) and Sustainable Design for Resilience Team (DART) charrettes in Ithaca, NY, DeKalb County, GA, Augusta, GA, Tremonton, UT, St. Helens, OR, Louisville, KY, and Bath, ME, as well as the AIA’s first International R/UDAT charrette in Dublin, Ireland. Mike’s recent professional projects include a modular student residence hall at Endicott College, a LEED Certified facility for Hosteling International Boston in an adaptively-reused historic building, and a deep-energy retrofit of public housing units for the Boston Housing Authority at the Cathedral Family Development, which achieved LEED Platinum certification. He blogs about his firm’s work as signatory to the AIA 2030 Commitment at <http://mikedavisfaia.wordpress.com>. Mr. Davis advised the Boston Planning and Development Agency as a Member and Chair of the Boston Civic Design Commission from 1996 to 2018 and served on Boston Mayor Thomas Menino’s Green Building Task Force and Massachusetts Governor Deval Patrick’s Net Zero Energy Building Task Force. He holds a Bachelor’s Degree in Architecture from the Pennsylvania State University and a Master of Architecture from Yale University
- **Mariam Yaqub** is an Architectural Designer at Bergmeyer, a multi-disciplinary design collaborative with offices in Boston and Los Angeles. She came to Bergmeyer’s Boston office with work experience in Rochester and Binghamton, NY, Providence, RI and Islamabad, Pakistan. During her time in Rochester, Mariam volunteered at Community Design Center Rochester (CDCR), where she is currently a board member. She continues to promote the creation of vibrant, equitable and resilient communities by engaging, educating, and empowering stakeholders in crafting purposeful design. She believes the built environment plays an essential role in shaping communities through placemaking, walkability and inclusivity. She completed her B.Sc. Arch and M.Arch degrees from Roger Williams University in Bristol, RI during which she was a recipient of two architecture scholarships AIA Rhode Island and Raj Saksena. Her Graduate Thesis “Open-Source Architecture: Redefining Residential Architecture in Islamabad” won the RWU Thesis Award.

- **Dr. Luis Aguirre-Torres** is the Director of Sustainability for the City of Ithaca, N.Y., where he leads the city's decarbonization and climate justice strategies. He is also co-chair of the New York State Climate Impacts Assessment, Society and Economy. Prior to joining the City of Ithaca, he was the President and CEO of GreenMomentum, a think tank organization focused on climate change and renewable energy in Latin America. He is the former chairman of the Latin American and Caribbean Council on Renewable Energy and former energy chair of the Mexico-US Entrepreneurship and Innovation Council. He holds a first degree in computer engineering from Mexico's National University, a master's in computer science and a Ph.D. in electronic and electrical engineering from University College London.
- **Abe Farkas** is a highly sought-after national leader in managing catalytic, sustainable, and equitable development projects. He has three decades of experience shepherding large, complex projects from an idea to reality utilizing public-private partnerships. His past projects include the adaptive reuse of vacant Washington High School in Portland OR into creative office, music venue, community theater and rooftop bar; a 33-acre development on Portland's South Waterfront that includes a major university research hospital expansion, mixed-use, housing and neighborhood open spaces served by a streetcar, aerial tram, and light rail; and a 118-acre redevelopment on Southshore in Austin TX, which is under construction. Abe's experience on both the public and private side of development projects gives him the ability to maximize the community benefit components of projects and achieve financially feasible outcomes. Evidence of his successful past work is visible across the country in the form of vibrant, catalytic, mixed-use projects in communities large and small. Previously, Abe served as Director of Development Services for ECONorthwest, Development Director for the Portland Development Commission, Planning and Development Director for Eugene, Economic Development Manager for Seattle, and Community Development and Planning Director for Fort Wayne. Abe has a Ph.D. in American Studies from University of Minnesota and a M.A. in American Studies from Purdue University. He has served on the board of the International Economic Development Council (IEDC) and on several advisory boards for the Urban Land Institute (ULI).
- **Aida Curtis** is a practicing Landscape Architect, Arborist, and certified Landscape Inspector. She has led Curtis + Rogers Design Studio in Miami for three decades. Long focused on innovation and sustainability, her firm works primarily on urban public projects. Aida's over 35 years of experience includes award-winning transportation, recreational, institutional, and civic projects. Leading the go-to Hispanic/Woman-owned landscape architecture firm in South Florida has allowed her to create sustainable spaces that are economically and socially inclusive. Aida's commitment to environmental stewardship, sustainable development and resilient landscapes has benefitted hundreds of successful municipal, department of transportation and civic projects.
- **Trung Vo** is a planner and engineer who focuses on building multimodal transportation systems to advance equity, public health, quality of life, and mobility. He works across the spectrum of project development to ensure that streets are planned, designed, and maintained to be safe, comfortable, and inviting for people of all ages, abilities, and

backgrounds. He also serves as the Director for Toole Design’s Denver office, partnering with communities in Colorado and across North America.

The SDAT panel will be in Petaluma starting Friday, August 5, 2022 through Monday, August 8, 2022, to conduct community engagement throughout the City and including a community workshop being held on the Fairgrounds property. This event has been well publicized, and the steering committee is anticipating the event will be well attended. In addition to the community meeting, the SDAT panel will be meeting with a diverse group of Petaluma stakeholder, including business owners, nonprofits, city staff, elected officials, and faith-based groups.

The culmination of the SDAT program in Petaluma is a presentation to City Council and the community at the special meeting of the City Council on August 8, 2022 at 6:00 p.m. The panel will verbally present their findings and recommendations. There is no action or adoption, rather the findings and recommendations become a tool for the City to utilize in future policy discussion. Particularly pertinent will be the feedback into the City’s General Plan update process which is currently underway.

Within three months of the final presentation AIA will create a report of the panel’s findings and recommendations that will be available to the community.

PUBLIC OUTREACH

Public outreach for the SDAT program in Petaluma has been overseen by the Petaluma SDAT Steering Committee. There has been a range of opportunities for stakeholders to get involved in the SDAT process, including both targeted interviews and the upcoming community workshop.

The SDAT steering committee presented at a Know Before You Grow community forum in June 2022 and has made presentations to other community groups, including the General Plan Advisory Committee. A community survey was prepared and publicized on the City’s website and in the community update to gather feedback prior to the community workshop.

COUNCIL GOAL ALIGNMENT

The SDAT process and discussion of 15-minute neighborhoods and living streets overlap in several of the City Council’s goals for 2021-2023, including:

- **“Environmental Legacy”** which seeks to preserve and protect Petaluma’s environment for future generations and become a municipal leader in sustainability by protecting our river and open space; reducing and drawing down greenhouse gas emissions; and encouraging sustainable development.
- **“A City that Works”** which seeks to ensure a fiscally and organizationally sustainable City that is innovative and efficient; provides valued services promptly and professional; engages the community, and proactively funds, designs, installs and maintains City infrastructure that is safe, functional, and sustainable and serves the needs of our residents.

- “**Spaces and Places**” which seeks to create inviting natural and built places and spaces for contemplation, play, arts, and connection while celebrating our history and encouraging community pride.

CLIMATE ACTION/SUSTAINABILITY EFFORTS

As discussed above, the focus on the 15-minute neighborhood and living streets was rooted in the City’s commitment to climate neutrality by 2030 and the direction adopted in the Climate Framework. The concept of the 15-minute neighborhood addresses many of the priorities in the Climate Framework, including topics around equity and climate justice, mitigation and sequestration, adaptation and social resilience, and community engagement.

The findings and recommendations from the SDAT process are anticipated to be a feedback loop for the General Plan Update which is also rooted in the city’s commitment to climate action and sustainability.

ENVIRONMENTAL COMPLIANCE

The SDAT presentation is not an action item and therefore is not a project under the California Environmental Quality Act.

FINANCIAL IMPACTS

The costs associated with the SDAT process were funded through a grant award from AIA. The City of Petaluma committed to a \$5,000 local match to demonstrate community support for the effort. No additional costs are borne by the City.

ATTACHMENTS

1. SDAT Program Guide

SUSTAINABLE DESIGN ASSESSMENT TEAM





Contents

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The American Institute of Architects Sustainable Design Assessment Program

What is a Design Assistance Team (DAT)?

Since 1967, the American Institute of Architects (AIA) has run Design Assistance Team (DAT) programs. These are results-driven community design programs based on the principles of interdisciplinary solutions, objectivity, and public participation. The programs combine local resources with the expertise of a multidisciplinary team of nationally recognized professionals who volunteer their time to identify ways to encourage desirable change in a community.

The team visits a community for three to four intense, productive days. The process is fast-paced, exciting, and energizing. This approach—which can address social, economic, political, and physical issues—offers communities a tool that mobilizes local support and fosters new levels of cooperation. The DAT programs have used this grassroots approach across the nation to help create communities that are healthy, safe and livable, as well as more sustainable.

In 1967, AIA launched the Regional/Urban Design Assistance Team (R/UDAT) to focus on community design problems. In 2005, AIA expanded its efforts with the Sustainable Design Assessment Team (SDAT) to focus on community efforts to increase sustainability. The DAT programs are offered to communities as a public service of the AIA. More than 500 professionals representing more than 30 disciplines have donated over \$3.5 million in services as members of DAT teams.

SDAT PROGRAM PRINCIPLES

The SDAT program relies on three simple tenets: multidisciplinary expertise, objectivity, and public participation. Combined, these three tenets provide communities with

- **Customized Design Assistance.** Each SDAT is designed as a customized approach to community assistance which incorporates local realities and the unique challenges and assets of each community.
- **Objective Technical Expertise.** The SDAT Team is assembled to include a range of technical experts (planners, architects, economists and others) from across the country. Team members do not accept payment for services in an SDAT. They participate in a volunteer capacity on behalf of the AIA and the partner community. Additionally, team members are required to refrain from accepting business in a partner community for at least one year following the SDAT project. As a result, the SDAT Team has enhanced credibility with local stakeholders and can provide unencumbered technical advice.
- **Inclusive and Participatory Processes.** 40 years of experience in community design assistance has shown that public participation is the foundation of good community design. The SDAT involves a wide range of stakeholder viewpoints and utilizes short feedback loops, resulting in sustainable decision-making that has broad public support and ownership.
- **Results.** The SDAT combines multidisciplinary expertise with highly interactive, participatory public involvement processes to condense normal planning tasks (which typically take months) into a three-day period. The intense process and compressed schedule allows a community to capitalize on SDAT information quickly and build momentum for implementation of its plan. The SDAT includes the delivery of a formal report and recommendations as well as a follow up assessment.

WHAT IS THE STRUCTURE OF THE SDAT PROCESS?

The DAT process is flexible, but typically has four parts or phases, some of which may overlap:

Phase 1: Getting Started and Applying

The SDAT program issues a formal Request for Proposals once a year. A local leader or citizen calls the AIA and asks for help and information, initiating a conversation between the AIA and local leaders. AIA staff will work with the community from project conceptualization to a formal application for AIA assistance. The community forms a steering committee that represents a cross-section of residents, local government agencies, businesses, institutions, and community groups. This committee gathers community support and prepares an application. Upon review and approval of the application, the AIA makes a formal commitment to your community.

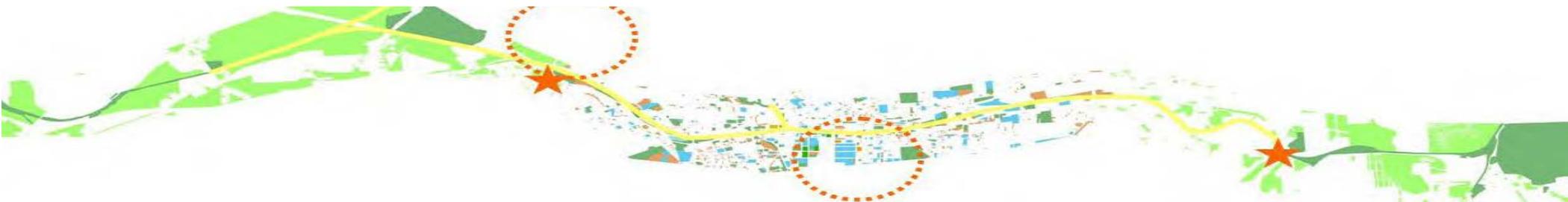
Phase 2: Preliminary Visit

An AIA staff person and the DAT team leader selected by the AIA conduct a 1-1.5 day long preliminary visit to the recipient community to tour the project area and surrounding community and to meet with the steering committee. This visit introduces the leader to the community and its concerns and sparks broader community interest and participation in the process. The preliminary visit is relatively informal and does

not require extensive meetings with all of the interested stakeholders; the primary goal of the preliminary visit is to establish the topical areas of focus for the project. At the conclusion of the preliminary visit, preparations begin for the full team visit, including logistical plans (meeting locations, team work space, plans for publicizing the event, etc.) as well as team member compilation by the team leader and AIA National staff.

Phase 3: Full Team Visit

The team leader and AIA National Staff select a multidisciplinary team of five to seven professionals who visit the community for three (SDAT) intense, productive days. After viewing both the study area and the surrounding community and listening to the concerns and ideas of residents, interested groups, and community leaders, the team prepares a summary presentation of its findings that is presented in a public meeting on the last day. A final report is created and provided to the community. This report is typically provided approximately two to four months after the team visit (SDATs), and is provided to the community in electronic form as well as posted to the AIA website.



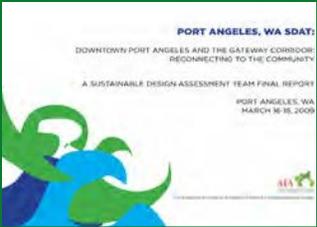
Phase 4: Implementation

The community begins implementation by analyzing the team recommendations, identifying priorities, preparing an action plan, and undertaking immediate objectives. SDAT team members are available to answer questions or offer advice throughout the implementation phase, and provide follow-up through evaluating progress to date and advising the community on opportunities to improve the effectiveness of its implementation efforts after a year or more since the full team visit has passed.

DAT PARTICIPANTS

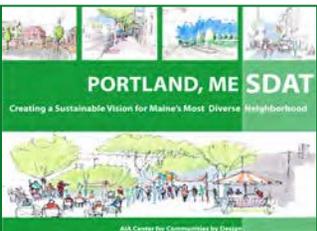
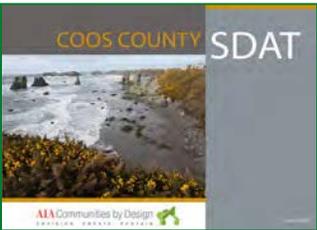
- **Local steering committee:** Committee of community members formed to manage the community obligations of the SDAT. This committee must include members of the diverse stakeholder groups.
- **SDAT team leader:** The team leader is a professional with substantial SDAT experience who will select and lead the team assigned to a particular SDAT effort.
- **AIA Staff:** AIA representatives who guide the AIA's participation in the SDAT process from the pre-application through implementation phases.
- **SDAT team:** A group of multidisciplinary professionals selected to assist a community during the SDAT process. All team members, including the team leader, volunteer their time and professional expertise.
- **Implementation committee:** Committee of community members formed to manage the implementation of the DAT recommendations. Some or all of these individuals may have served on the steering committee as well.
- **Community Members:** The success of the SDAT is dependent upon the involvement of an inclusive and wide-ranging spectrum of community members and residents in order to ensure decision-making that has broad public support and ownership and that is representative of the community as a whole.





WHAT ARE THE RESULTS OF THE DAT PROCESS?

SDATs have led to new construction and development, new public agencies and organizations, new parks and open space, new zoning ordinances, political change, affordable housing, commercial and economic revitalization, preservation of historic districts, landmark preservation, pedestrian systems, comprehensive plans, changes in growth patterns, and cessation of inappropriate development.



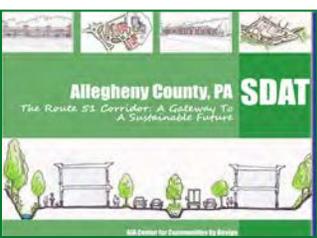
Tangible products include:

- A coherent description of the community's condition and the challenges that must be addressed. This statement, generated by the steering committee during the application process, is frequently a community's first citizen-based self-analysis.
- A professional report that both examines the community's concerns and aspirations and recommends a vision for the future, specific action items, and timetables for implementation.
- Continued guidance and advice from the team and AIA staff as the community moves forward with implementation.



Intangible products frequently include:

- A new or renewed sense of purpose and direction
- An objective look at the community
- Increased energy and commitment



- New levels of cooperation and collaboration throughout the community
- Consensus on community concerns
- Improved communication networks throughout the community

PROGRAM COSTS

The Sustainable Design Assessment Team is not a traditional grant program. Awarded communities receive pro bono services through the program, and the AIA commits to funding up to \$15,000 for each project to cover team expenses. Recipient communities are required to make a one-time payment of \$5,000 to the AIA as a cash match to the program. They are also required to cover any costs above the \$15,000 ceiling should cost escalations occur.

Most communities raise additional funds or secure in-kind donations in order to cover local costs associated with project implementation (public outreach materials, meeting and facilities, etc).

The community is often able to provide in-kind contributions of meeting and work space, meals, or other direct out-of-pocket expenses typically covered by AIA. Generally, the cash match covers team travel to the site, lodging, living expenses, and report production. All of the team's time is donated.

Experience has shown that the best way to create broad community support is to ask everyone to contribute rather than relying on one major funding source. Funding and donations should ideally come from a variety of public and private sources, which might include businesses, local governments, nonprofits, foundations, organizations

such as the chamber of commerce, arts councils, the local AIA component, and other community groups and individuals.

COMMON PITFALLS TO AVOID

No process can be error-free, but avoiding the common pitfalls listed below can help ensure success.

- 1. Inadequate or inaccurate information** - Inadequate and inaccurate information (either in the information package or during the SDAT team visit) will result in unnecessary time spent on background research and less time for problem solving.
- 2. Insufficient representation and participation at open public hearings** -The team will have inadequate information about the community and will not hear from citizens who may have the most at stake.
- 3. Insufficient local support** - If elected officials or community leaders are not actively involved in the local steering committee process or are not available during the visit, implementing an action plan is difficult if not impossible. Poor citizen attendance discourages team members and limits their access to information. Insufficient public interest in the process will hinder communication and long-range success.
- 4. Uninvolved movers and shakers**- If the individuals who are critical to the implementation of a plan are left out or are apathetic, the best intentions will be thwarted.
- 5. Logistical failures of equipment or people** – Malfunctioning printers, copiers,

scanners, or projectors may result in frustration and inhibit productivity; mismanaged schedules waste time and limit team access to essential resource people; and equipment breakdowns delay production.

- 6. Well-intentioned disruptions** - Too many social events during team visits, inappropriate interruptions, and local people who become overly involved and attempt to act as team members or who have their own agendas can all hinder the efficiency of the process.
- 7. Insufficient funds or underbudgeting** - The project will not proceed until the community can meet their local cash match. Timing the DAT so that it is not delayed by fundraising will allow the process to go more smoothly.
- 8. Inadequate media coverage** - Media coverage is critical to the success of the DAT in terms of increasing both public participation in the process and public awareness of the recommendations made in the report.
- 9. The noble champion** - If one person on the steering committee tries to do all the work, the inclusive collaboration that is the key to success will be lost.



SDAT PHASES

Phase 1: Getting Started

The first phase of the SDAT process introduces the community to the program. The focus of this phase is preparation of the application, which is a critical aspect of the SDAT experience. Ideally, one person should not do all the work. The SDAT process is inclusive, and this is the time to begin making connections within the community that will provide the support needed to sustain the entire four-phase process.

Because they are underwritten by AIA, Sustainable Design Assistance Team projects are selected on a competitive basis among communities. Each fall, applications are submitted to AIA, who then selects the projects for the following year.

- 1. Call or write the AIA** - DAT program staff can provide resources and contacts to help you decide whether a DAT is right for your community. Staff can be reached at (202) 626-7492, or at communitiesbydesign@aia.org.
- 2. Establish a steering committee**- The steering committee is made up of a variety of local people who have made a commitment to the SDAT process—community leaders who can get things done. Committee members might come from the chamber of commerce, Main Street programs, municipal planning and development office, downtown associations, public-private partnerships, nonprofit community development corporations, developers, banks, local businesses, professional firms or organizations, and community groups. Be sure to contact your local AIA component at the earliest stage. (Call us if you don't know how to contact your component.) The committee must be large enough to get the work done. The size and structure of the steering committee depend

on the needs and resources of the community. The first—and ongoing—task of the steering committee is to stimulate enthusiasm and support for the program in the community. Interest must be solicited from all corners— from banks to city hall, from neighborhood groups to the media. Through conversations with community stakeholders, the committee will gain greater understanding of local problems and begin to see the potential in bringing together diverse groups in the community. The steering committee will decide when and if to formally apply for a DAT.

- 3. Prepare the application**- When the preparation of your application, please see the AIA Communities by Design webpage. AIA staff will also help guide you through the application process.
- 4. Evaluation of Application** - The AIA will send a letter or email to the steering committee notifying them of the status of the application. If the application is approved, the AIA will also send a short memorandum of understanding outlining the responsibilities of the AIA and the community during the SDAT process.

Phase 2: Getting Organized

The second phase of the DAT process is critical to preparing the community for the DAT team visit. This is when resources are gathered that will be crucial to the team's understanding of your community and thus to its ability to work effectively. Use this time to generate excitement about the process and encourage broad community participation—the keys to ensuring a positive future for your community.



1. Expanding the steering committee-The steering committee will create continuity and inclusiveness throughout the DAT process. The steering committee must work hard to make sure key groups are involved in the process:

- o **Citizens:** Citizen participation is a cornerstone of the DAT process. Citizens have often revealed problems not apparent to the decision-making sector and DAT teams have, on occasion, rejected directives from the establishment that seemed to conflict with the needs of the people of the community. The steering committee should be sure to involve citizens and community groups not usually engaged in the political process. Citizens who are affected directly or indirectly by development issues may not turn up at a meeting without encouragement.; the steering committee will need to identify these groups and solicit their participation in the public sessions.

- o **Public officials:** Local elected leaders must recognize the potential of the SDAT process and agree to participate. Public officials and agencies should be encouraged to pool data, collaborate, and work supportively before and after DAT visits. Including some of the leaders who can most effectively encourage the participation of their peers on the steering committee is generally a good idea.

- o **Stakeholders and opinion leaders (movers and shakers):** Identify now those people who are key to the eventual implementation of an action plan. If these people are not key members of the steering committee, devise a process (e.g., an advisory council, informational lunches, briefing sessions.) that will promote their interest in the DAT effort. These people must have a sense of ownership in the process if they are to help you achieve results.

2. Selection of a team leader- The AIA will select your team leader based on the needs of your project. Team leaders have extensive professional experience and bring special skills to the process, including leadership, sensitivity, an understanding of community development, and an ability to orchestrate the action.

3. Preliminary visit - The team leader, accompanied by AIA National staff, will make a 1-1.5 day visit to your community. During the visit, the team leader will tour the community in the company of the steering committee members and meet with the steering committee, selected community leaders, planning and/or economic development officials, and representatives of the local AIA component. It is not necessary to meet with all of the potential SDAT stakeholders at this time; a concise selection will suffice for the preliminary visit. The preliminary visit should be a relatively informal informational visit; the full team visit is the proper forum for the concerted effort. The team leader and the steering committee will discuss the agenda for the full team visit at this time. A detailed discussion of logistics—including options for the work space and community meeting locations—will occur. The team leader and AIA staff will

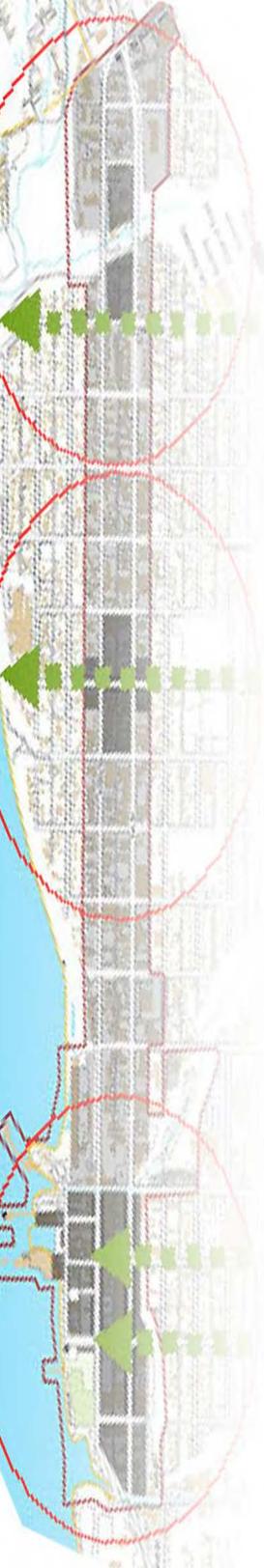
use the visit to assess the areas of expertise that should be represented on the team.

- 4. Local AIA component-** Be sure to ask your local or state AIA component for help. Component members are likely to include architects and allied professionals who are familiar with the process and eager to participate. Local AIA members can help you with organizational, logistical, and technical issues and frequently serve as a valuable resource to the team.
- 5. Setting a date for the team visit-** The visit should not be scheduled in conjunction with any other local conference, meeting, or event. Experience has shown that these dilute the effectiveness of a DAT, which works best when it is the “only show in town.” Consider the implications of other significant events such as elections and the timing of other studies or public initiatives.
- 6. Team selection-** Your team leader and AIA staff will select team members who match the needs of your community. The all-volunteer team will consist of highly skilled professionals representing a variety of disciplines.
- 7. Student Participation-** Architecture students and students in related disciplines can be an important part of the team visit. Performing assignments in support of the team’s work, they can contribute to a more complete report. The heads of participating school(s) of architecture or planning should be asked to recommend their most talented students. The criteria for student participation are the students’ understanding of the principles of urban design and planning and a talent for drawing computer graphics. Students must have the ability to work intensely in collaboration with others. Their specific roles will vary with

their skills and experience and can be a major learning experience. The team leader will determine the number of students required and their disciplines; selections are at the leader’s discretion. The students will serve under the direction of the team leader.

- 8. Media and public relations-** An effective media plan is essential to success. A media and public relations subcommittee should refine the details of the media plan and begin to implement items that will continually promote community awareness and enthusiasm.
- 9. Budget-** The community’s \$5,000 cash match is due with the signing of a Memorandum of Understanding with the AIA. Remember that team members donate several days of their professional and personal time to serve on a SDAT team and their only compensation is the intellectual stimulation of the experience. Because of this, they should be treated as highly regarded guests, and the budget should provide for comfortable, convenient travel arrangements and accommodations. As such,





in-kind contributions may be used to both encourage community buy-in and defray hard costs throughout the project. Many budgeted items may be donated by local organizations, including meals, vans, meeting & work space, and work materials.

10. Preparing the information package – The AIA will provide the community with access to an FTP site. The community should upload any information that might prove helpful to the team as background information on the community, including but not limited to previously completed reports, planning documents, website links, and maps.

Phase 3: Team Visit

The focus of the SDAT process is the team visit. This is an exciting time for the community. Broad citizen participation and media attention, combined with the energy and commitment of the team, can inspire a community with newfound confidence and optimism, which will fuel the implementation phase of the process.

1. Schedule- A detailed schedule should be developed in collaboration with the team leader. Sample agendas for both preliminary and full team visits can be found later in this document. Each DAT will be different, based on the community's needs and resources. An SDAT is typically held over three days during the work week, preferably adjacent to a weekend so that volunteers can limit the number of days they need to take off from work as

much as possible.

- 2. Team introduction** – Since each SDAT team is tailored to the needs of the individual communities, most SDAT team members have never worked with each other before. The team typically arrives the evening before the formal SDAT begins. The national team members will likely meet for a dinner to become acquainted and prepare for the SDAT.
- 3. Team tours**- It is important to provide the team with a good sense of the entire community. Team tours are often conducted using a number of combinations, including bus, foot, and air tours.
- 4. Interviews with community leaders and resource people**- The team will meet with many diverse groups and stakeholders. In order to make the most of their limited time in the community, team members will break into concurrent stakeholder groups that are organized by topical subjects. Those subject matters will be established well before the full team visit, and team members will be chosen based upon their expertise and knowledge of the pertinent subject matter. The steering committee should coordinate the interviews well in advance, and proposed schedules should be reviewed with the team leader. Careful scheduling is important to avoid overwhelming the team or the meeting space and to conserve people's time. Each National Team Member will direct the conversation at their specific stakeholder session. Having student or steering committee volunteers available to take notes on large pads and easels so that the team members can focus on the conversation is very helpful. Interviews with such groups are best held in a setting that will encourage informal, candid

conversation. Team members may wish to talk again with individuals who have appeared, so it is important to make sure of their availability and to keep a record of those who attend, along with their telephone numbers or email addresses.

Groups that should be represented include:

- o Mayor and city council (or your community’s equivalent)
- o Planning board and its key staff
- o Municipal agencies and authorities (transit, housing, public works, economic development, etc.)
- o County/regional authorities and agencies and their key staff
- o Chambers of commerce
- o Downtown or area businesspeople
- o Community groups
- o Community service organizations and other major non-profits
- o Developers and real estate professionals (nonprofit and for profit)
- o Public and private school systems and colleges or universities
- o Environmental, historic preservation, and other groups

5. Meeting with citizen groups- A “town hall meeting” is held by the team on the evening of the first day at a location considered to be a neutral space. Considerable effort must be made to get people to turn out—notices must go out to various organizations well in advance and follow-up phone calls made the day before. Prior media coverage is essential. The team leader will moderate the meeting. At the team leader’s discretion, the team may divide into groups to facilitate communication. Participants should include:

- o Neighborhood organizations
- o Community development corporations



- o Business groups and individual business owners and managers
- o Church groups
- o Chief of police
- o PTAs
- o Senior citizens
- o Teenagers and youth groups
- o Ethnic groups
- o Businesses and business organizations
- o Environmental organizations
- o Preservation groups and historical societies
- o Interested Residents

6. Teamwork - The team works very intensively in three phases, which occasionally overlap:

- o Understanding: learning about your community and its concerns
- o Creating: generating ideas that respond to your issues
- o Producing: preparing the report and the public presentation

Some members will withdraw from the central activity of the team visit to write or consult with resource people. Others will spend more time interacting with other team members and the public. The team leader and AIA Staff are responsible for development and final assembly of the presentation.

7. Public presentation - The final presentation to the entire community should be well publicized. Media representatives should be specifically invited. The team will make a PowerPoint presentation of its observations and recommendations for about an hour and will take questions for the remaining amount of time.

Phase 4: Implementation

In this phase, the community begins to translate the team's report into an action plan for implementing the vision for its future developed during the SDAT process. This phase begins within a week of the conclusion of the team visit.

1. Form an Implementation Committee- The membership of the implementation committee should reflect constituencies affected by potential changes in the community, the commitment of individuals and groups they represent to the effort, and the need for certain skills during this phase. The committee should remain nonpolitical and broadly representative of the community. Continuity provided by including original steering committee members is valuable, but new members can make important contributions. The implementation committee's structure must respond to a new agenda:

- o Review the team's report (months 1-2)
- o Identify immediate and short-term objectives (months 2-3)
- o Develop long-range goals and objectives for implementation within the next 3-5 years (months 4-6)
- o Produce an action plan based on the above items (months 4-6)
- o Maintain broad community involvement and interest (ongoing)
- o Support implementation efforts (ongoing)

2. Review the team's presentation and report - The implementation committee should develop an immediate strategy for discussing the report, identifying priorities, and determining which areas need further attention. As soon as possible, the committee should obtain endorsements and commitments from public officials for the presentation recommendations for which there is

consensus. To maintain the inclusive spirit of the SDAT process, solicit feedback from involved groups and individuals as well as other interested parties. Maintaining a database of those who participated in the earlier phases makes it possible to solicit feedback through mailings and encourage continuing interest. This work should be completed within a few weeks of the team visit in order to maintain momentum.

3. Produce an action plan - After soliciting broad community participation in the development of goals and objectives, the implementation committee should produce a document that will become the community's action plan. The outline for this document will vary, but it should include a clear description of the community's vision for its future; a statement of long-range goals; a list of objectives to be achieved over the next three to five years, including identification of kickoff projects that can be completed in the next 12 months; a summary of actions needed to achieve the objectives; and a funding strategy identifying sources of funding. Include a map of the community that shows where funds will be spent and where projects will be completed. This map will be the basis for describing your overall community strategy.

The success of the action plan depends on people seeing results quickly—the momentum that builds with short-term achievement can sustain a community for years to come. Identify a few achievable, high-visibility projects that are certain of early success and support the long-range goals. Consider projects that are likely to energize the community and expand the number of people who will

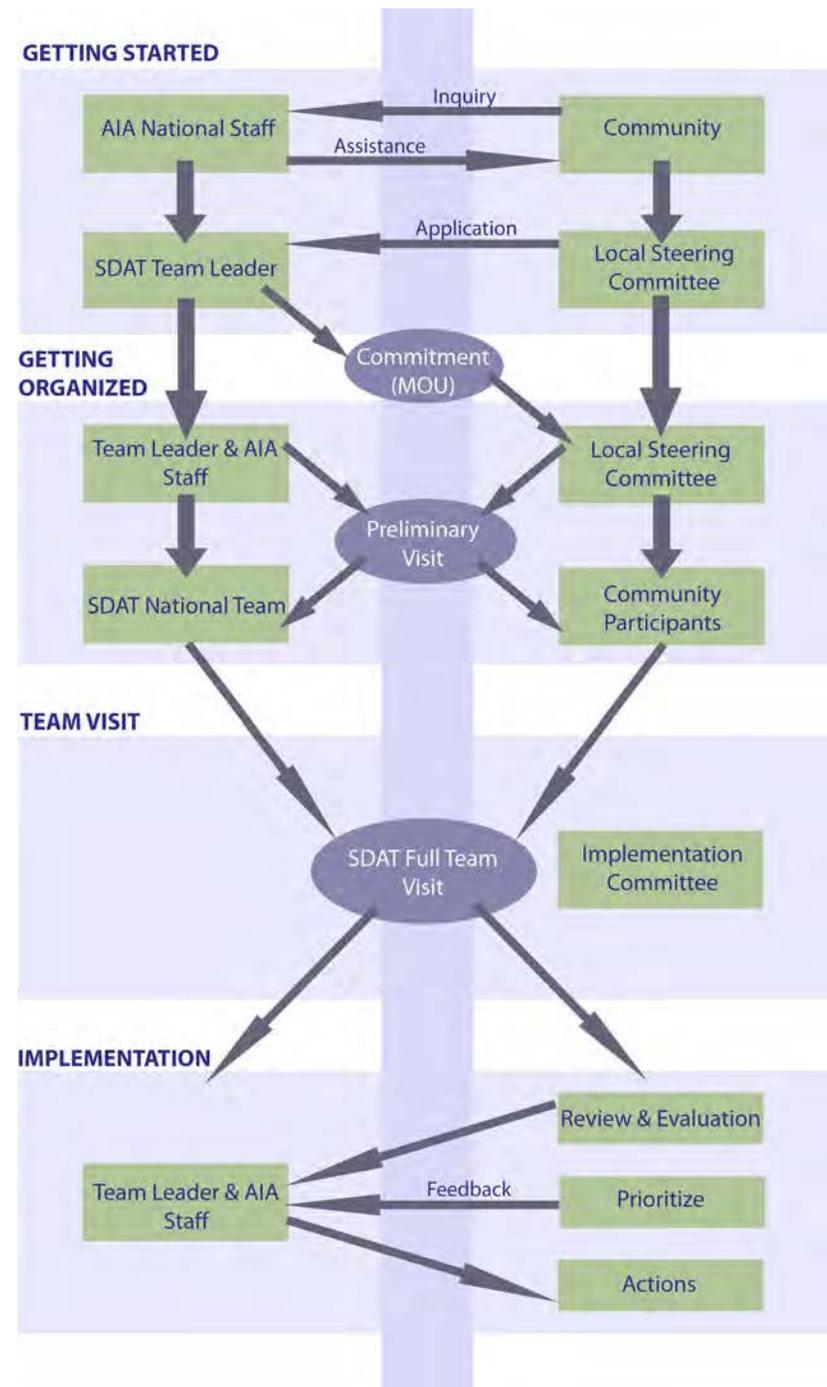
help implement the overall plan. A community with the goal of revitalizing its downtown, for example, might identify projects such as hiring a downtown-events coordinator, razing a condemned eyesore, establishing a visitors' center, creating a volunteer cleanup program, arranging tours for potential investors, or approving projects already in the budget pipeline.

After discussing the report, the implementation committee defines the community's goals and priorities over the next three to five years and identifies objectives that will help you achieve them. There are many ways to accomplish this, but whatever the process, the implementation committee must remain open and responsive to community feedback. To revitalize its downtown, for example, a community's long-term objectives could include relocating town offices from a highway site to the business district, developing a new traffic plan, restoring historic building façades, or establishing a special-assessment business-improvement district. A good action plan will include benchmarks and triggers for action—ways to measure your progress and successes that will allow



the community to celebrate its achievements. Benchmarks will vary with your objectives but might include enactment of regulatory changes; completion of buildings, parks, or infrastructure improvements; and statistical measurements, such as a 25 percent increase in tourist traffic or a donor-participation target in a community-projects fund. Solicit endorsement of the action plan by political leaders, and be sure to follow through with newly elected officials. Future political candidates should understand the plan and the grassroots process behind its development.

4. **Maintain broad community involvement and interest** - Develop a public relations strategy to maintain the visibility of the SDAT process and encourage continuing participation. Distribution of the action plan should receive special attention, but establishing an ongoing presence in the community is equally important. The committee might sponsor events like public meetings, workshops, or leadership retreats, or partner with other community groups to sponsor events like local heritage-day celebrations, festivals, and gala evenings.



Roles and Responsibilities for Participants in Each Phase of the SDAT Process

Participants	Phase 1: Getting Started	Phase 2: Getting Organized	Phase 3: Team Visit	Phase 4: Implementation
Local Community: Individual citizens and leaders, community groups, private and nonprofit organizations, businesses, government agencies and officials.	A local leader contacts the Center for Communities by Design for information about the program and on first steps. The community begins to educate its citizens and build support for an SDAT.	Citizens and leaders learn about the process, local issues, and the need for their participation in the overall process.	The public is invited to participate in the SDAT through open public meetings, scheduled interviews, and the final presentation.	The public is invited by the local steering committee to participate in meetings and events to review and discuss the SDAT report.
Local Steering Committee: Group formed to guide the DAT process.	A steering committee is formed to manage local activities and to establish a dialogue with the SDAT program. An application describing local needs and issues and indicating committed financial support is submitted to the SDAT program.	The steering committee is expanded to represent a wide range of community interests. Preparations are made for the team visit. Briefing and background materials are compiled for the team prior to their visit.	The steering committee hosts the team visit and participates as a community resource.	The steering/implementation committee reviews and evaluates the SDAT recommendations and develops short-and-long range objectives and priorities. An action plan and timetable are produced, and short-term projects are implemented.
AIA Center for Communities by Design	Staff members begin a dialogue with the steering committee; review the application; and assist the community with the completion of the applications as necessary.	Staff selects a team leader who visits the community for a preliminary round of meetings with local leaders and citizens to review the logistics for the full team visit. The team leader and AIA staff select a multidisciplinary team of professionals to visit the community.	The team visits the community, listens to citizens, and makes recommendations for taking action.	Team members remain in contact with the community and provide additional guidance and recommendations as the community works to implement the SDAT recommendations.

Sample SDAT Agenda: Preliminary Visit

Date/Time	Activity	Location	Participant
Day 1			
8:00 am - 9:00 am	Introductions, Project Goals, Background Information	Meeting Room	Steering Committee, Team Leader, AIA Staff
9:00 am - 12:00 pm	Tour of Community	Community/Region	Selected Steering Committee Reps, City staff, Team Leader, AIA Staff
12:00 pm - 1:00 pm	Lunch	TBD	Steering Committee Reps, Team Leader, AIA Staff
1:30 pm - 2:30 pm	Stakeholder Meeting #1 (Topic determined from issues identified in the SDAT applications)	Meeting Room	Steering Committee Reps, Invited Stakeholders, Team Leader, AIA Staff
2:30 pm - 3:30 pm	Stakeholder Meeting #2 (Topic determined from issues identified in the SDAT applications)	Meeting Room	Steering Committee Reps, Invited Stakeholders, Team Leader, AIA Staff
3:30 pm - 4:30 pm	Stakeholder Meeting #3 (Topic determined from issues identified in the SDAT applications)	Meeting Room	Steering Committee Reps, Invited Stakeholders, Team Leader, AIA Staff
4:30 pm - 5:30 pm	Stakeholder Meeting #4 (Topic determined from issues identified in the SDAT applications)	Meeting Room	Steering Committee Reps, Invited Stakeholders, Team Leader, AIA Staff
5:30 pm - 6:30 pm	Break		
6:30 pm - 8:30 pm	Dinner	TBD	Steering Committee Reps, Team Leader, AIA Staff
Day 2			
9:00 am - 10:00 am	Stakeholder Meeting #5 (Topic determined from issues identified in the SDAT applications)	Meeting Room	Steering Committee Reps, Invited Stakeholders, Team Leader, AIA Staff
10:00 am - 11:30 am	Logistical Meeting with Steering Committee	Meeting Room	Steering Committee, Team Leader, AIA Staff
11:30 am	Team Leader and AIA Staff Depart		

Sample SDAT Agenda: Full Team Visit

Date/Time	Activity	Location	Participants
Day 1			
8:30 am - 9:00 am	Introductions, Goals, Background Information	Meeting Room	Steering Committee, SDAT National Team
9:00 am - 12:00 pm	Community Tour	Community/Region	Steering Committee Reps, SDAT National Team, City Staff, Other Invited Tour Guides
12:00 pm - 1:00 pm	Lunch	TBD	Steering Committee Reps, SDAT National Team
1:30 pm - 4:00 pm	Concurrent Stakeholder Meetings: 1) Topic #1 2) Topic #2 3) Topic #3 4) Topic #4 5) Topic #5	Adjacent Meeting Rooms	Steering Committee, SDAT National Team, Designated Stakeholders
4:30 pm - 5:30 pm	SDAT National Team Meeting	Meeting Room	SDAT National Team
6:00 pm - 7:30 pm	Town Hall Meeting (Open to the Public)	Auditorium	SDAT National Team, Steering Committee, Stakeholders, Community Members
7:30 pm - 9:00 pm	SDAT National Team Meeting and Dinner	TBD	SDAT National Team
Day 2			
9:30 am - 11:30 am	Concurrent Stakeholder Meetings: 1) Topic #1 2) Topic #2 3) Topic #3 4) Topic #4 5) Topic #5	Adjacent Meeting Rooms	Steering Committee, SDAT National Team, Designated Stakeholders
12:00 pm - 1:00 pm	SDAT National Team Lunch and Meeting	TBD	SDAT National Team, Steering Committee Reps
1:00 pm - 9:00 pm	SDAT National Team Working Session	Team Workspace	SDAT National Team, Students, Local Professionals
Day 3			
8:00 am - 5:30 pm	SDAT National Team Working Session and Presentation Production	Team Workspace	SDAT National Team, Students, Local Professionals
6:00 pm - 8:30 pm	SDAT Final Presentation (Open to the Public)	Auditorium	SDAT National Team, Steering Committee, Stakeholders, Community Members

SDAT LOGISTICS



Good logistics are critical to a smoothly functioning SDAT process. Steering committee members will work with the AIA staff to ensure that logistical needs are accommodated prior to and during the team's visit.

ROOM AND BOARD

The place selected for team lodging should be close to the center of the study area and near the SDAT work space. Each member should have an individual room as they sleep at different times. Wireless internet access in each room is important if it is available. The AIA will make these arrangements based on the steering committee's recommendations.

Breakfasts are a time for the SDAT team to meet on their own. Lunches are usually casual and often served in or near the SDAT work space or on tours. Evening meals are more of a respite from the day's activities. Informal discussions among team members, students, and steering committee members typically continue during meals. The schedule may necessitate bringing a number of meals to the team workspace.

STEERING COMMITTEE PARTICIPATION

Because steering committee members will have primary responsibility for developing the eventual action plan, their continuous involvement is critical to the eventual success of the project. The AIA and the steering committee chair should discuss how the committee will be involved during the team visit to ensure maximum ownership of the process after the team finishes its work.

TRANSPORTATION

For the team visit, members will typically arrive the evening before the SDAT and depart the morning after. Arrangements for team member ground transportation to and from the airport will be coordinated by the AIA Staff. During the team visit, the AIA will typically arrange for at least one rental car to transport the team.

SPACE NEEDS

Three types of space are required—a work space where most of the team's work will be done during the visit, a space for community meetings, and a space for the final presentation. The team leader should review all the options available on the preliminary visit before commitments are made.

WORK SPACE

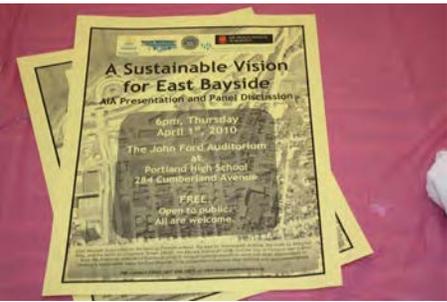
The work space should be located within or adjacent to the primary study area, and should be large enough to accommodate 10-15 people comfortably. The space should be suitable for the needs of production, with good lighting, plenty of wall outlets, windows, wireless internet access, and extensive wall space to pin up drawings and other graphics. A city or municipal office, an architecture studio, or a vacant storefront in the study area can be ideal. The space must be available after business hours as the SDAT may work into the evening or night.

COMMUNITY MEETINGS

A "town hall meeting" space is needed. This space may be located nearby in a church, school, or similar public space on neutral ground. Depending on the scale of the



community, there should be space for 150 to 200 people in an informal setting. Microphones are necessary in a larger space.



FINAL PRESENTATION

The place for the final presentation during the team visit should have good community access and be identified as neutral ground. There should be provision for an LCD data projector and screen as well as a public address system. There should be one or two microphones for the team and one or two for citizen participation in a question/answer session following the team's presentation. The size of the space will vary according to the size of the community, but even small towns or rural regions can attract 200 or 300 people.



FURNITURE AND EQUIPMENT

The following items for the SDAT work space should be provided:

- Drawing/writing tables and chairs
- Conference tables and chairs
- Color Scanner
- Color printer



- Data projector and screen for PowerPoint presentation
- Internet access for team, preferably wireless

There should be a reference center consisting of copies of ordinances, statistics, maps, previous reports and studies, and histories. This should be under the control of a local steering committee member as some of these documents will be one of a kind. If there is a local GIS system, it should be set up on the computers in the work area.

SUPPLIES

Supplies will include materials normally found in an architect's office and should be reviewed with the AIA before the first team visit. Some SDATs, are more policy focused and may not require all of these materials. In general, the SDAT work space should be stocked with:

- Writing paper pads, 8½" x 11"
- White tracing paper, 12", 24", and/or 36" wide rolls
- Post-its
- Felt-tipped markers (Magic Markers, Design Art Markers)
- Colored pencils
- Fiber-tipped (not ballpoint) pens, with medium and fine tips, black and red
- Large newsprint pads and easels, one per stakeholder group
- T-squares, triangles, & scales
- drafting tape
- push pins
- Plain bond paper, 8½" x 11"
- Reproducible base maps of the community and study area (some of these should show building outlines)

COMPUTERS

Most team members will bring their own laptops. AIA Staff can provide extra computers for those team members who cannot bring their own machine. If multiple computers are needed, AIA staff will coordinate with the steering committee to provide additional computers.



TEAM TOUR

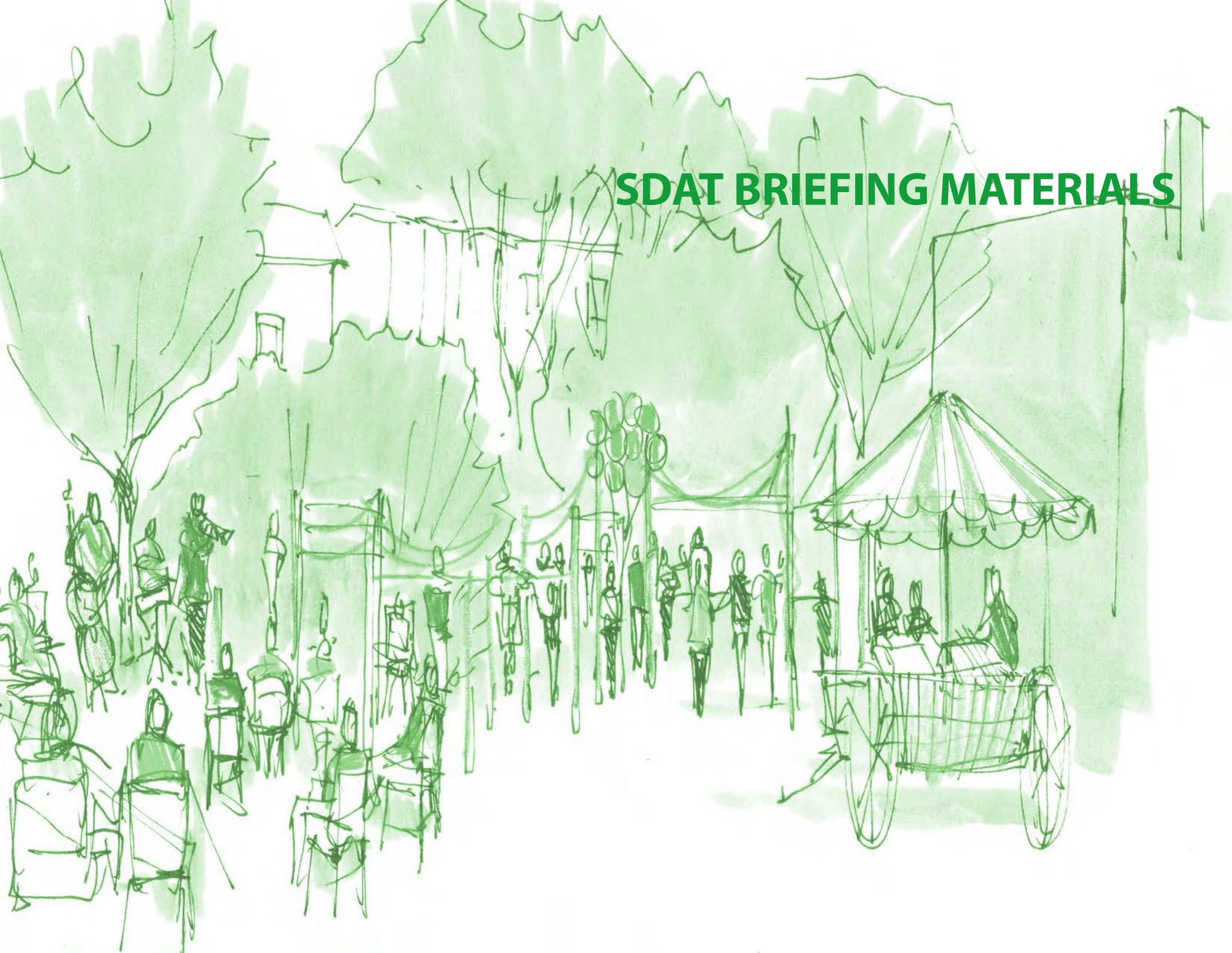
Planning should be done in advance for tours that will give the team an understanding of your community and its issues. The team, together with their steering committee guides, will inspect the study area by air, bus, foot—even by boat if appropriate. Regional and local maps should be provided for the team.



A bus or van survey should be made with everyone in a single vehicle high enough to see above traffic and with a microphone for the guide. Again, maps marked with the route are important. Many communities work with the local transit authority or municipal government to have a tour bus donated for the team tour.



SDAT BRIEFING MATERIALS



SDAT Briefing Materials

An SDAT will function much more effectively and provide a much better product for the community if they are adequately briefed on the project before they come to the community. AIA Staff will create an FTP site for the use of the team and the community. Background materials should be uploaded well before the project commences so that the team can prepare themselves before they arrive for the SDAT. In addition to the electronic copies of these documents, the team workspace should be furnished with hard copies of these materials for easy reference during the project.

Useful documents and plans include:

- **Maps of the study area, community, and regions showing:**
 - Municipal and county boundaries
 - Neighborhoods
 - Local political boundaries, such as wards and parishes
 - Topography
 - Land use (adjacent to the study area)
 - Streets and highways
 - Important places (employment or shopping centers, schools, etc.)
 - Parks, forests, lakes
 - Public transportation routes
 - Historic or archeological sites
- **Photographs—both aerial and street views describing the study area**
- **Population statistics, including:**
 - Growth or decline in past 10 years
 - Projected growth or decline
 - Age, sex, and other household information
- **Economic data, including:**

- Past and projected commercial and industrial values
- Where and what the jobs are
- Median income
- Land values
- Tax information
- Brochures to attract industry, tourists
- **Zoning and other land use regulations (include maps), including:**
 - Most recent master plan
 - Design guidelines
 - Growth management measures
- **Historic preservation and archeological data (if appropriate), including:**
 - Plans or diagrams of historical patterns of development
 - Historic district maps
 - Local history
 - Architectural survey
 - Archeological survey
- **Information related to other topics to be addressed, for example:**
 - Environmental issues
 - Transportation
 - Social equity issues

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