



SAN RAFAEL CITY COUNCIL - TUESDAY, SEPTEMBER 4, 2018

**REGULAR MEETING
COUNCIL CHAMBERS, CITY HALL
1400 FIFTH AVENUE, SAN RAFAEL, CALIFORNIA**

AGENDA

OPEN SESSION - COUNCIL CHAMBERS, CITY HALL - 6:00 PM

1. Mayor Phillips to announce the Closed Session item.

CLOSED SESSION - THIRD FLOOR CONFERENCE ROOM, CITY HALL - 6:00 PM

2. Closed Session:
 - a. Conference with Labor Negotiators
Government Code Section 54957.6
Lead Negotiator: Timothy L. Davis (Burke, Williams & Sorensen)
Agency Designated Representatives: Jim Schutz, Cristine Alilovich, Lauren Monson, Nadine Hade, Christopher Gray, Diana Bishop
Employee Organizations: San Rafael Police Association; San Rafael Firefighters' Association; San Rafael Police Mid-Management Association; San Rafael Fire Chief Officers' Association

OPEN TIME FOR PUBLIC EXPRESSION - 7:00 PM

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

CITY MANAGER'S REPORT:

3. City Manager's Report

CONSENT CALENDAR:

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

4. Consent Calendar Items:
 - a. **Approval of Minutes**
Approval of Minutes of City Council / Successor Agency Regular Meetings of August 6, 2018 and August 20, 2018 (CC)
Recommended Action - Approve as submitted

- b. **ADA Access Advisory Committee Vacancies**
Call for Applications to Fill Four, Four-Year Terms on the San Rafael ADA Access Advisory Committee, to the End of October 2022, Due to the Expiration of Terms of Frederic Divine, Gladys Gilliland, Eric Holm and Rob Simon (CC)
Recommended Action – Approve staff recommendation

- c. **Conflict of Interest Code Update**
Resolution Repealing Resolution No. 14188, Re-Adopting the FPPC Model Conflict of Interest Code as the City’s Conflict of Interest Code, and Adopting a Revised List of Designated Employee Positions and Disclosure Categories, to Be Incorporated into the City’s Conflict of Interest Code (CC)
Recommended Action – Adopt Resolution

- d. **Cheryl Lentini Resolution of Appreciation**
Resolution of Appreciation for Cheryl Lentini for Eight Years of Service on the Design Review Board (CD)
Recommended Action – Adopt Resolution

- e. **West End Neighborhood Association Annual Picnic Road Closure**
Resolution Authorizing Street Closure for the West End Neighborhood Annual Picnic on Sunday, September 16, 2018, on Neame Avenue from Santa Margarita Avenue to West Crescent Drive, From 8 A.M. To 6 P.M. (CS)
Recommended Action – Adopt Resolution

- f. **Downtown Business Improvement District Advisory Board Members**
Resolution Appointing Business Improvement District (BID) Advisory Board Members (ED)
Recommended Action – Adopt Resolution

- g. **National Preparedness Month**
Resolution in Support of National Preparedness Month (FD)
Recommended Action – Adopt Resolution

- h. **General Fund Update and City-Wide Budget Amendments**
Resolution Adopting Amendments to the City of San Rafael Budget for Fiscal Year 2017-2018 for the Purpose of Confirming Authorized Appropriations and Transfers (FIN)
Recommended Action – Accept report and Adopt Resolution

- i. **Office of Traffic Safety Grant Approval**
Resolution Approving Use of State of California Office of Traffic Safety Grant Funds in the Amount of \$175,000 for the “Selective Traffic Enforcement Program” (“Step”) Grant from October 1, 2018 through September 30, 2019, and Authorizing the City Manager to Execute a Grant Agreement and Any Other Documents Related to the Grant (PD)
Recommended Action – Adopt Resolution

j. **Caltrans Local Procedures**

Resolution Adopting Chapter 10 of the Caltrans Local Assistance Procedures Manual, Entitled "Consultant Selection", as the Process by which the City Retains Architectural and Engineering Consultant Services Related to Federal and State Funded Transportation Projects (PW)

Recommended Action - Adopt Resolution

k. **2017 Storm Damage Repair - #70 Irwin Street**

Resolution Awarding and Authorizing the City Manager to Execute a \$1,129,369 Construction Agreement to Valentine Corporation, and Authorizing a Total Appropriated Amount of \$1,245,000, for the Repair of 2017 Storm Damage at #70 Irwin Street, Qualifying for FEMA Reimbursement for All but \$77,813 in Local Matching Funds (PW)

Recommended Action - Adopt Resolution

SPECIAL PRESENTATIONS:

5. Special Presentations:

a. Presentation of Resolution of Appreciation to Cheryl Lentini for Eight Years of Service on the Design Review Board

b. Presentation of Resolution Supporting National Preparedness Month

OTHER AGENDA ITEMS:

6. Other Agenda Items:

a. **Transit Center Update**

Informational Update from Golden Gate Bridge, Highway and Transportation District Regarding the New Downtown San Rafael Transit Center (PW)

Recommended Action - Accept report

PUBLIC HEARINGS:

7. Public Hearings:

a. **Appeal of Approved 88-Bed Assisted Living Facility (800 Mission Avenue)**

Resolution Denying an Appeal (AP18-002) and Upholding the Planning Commission's July 10, 2018 Conditional Approval of a Use Permit (UP17-030) and an Environmental and Design Review Permit (ED17-090) to Allow the Construction of a New, 88-Bed, Assisted Living Facility with Garage Parking Spaces and Associated Site Improvements (Grading, Drainage and Landscaping) on Two Vacant Downtown Lots Located at 800 Mission Ave. (Formerly 1203 and 1211 Lincoln Ave.; APN's: 011-184-08 & -09) (CD)

Recommended Action - Adopt Resolution

OTHER AGENDA ITEMS (continued):

8. Other Agenda Items:

- a. **San Rafael Police Association Memorandum of Understanding**
Resolution Establishing the Memorandum of Understanding Between the City and San Rafael Police Association Pertaining to Compensation and Working Conditions (July 1, 2018 through June 30, 2020) (HR)
Recommended Action - Adopt Resolution

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:

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

9. Councilmember Reports:

SAN RAFAEL SUCCESSOR AGENCY:

- 1. Consent Calendar: - None.

ADJOURNMENT:

Any records relating to an agenda item, received by a majority or more of the Council less than 72 hours before the meeting, shall be available for inspection in the City Clerk's Office, Room 209, 1400 Fifth Avenue, and placed with other agenda-related materials on the table in front of the Council Chamber prior to the meeting. Sign Language interpreters and assistive listening devices may be requested by calling (415) 485-3198 (TDD) or (415) 485-3066 (voice) at least 72 hours in advance. Copies of documents are available in accessible formats upon request. Public transportation is available through Golden Gate Transit, Line 22 or 23. Paratransit is available by calling Whistlestop. Wheels at (415) 454-0964. To allow individuals with environmental illness or multiple chemical sensitivity to attend the meeting/hearing, individuals are requested to refrain from wearing scented products.

In the Council Chambers of the City of San Rafael, Monday, August 6, 2018 at 7:00 p.m.



**Regular Meeting
San Rafael City Council**

Minutes

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

Absent: Mayor Phillips

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

OPEN SESSION - COUNCIL CHAMBERS, CITY HALL

1. None.

CLOSED SESSION - THIRD FLOOR CONFERENCE ROOM, CITY HALL

2. Closed Session: - None.

OPEN TIME FOR PUBLIC EXPRESSION - 7:00 PM

- [Dan Curran addressed the City Council regarding bike path safety](#)
- [Vickie Seavers addressed the City Council regarding wireless telecommunications](#)

CITY MANAGER'S REPORT:

3. City Manager's Report

- [City Manager Jim Schutz announced National Night Out to be held Tuesday, August 7, 2018](#)

CONSENT CALENDAR:

4. Consent Calendar Items:

[Councilmember Colin moved and Councilmember Bushey seconded to approve Consent Calendar Items:](#)

a. **Approval of Minutes**

Approval of Minutes of City Council /Successor Agency Regular Meeting of July 16, 2018 (CC)

[CCSA Minutes 2018-07-16](#)

Approved as submitted

- b. **Marin Emergency Radio Authority Reappointment**
Reappointment of Fire Chief Christopher Gray to the MERA (Marin Emergency Radio Authority) Executive Board (CC)
[Marin Emergency Radio Authority \(MERA\) Reappointment](#)
APPROVED STAFF RECOMMENDATION

- c. **Quarterly Investment Report**
Acceptance of City of San Rafael Quarterly Investment Report for the Quarter Ending June 30, 2018 (Fin)
[City Quarterly Investment Report](#)
ACCEPTED REPORT

- d. **Agreement for Granicus Video Streaming Services**
Resolution Authorizing the City Manager to Enter into an Agreement with Granicus, LLC, to Provide Video Streaming and Related Media Services (IT)
[Agreement for Granicus Video Streaming Services](#)
RESOLUTION 14553 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH GRANICUS, LLC, TO PROVIDE VIDEO STREAMING AND RELATED MEDIA SERVICES

- e. **Francisco Boulevard East Sidewalk Improvements**
Resolution Approving and Authorizing the City Manager to Execute a Professional Services Agreement with BKF Engineers for Right-Of-Way Engineering Services Associated with the Francisco Boulevard East Sidewalk Improvement Project, City Project No. 11349, in an Amount Not to Exceed \$437,216 (PW)
[Francisco Boulevard East Sidewalk Improvements](#)
RESOLUTION 14554 - RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH BKF ENGINEERS FOR RIGHT-OF-WAY ENGINEERING SERVICES ASSOCIATED WITH THE FRANCISCO BOULEVARD EAST SIDEWALK IMPROVEMENTS PROJECT, CITY PROJECT NO. 11349, IN AN AMOUNT NOT TO EXCEED \$437,216

- f. **G Street Improvements - Phase II Project**
Resolution Awarding and Authorizing the City Manager to Execute the Construction Contract for the G Street Improvements - Phase II Project, City Project No. 11345, to Ghilotti Bros., Inc., in the Amount of \$365,444, and Authorizing Contingency Funds and Other Costs in the Amount of \$44,556, for a Total Appropriated Amount of \$410,000 (PW)
[G Street Improvements - Phase II](#)
RESOLUTION 14555 - RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONSTRUCTION CONTRACT FOR THE G STREET IMPROVEMENTS - PHASE II PROJECT, CITY PROJECT NO. 11345, TO GHILOTTI BROS., INC., IN THE AMOUNT OF \$365,444, AND AUTHORIZING CONTINGENCY FUNDS AND OTHER COSTS IN THE AMOUNT OF \$44,556, FOR A TOTAL APPROPRIATED AMOUNT OF \$410,000

- g. **D Street and Via Sessi Storm Drain Improvements Project**
Accept Completion of the D Street and Via Sessi Storm Drain Improvements Project (City

Project No. 11347), and Authorize the City Clerk to File the Notice of Completion (PW)
[D Street and Via Sessi Storm Drain Improvements](#)
APPROVED STAFF RECOMMENDATION

- h. **Victor Jones Park Improvements Project**
Accept Completion of the Victor Jones Park Improvements Project (City Project No. 11289), and Authorize the City Clerk to File the Notice of Completion (PW)
[Victor Jones Park Improvements](#)
APPROVED STAFF RECOMMENDATION

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

OTHER AGENDA ITEMS:

5. Other Agenda Items:

- a. **General Plan 2040 Steering Committee**
Resolution Amending Resolution 14426, Modifying Appointments to the San Rafael General Plan 2040 Steering Committee and Amending the Adopted Committee Bylaws (CD)
[General Plan 2040 Steering Committee](#)

[Paul Jensen, Community Development Director, presented the staff report](#)

[Councilmember Colin](#)

[Councilmember McCullough / Paul Jensen](#)

[Councilmember McCullough](#)

[Councilmember Bushey](#)

[Mayor Pro Tem Gamblin invited public comment; however, there was none.](#)

[Councilmember Colin moved and Councilmember McCullough seconded to adopt the Resolution](#)

RESOLUTION 14556 - RESOLUTION AMENDING RESOLUTION 14426, MODIFYING APPOINTMENTS TO THE SAN RAFAEL GENERAL PLAN 2040 STEERING COMMITTEE AND AMENDING THE ADOPTED COMMITTEE BYLAWS

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

- b. **Grand Avenue Pathway Connector Project**
Resolutions Related to the Grand Avenue Pathway Connector Project, City Project No.

11173 (PW)

- 1) Resolution Rejecting the Bid Protest from Ghilotti Construction Company and Awarding and Authorizing the City Manager to Execute a Construction Agreement for the Grand Avenue Pathway Connector Project to Valentine Corporation in the Amount of \$1,776,870, and Authorizing Contingency Funds in the Amount of \$241,802 for a Total Appropriated Amount of \$2,018,672
- 2) Resolution Approving and Authorizing the City Manager to Execute a Professional Services Agreement with Coastland Civil Engineering, Inc. for Inspection Services Associated with the Grand Avenue Pathway Connector Project, in the Amount of \$146,328
- 3) Resolution Approving and Authorizing the City Manager to Execute a Fourth Amendment to the Agreement with Siegfried Engineering, Inc. for Construction Support Services Associated with the Grand Avenue Pathway Connector Project, in the Amount of \$40,000, for a Total Contract Not to Exceed Amount of \$348,737
[Grand Avenue Pathway Connector Project](#)

Bill Guerin, Public Works Director, introduced Kevin McGowan, Assistant Public Works Director, who presented the staff report

Kevin McGowan

Councilmember McCullough / Kevin McGowan

Councilmember McCullough / Kevin McGowan

Councilmember McCullough / Kevin McGowan

Bill Guerin

Councilmember Bushey / Kevin McGowan

Mayor Pro Tem Gamblin / Kevin McGowan

Mayor Pro Tem Gamblin / Bill Guerin

Mayor Pro Tem Gamblin / Bill Guerin

Mayor Pro Tem Gamblin invited public comment

John Reynolds

Stephen Bingham

Jim Geraghty, Bicycle and Pedestrian Advisory Committee

There being no further comment from the audience, Mayor Pro Tem Gamblin closed the public comment period

Councilmember McCullough / Kevin McGowan / Bill Guerin / Kevin McGowan

Councilmember McCullough moved and Councilmember Bushey seconded to adopt the Resolution

RESOLUTION 14557 - RESOLUTION REJECTING THE BID PROTEST FROM GHILOTTI CONSTRUCTION COMPANY AND AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE GRAND AVENUE PATHWAY CONNECTOR PROJECT TO VALENTINE CORPORATION IN THE AMOUNT OF \$1,776,870, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$241,802 FOR A TOTAL APPROPRIATED AMOUNT OF \$2,018,672

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

Councilmember McCullough moved and Councilmember Bushey seconded to adopt the Resolution

RESOLUTION 14558 - RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH COASTLAND CIVIL ENGINEERING, INC. FOR INSPECTION SERVICES ASSOCIATED WITH THE GRAND AVENUE PATHWAY CONNECTOR PROJECT, IN THE AMOUNT OF \$146,328

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

Councilmember McCullough moved and Councilmember Bushey seconded to adopt the Resolution

RESOLUTION 14559 - RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FOURTH AMENDMENT TO THE AGREEMENT WITH SIEGFRIED ENGINEERING, INC. FOR CONSTRUCTION SUPPORT SERVICES ASSOCIATED WITH THE GRAND AVENUE PATHWAY CONNECTOR PROJECT, IN THE AMOUNT OF \$40,000, FOR A TOTAL CONTRACT NOT TO EXCEED AMOUNT OF \$348,737

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

- c. **Amended Compensation for Unrepresented Mid-Management Employees
Amended Resolution Establishing the Compensation and Working Conditions for**

Unrepresented Mid-Management Employees (July 1, 2018 Through June 30, 2020) (HR)

[Amended Compensation for Unrepresented Mid-Management Employees](#)

Stacey Peterson, Human Resources Director, presented the staff report for agenda items 5.c, 5.d and 5.e together.

Councilmember McCullough / Stacey Peterson

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

Councilmember Colin moved and Councilmember McCullough seconded to direct staff to return with Resolution

DIRECTED STAFF TO RETURN WITH RESOLUTION ADOPTING MOU

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

- d. **Amended Compensation for Executive Management Employees**
Amended Resolution Establishing the Compensation and Working Conditions for Unrepresented Executive Management Employees (July 1, 2018 Through June 30, 2020) (HR)

[Amended Compensation for Executive Management Employees](#)

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

Councilmember Colin moved and Councilmember McCullough seconded to directed staff to return with Resolution

DIRECTED STAFF TO RETURN WITH RESOLUTION ADOPTING MOU

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

- e. **Amended Compensation for Elected City Clerk and Elected Part-Time City Attorney**
Amended Resolution Establishing the Compensation and Working Conditions for the Elected City Clerk and Elected Part Time City Attorney (July 1, 2018 Through June 30, 2020) (HR)

[Amended Compensation for the Elected City Clerk and Elected Part-Time City Attorney](#)

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

Councilmember Colin moved and Councilmember McCullough seconded to approve Directed staff to return with Resolution

DIRECTED STAFF TO RETURN WITH RESOLUTION ADOPTING MOU

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

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:

6. Councilmember Reports:

- Councilmember Colin reported on:
 - Climate Change Action Plan;
 - City of San Rafael Diversity Training; and
 - Marin Transit District

SAN RAFAEL SUCCESSOR AGENCY

1. Consent Calendar:

Member Colin moved and Member Bushey seconded to approve Consent Calendar Items:

- a. **Successor Agency Quarterly Investment Report**
Accept Investment Report for the Quarter Ending June 30, 2018 (Fin)
[Quarterly Investment Report](#)

Accepted report

AYES: Members: Bushey, Colin, McCullough & Vice-Chairman Gamblin
NOES: Members: None
ABSENT: Members: Chairman Phillips

ADJOURNMENT:

Mayor Pro Tem Gamblin adjourned the meeting at 7:50 p.m. in celebration of Councilmember McCullough's birthday.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2018

GARY O. PHILLIPS, Mayor

In the Council Chambers of the City of San Rafael, Monday, August 20, 2018 at 7:00 p.m.



**Regular Meeting
San Rafael City Council**

Minutes

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

Absent: None

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

OPEN SESSION - COUNCIL CHAMBERS, CITY HALL - 6:30 PM

1. Mayor Phillips announced the Closed Session items.

CLOSED SESSION - THIRD FLOOR CONFERENCE ROOM, CITY HALL - 6:30 PM

2. Closed Session:

a. Conference with Legal Counsel—Anticipated Litigation
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9:
(One case)

City Attorney Robert Epstein announced that no reportable action was taken in closed session

OPEN TIME FOR PUBLIC EXPRESSION - 7:00 PM

The following members of the public addressed the City Council regarding wireless telecommunications and 5G:

James Heddle, Mary Beth Brangan, Ecological Options Network, Jim Benster, Vickie Sievers, Kiah Bosy, Chi Home Designs, Kim Hahn, Member of the public

- Cathy Manovi addressed the City Council regarding SMART right-of-way maintenance
- Lisa Doering addressed the City Council regarding rent control / Mayor Phillips
- Brandy Wilson addressed the City Council regarding item 6.b
- Mark Gaynor addressed the City Council regarding apartment crowding

CITY MANAGER'S REPORT:

3. City Manager's Report

- City Manager Jim Schutz commented on items 6.a, 6.b & 6.c on the agenda for this evening and announced free weekend parking at downtown parking garages
- Mayor Phillips
- City Manager Jim Schutz / Public Works Director Bill Guerin
- Mayor Phillips

CONSENT CALENDAR:

4. Consent Calendar Items:

Councilmember Bushey moved and Councilmember Colin seconded to approve Consent Calendar Items:

- a. **Measure D Special Library Parcel Tax Committee Vacancy**
Call for Applications to Fill One Unexpired Four-Year Term on the San Rafael Measure D Special Library Parcel Tax Committee to the End of July 2022 Due to the Resignation of Robert Ross (CC)

[Measure D Special Library Parcel Tax Committee Vacancy](#)

APPROVED STAFF RECOMMENDATION

- b. **City Hall Switchgear Replacement Project**
Resolution Awarding and Authorizing the City Manager to Execute a Construction Agreement to CES Corp. Dba Cal Elite Builders for the City Hall Switchgear Replacement Project, in the Amount of \$489,990; and Authorizing Contingency Funds in the Amount of \$50,010 for a Total Appropriated Amount of \$540,000 (PW)

[City Hall Switchgear Replacement Project](#)

RESOLUTION 14560 - RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT TO CES CORP. DBA CAL ELITE BUILDERS FOR THE CITY HALL SWITCHGEAR REPLACEMENT PROJECT, IN THE AMOUNT OF \$489,990; AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$50,010 FOR A TOTAL APPROPRIATED AMOUNT OF \$540,000

- c. **Stormwater Pump Station Repair Agreement**
Resolution Approving and Authorizing the City Manager to Execute an Agreement with Pump Repair Service Company to Perform Repair and Replacement Work on Three Stormwater Pump Stations, in an Amount Not to Exceed \$355,237 (PW)

[Stormwater Pump Station Repair Agreement](#)

RESOLUTION 14561 - RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PUMP REPAIR SERVICE COMPANY TO PERFORM REPAIR AND REPLACEMENT WORK ON THREE STORMWATER PUMP STATIONS, IN AN AMOUNT NOT TO EXCEED \$355,237

- d. **Freitas/Las Gallinas and Freitas/Los Gamos Intersection Improvements**
Accept Completion of the Freitas/Las Gallinas and Freitas/Los Gamos Intersection Improvements (City Project No. 11171), and Authorize the City Clerk to File the Notice of

Completion (PW)

[Freitas/Las Gallinas and Freitas/Los Gamos Intersection Improvements](#)

APPROVED STAFF RECOMMENDATION

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

PUBLIC HEARINGS:

5. Public Hearings:

- a. **Southern Heights Bridge Replacement Project
Resolution Adopting a Mitigated Negative Declaration and Approving a Mitigation
Monitoring and Reporting Program for the Southern Heights Bridge Replacement
Project, City Project No. 11282; Resolution Adopting the Plans for the Southern Heights
Bridge Replacement Project, and Directing Staff to Finalize Construction Documents of
Bridge Design Option 4 (PW)**

[Southern Heights Bridge Replacement Project](#)

[Councilmember Bushey moved and Councilmember McCullough seconded to continue to
a future City Council meeting](#)

CONTINUED TO A FUTURE CITY COUNCIL MEETING

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

OTHER AGENDA ITEMS:

6. Other Agenda Items:

- a. **Wildfire Prevention and Preparedness
Update Regarding Ongoing City Efforts to Prevent and Prepare for Wildfires (FD)**
[Wildfire Prevention and Preparedness](#)

[Fire Chief Chris Gray introduced Police Captain Glenn McElderry who assisted with the
presentation of the staff report](#)

[Captain McElderry](#)

[Chief Gray](#)

[Mayor Phillips](#)

[Councilmember Colin / Chief Gray](#)

[Councilmember McCullough](#)

Mayor Phillips

Mayor Phillips invited public comment

Roger Roberts

Jim Geraghty

Keith Granger

Bill Carney, Sustainable San Rafael

Mark Gaynor

Mayor Phillips

Dave Coury

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

Mayor Phillips

Councilmember McCullough

Mayor Phillips

City Attorney Robert Epstein

Mayor Phillips

Councilmember Bushey

Mayor Phillips

Councilmember Colin moved and Councilmember Bushey seconded to accept the report

ACCEPTED REPORT

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

- b. **Housing Topics & Issues**
Presentation on and Discussion of Housing Topics and Issues (CD)
[Housing Topics and Issues](#)

Community Development Director Paul Jensen presented the staff report

Mayor Phillips

Mayor Phillips / Paul Jensen

Mayor Phillips / Paul Jensen

Mayor Phillips / Paul Jensen

Mayor Phillips

Councilmember Gamblin / Paul Jensen

Councilmember Gamblin / Paul Jensen

Councilmember Gamblin / Paul Jensen

Councilmember Colin / Paul Jensen

Councilmember Colin / Paul Jensen

Councilmember McCullough

Councilmember Bushey

Mayor Phillips invited public comment

Len Rifkind

Dave Coury

Roland Katz, Marin Association of Public Employees

Linda Jackson, Aging Action Initiative

Julia Kiley, Marin Organizing Committee (MOC)

Sandy Miracle, Marin Environmental Housing Collaborative and Marin Organizing Committee

Keith Granger

Roger Roberts

Bill Carney, Sustainable San Rafael

Jeff Rhodes

Ken King

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

Mayor Phillips

Councilmember Colin

Councilmember Bushey

Councilmember McCullough

Mayor Phillips

Councilmember McCullough

Paul Jensen

Councilmember McCullough moved and Councilmember Bushey seconded to accept the report

ACCEPTED REPORT

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

- c. **Resilient by Design Sea Level Rise Project**
'Resilient by Design' Presentation of Central San Rafael Reach "Site Area" Study by the Bionic Team (CD)
[Resilient by Design Sea Level Rise Project](#)

Cory Bytof, Volunteer and Sustainability Coordinator, introduced Marcelle Wilson of the Bionic Team who presented the report

Marcelle Wilson, Bionic Team

Mayor Phillips

Councilmember McCullough / Marcelle Wilson

Councilmember Colin / Marcelle Wilson

Mayor Phillips

Councilmember Gamblin / Marcelle Wilson

Councilmember Gamblin / Marcelle Wilson

Mayor Phillips

Marcelle Wilson

Mayor Phillips invited public comment

Jeff Rhodes

Roger Roberts

Linda Jackson, Sustainable San Rafael

April Phillips

Ken King

Bill Carney, Sustainable San Rafael

Stuart Siegel

Jean Severinghaus

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

Councilmember Colin / Paul Jensen / Cory Bytof

Councilmember Colin

Councilmember Colin moved and Councilmember McCullough seconded to accept the report

ACCEPTED REPORT

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

- d. **Grand Jury Report on Yellow School Bus Service for Traffic Relief Resolution Approving and Authorizing the Mayor to Execute the City's Response to the June 1, 2018 Marin County Grand Jury Report Entitled "Yellow School Bus Traffic Congestion Relief" (PW)**

[Grand Jury Report on Yellow School Bus Service for Traffic Relief](#)

Public Works Director Bill Guerin presented the staff report

Mayor Phillips

Mayor Phillips invited public comment

Kate Powers

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

Councilmember Bushey

Mayor Phillips / Councilmember Bushey

Mayor Phillips / Councilmember Bushey

Councilmember McCullough / Bill Guerin

Mayor Phillips

Councilmember Colin

Mayor Phillips

Councilmember McCullough moved and Councilmember Colin seconded to adopt the Resolution

RESOLUTION 14562 - RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE CITY'S RESPONSE TO THE JUNE 1, 2018 MARIN COUNTY GRAND JURY REPORT ENTITLED "YELLOW SCHOOL BUS TRAFFIC CONGESTION RELIEF"

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

- e. **San Rafael Police Association Successor Memorandum of Understanding Discussion and Consideration of a Memorandum of Understanding Pertaining to Compensation and Working Conditions for San Rafael Police Association (SRPA) (July 1, 2018 Through June 30, 2020) (HR)**
[San Rafael Police Association MOU](#)

Human Resources Director Stacey Peterson presented the staff report

Mayor Phillips / Stacey Peterson

Mayor Phillips / Stacey Peterson

Mayor Phillips / Stacey Peterson

Councilmember McCullough / Stacey Peterson

Mayor Phillips invited public comment; however, there was none.

Councilmember McCullough

Councilmember Bushey moved and Councilmember Colin seconded to direct staff to return with Resolution adopting MOU

DIRECTED STAFF TO RETURN WITH RESOLUTION ADOPTING MOU

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

- f. **Amended Compensation for Unrepresented Mid-Management Employees**
Amended Resolution Establishing the Compensation and Working Conditions for Unrepresented Mid-Management Employees (July 1, 2018 Through June 30, 2020) (HR)
[Amended Compensation for Unrepresented Mid-Management Employees](#)

Councilmember McCullough moved and Councilmember Gamblin seconded to adopt the Resolution

RESOLUTION 14563 - RESOLUTION ESTABLISHING THE COMPENSATION AND WORKING CONDITIONS FOR UNREPRESENTED MID-MANAGEMENT EMPLOYEES (JULY 1, 2018 THROUGH JUNE 30, 2020)

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

- g. **Amended Compensation for Executive Management Employees**
Amended Resolution Establishing the Compensation and Working Conditions for Unrepresented Executive Management Employees (July 1, 2018 Through June 30, 2020) (HR)
[Amended Compensation for Executive Management Employees](#)

Councilmember McCullough moved and Councilmember Gamblin seconded to adopt the Resolution

RESOLUTION 14564 - RESOLUTION ESTABLISHING THE COMPENSATION AND WORKING CONDITIONS FOR UNREPRESENTED EXECUTIVE MANAGEMENT EMPLOYEES (JULY 1, 2018 THROUGH JUNE 30, 2020)

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

- h. **Amended Compensation for the Elected City Clerk and Part-Time City Attorney
Amended Resolution Establishing the Compensation and Working Conditions for the
Elected City Clerk and Elected Part Time City Attorney (July 1, 2018 Through June 30,
2020) (HR)**

[Amended Compensation for the Elected City Clerk and Elected Part-Time City Attorney](#)

Human Resources Director Stacey Peterson presented the staff reports for items 6.f-6.h

Mayor Phillips invited public comment; however, there was none.

Councilmember McCullough moved and Councilmember Gamblin seconded to adopt the Resolution

RESOLUTION 14565 - RESOLUTION ESTABLISHING THE COMPENSATION AND WORKING CONDITIONS FOR THE ELECTED CITY CLERK AND ELECTED PART TIME CITY ATTORNEY (JULY 1, 2018 THROUGH JUNE 30, 2020)

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

COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:

7. Councilmember Reports:

- Mayor Phillips:
 - Met with the Dominican President, Mary Marcy, regarding cooperation with University;
 - Spoke with Paul Goldstone regarding redevelopment of 1001 Fourth Street
- City Manager Jim Schutz
- Mayor Phillips

SAN RAFAEL SUCCESSOR AGENCY:

1. Consent Calendar: - None.

ADJOURNMENT:

Mayor Phillips adjourned the City Council meeting at 11:05 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2018

GARY O. PHILLIPS, Mayor



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Clerk

Prepared by: Lindsay Lara, City Clerk

City Manager Approval: _____

TOPIC: ADA ACCESS ADVISORY COMMITTEE VACANCIES

SUBJECT: CALL FOR APPLICATIONS TO FILL FOUR, FOUR-YEAR TERMS ON THE SAN RAFAEL ADA ACCESS ADVISORY COMMITTEE, TO THE END OF OCTOBER 2022, DUE TO THE EXPIRATION OF TERMS OF FREDERIC DIVINE, GLADYS GILLILAND, ERIC HOLM AND ROB SIMON

RECOMMENDATION:

It is recommended that the City Council:

1. Call for applications to fill four, four-year terms on the San Rafael ADA Access Advisory Committee from November 1, 2018 to October 31, 2022;
2. Set deadline for receipt of applications for Wednesday, September 26, 2018 at 5:00 p.m. in the City Clerk's Office, Room 209, City Hall; and
3. Set date for interviews of applicants at a Special City Council meeting to be held on a date to be determined.

BACKGROUND:

The ADA Access Advisory Committee is established to review the City's progress in implementing its Settlement Agreement with the Department of Justice (DOJ) regarding Project Civic Access. The Committee serves in an advisory role, assisting the City with creating or modifying procedures, policies, and standards that are necessary to bring San Rafael into compliance with both the Settlement Agreement and the Americans with Disabilities Act (ADA).

All members of the ADA Access Advisory Committee must be individuals with a strong interest and enthusiasm for bringing the City of San Rafael into compliance with the DOJ Settlement Agreement and the ADA. The majority of members of the Committee shall be residents of the City who have significant experience in the disability community.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

[Meetings](#) are held on the first Wednesday of March, June, September, and December from 2:00 p.m. to 3:00 p.m. at San Rafael City Hall.

In February 2014, the City Council adopted [Resolution 13681](#) limiting ADA Access Advisory Committee members to two consecutive four-year terms. Applications may be submitted [online](#) and are also available in hard copy format at the City Clerk's Office.

FISCAL IMPACT: None

RECOMMENDED ACTION: Approve staff recommendation.

ATTACHMENTS:

1. Vacancy notice
2. Application
3. Excerpt from San Rafael Municipal Code
4. Ethics Training Information

Four Vacancies

ADA Access Advisory Committee

Applications to serve on the ADA Access Advisory Committee to fill four, four-year terms to the end of October 2022 may be obtained online at <https://www.cityofsanrafael.org/boards-commissions/> and may be completed and submitted electronically. Hard copies of the application are also available in the City Clerk's Office.

Deadline for filing applications: **Wednesday, September 26, 2018 at 5:00 p.m.**

There is no compensation paid to Committee Members. Members must comply with the City's ethics training requirement of AB 1234, and reimbursement policy. See attached information.

RESIDENTS OR BUSINESS OWNERS OF THE CITY OF SAN RAFAEL AND PERSONS WITH DISABILITIES MAY APPLY.

The ADA Access Advisory Committee meets on the 1st Wednesday of March, June, September & December from 2:00 - 3:00 p.m. in City Hall's Community Development Conference Room, 3rd Floor. These meetings shall comply with all provisions of the Brown Act.

Interviews of applicants will be scheduled to be scheduled on a date to be determined.

San Rafael City Council Resolution No. 10318, adopted October 5, 1998, outlines the powers and duties of committee members, etc.

Lindsay Lara
City Clerk
City of San Rafael

Dated: September 5, 2018



Large Print



CITY OF SAN RAFAEL

APPLICATION TO SERVE AS MEMBER OF ADA ACCESS ADVISORY COMMITTEE

NAME: _____

STREET ADDRESS: _____

CITY/STATE/ZIP CODE: _____

RESIDENT OF THE CITY OF SAN RAFAEL FOR _____ YEARS

PRESENT WORK POSITION: _____

NAME OF FIRM: _____

BUSINESS ADDRESS: _____

* HOME & BUSINESS PHONE #'s: _____

* E-MAIL ADDRESS (optional): _____

EDUCATION: _____

DESCRIBE YOUR INVOLVEMENT WITH THE DISABLED COMMUNITY IN SAN RAFAEL:

DO YOU OFFICIALLY REPRESENT AN ORGANIZATION, AGENCY, OR GROUP WITH SERVICES FOR PEOPLE WITH DISABILITIES? YES _____ NO _____

IF YES, PLEASE INDICATE THE NAME OF THE GROUP AND YOUR POSITION, AND ATTACH A LETTER OF REFERENCE:

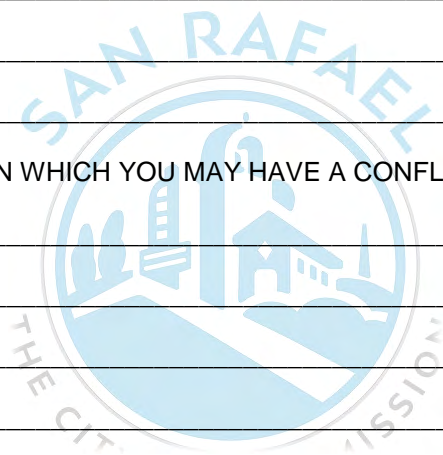
DO YOU REPRESENT THE BUSINESS COMMUNITY? YES _____ NO _____

IF YES, PLEASE INDICATE THE NAME OF THE BUSINESS AND YOUR POSITION:

YOUR REASONS FOR WANTING TO SERVE:

IF SELECTED TO SERVE, WHAT REASONABLE ACCOMMODATION REQUESTS SHOULD THE COMMITTEE FACILITATOR KNOW, IN ORDER FOR YOU TO FULLY PARTICIPATE?

DESCRIBE POSSIBLE AREAS IN WHICH YOU MAY HAVE A CONFLICT OF INTEREST WITH THE CITY:



SIGNATURE: _____ DATE: _____

FILING DEADLINE:

Date: Wednesday, September 26, 2018
Time: 5:00 p.m.

MAIL OR DELIVER TO:

City of San Rafael
City Hall, Dept. of City Clerk
1400 Fifth Avenue, Room 209
P.O. Box 151560
San Rafael, CA 94915-1560

*Information kept confidential to the extent permitted by law

ADA ACCESS ADVISORY COMMITTEE

PURPOSE

The ADA Access Advisory Committee is established to review the City's progress in implementing its Settlement Agreement with the Department of Justice regarding Project Civic Access. The Committee shall serve an advisory role in assisting the City with creating or modifying procedures, policies, and standards that are necessary to bring San Rafael into compliance with both the Settlement Agreement and the ADA.

Currently, the City is required under numerous Federal and State laws to enforce and comply with all aspects of the Americans with Disabilities Act. In order to keep the purpose of this Committee clearly defined, it is equally important to define Committee limitations. The ADA Access Advisory Committee is not involved in:

1. ADA compliance related to private development applications, approvals or enforcement. This responsibility is carried out by the Community Development Department.
2. Grievances under the ADA directed toward the City. Anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the City of San Rafael shall fall under the provisions of the City's grievance procedure.
3. Project review and approval. Existing Boards or Commissions (such as the Design Review Board or Planning Commission) that are established for public or private project review and approval, which includes full ADA compliance, shall remain with those Boards and Commissions.
4. City bids, contracts and agreements. The City has full responsibility to ensure that all approved bids, contracts and agreements are in full compliance under the ADA.

QUALIFICATIONS

All members of the ADA Access Advisory Committee must be individuals with a strong interest and enthusiasm for bringing the City of San Rafael into compliance with the DOJ Settlement Agreement and the ADA. The Advisory Committee shall consist of nine (9) members. The majority of members of the Committee shall be residents of the City who have significant experience in the disability community.

At least five (5) members shall be both residents of San Rafael and persons with disabilities. Some members of advocacy groups or social service providers may also be appointed, but no more than three organizations will serve on the Committee. Also, one member of the Committee shall represent the San Rafael business community interest.

Committee members will be appointed by the City Council.

TIME COMMITMENT

The Advisory Committee shall meet at least quarterly per annum. Additional meetings may be scheduled in order to address issues in the DOJ Settlement Agreement. The meetings shall comply with all provisions of the Brown Act. Review of documents and materials may be required prior to scheduled meetings.

TERMS OF COMMITTEE MEMBERS

Members may serve for two consecutive four-year terms, as per Resolution No. 13681, adopted February 18, 2014



NOTICE TO BOARD & COMMISSION APPLICANTS

REGARDING ETHICS TRAINING

On January 1, 2006, a new law became effective that requires two (2) hours of ethics training of the local legislative bodies by January 1, 2007. This new law defines a local legislative body as a "Brown Act" governing body, whether permanent or temporary, decision-making or advisory, and created by formal action of the City Council. In other words, any person serving on a City Council, Board, Commission, or Committee created by the Council is subject to this ethics training requirement. After this initial class, training will be required every two years.

Ethics training can be accomplished by taking a 2-hour class, self-study, or an on-line class. You may seek reimbursement for taking any authorized ethics class. The city staff member that is assigned to your committee can help you with the reimbursement process.

After you have completed the ethics class, the original certificate needs to be given to the City Manager's Office for record-keeping, with a copy kept for your records.

AB 1234 (Salinas). Local Agencies: Compensation and Ethics

Chapter 700, Statutes of 2005

This law does the following:

- **Ethics Training:** Members of the Brown Act-covered decision-making bodies must take two hours of ethics training every two years, if they receive compensation or are reimbursed expenses. The training can be in-person, on-line, or self-study.
- **Expense Reimbursement -- Levels:** Local agencies which reimburse expenses of members of their legislative bodies must adopt written expense reimbursement policies specifying the circumstances under which expenses may be reimbursed. The policy may specify rates for meals, lodging, travel, and other expenses (or default to the Internal Revenue Service's (IRS) guidelines). Local agency officials must also take advantage of conference and government rates for transportation and lodging.
- **Expense Reimbursement -- Processes:** Local agencies, which reimburse expenses, must also provide expense reporting forms; when submitted, such forms must document how the expense reporting meets the requirements of the agency's expense reimbursement policy. Officials attending meetings at agency expense must report briefly back to the legislative body at its next meeting.



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Clerk

Prepared by: Lindsay Lara, City Clerk

City Manager Approval: _____

TOPIC: CONFLICT OF INTEREST CODE

SUBJECT: RESOLUTION REPEALING RESOLUTION NO. 14188, RE-ADOPTING THE FAIR POLITICAL PRACTICES COMMISSION MODEL CONFLICT OF INTEREST CODE AS THE CITY'S CONFLICT OF INTEREST CODE, AND ADOPTING A REVISED LIST OF DESIGNATED EMPLOYEE POSITIONS AND DISCLOSURE CATEGORIES, TO BE INCORPORATED INTO THE CITY'S CONFLICT OF INTEREST CODE

RECOMMENDATION:

Adopt a resolution repealing [Resolution 14188](#), re-adopting the [Fair Political Practices Commission](#) (FPPC) Model Conflict of Interest Code as the City's Conflict of Interest Code, and adopting a revised list of designated employee positions and disclosure categories, to be incorporated into the city's conflict of interest code.

BACKGROUND:

FPPC regulations require that, in every even-numbered year, each public agency review and, if necessary, revise that portion of the Conflict of Interest Code containing the agency's lists of designated positions and disclosure categories. These lists have been formulated using the criteria from FPPC regulations requiring that all local officials, who foreseeably may materially affect their private economic interests through the exercise of their public duties, disclose their economic interests by filing a Statement of Economic Interest (Form 700). Some officials are required to file disclosure statements because of their position, and others are required to file because of their duties.

In compliance with this FPPC requirement, the City Clerk worked with City departments to review and, if necessary, revise their lists of designated positions and disclosure categories to reflect the City's current organizational structure. These lists have now been revised with that information.

In addition, the FPPC has interpreted the Political Reform Act (PRA) to apply to members of those City boards and commissions with "decision-making authority," as well as to certain consultants. Boards and Commissions are considered to have

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

“decision-making authority” if historically the recommendations of those boards and commissions have been routinely adopted by the City Council. Consultants are considered “public officials” for purposes of the PRA if they either serve in the capacity of a staff member or make recommendations that are routinely adopted by the City. The various City departments have provided updated information regarding the applicability of these regulations to their respective consultants as well as their boards and commissions, and that information has been used to update the Conflict of Interest Code.

A copy of this staff report will be provided to all those who will be required to file for the first time.

Copies of all statements of economic interest are kept on file in the City Clerk’s office for public review.

The disclosure requirements for Mayor, City Councilmembers, City Manager, City Attorney, City Treasurer, and the Planning Commissioners are set forth in Government Code Sections 87200-87210, and are not included in the City’s Code. These officials are covered under separate regulations and their disclosure statements are filed with the FPPC in Sacramento, with copies kept on file in the City Clerk’s office for public review.

FISCAL IMPACT:

No fiscal impact is anticipated from the adoption of this resolution.

ACTION:

Adopt Resolution

ATTACHMENTS:

1. Resolution for adoption, including Appendices A and B
2. Deputy City Attorney II - Memorandum dated June 28, 2018
3. Model FPPC Conflict of Interest Code (2 CCR Section 18730)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL REPEALING RESOLUTION NO. 14188, RE-ADOPTING THE FPPC MODEL CONFLICT OF INTEREST CODE AS THE CITY'S CONFLICT OF INTEREST CODE, AND ADOPTING A REVISED LIST OF DESIGNATED EMPLOYEE POSITIONS AND DISCLOSURE CATEGORIES, TO BE INCORPORATED INTO THE CITY'S CONFLICT OF INTEREST CODE

WHEREAS, pursuant to California Government Code Sections 81000, et seq.

(The Political Reform Act, or PRA), the City Council has adopted by Resolution from time to time the Fair Political Practices Commission's (FPPC) model Conflict of Interest Code, contained at Title 2, California Code of Regulations, Section 18730, as the City's Conflict of Interest Code, and adopted therewith designated employee positions and disclosure categories for incorporation into the City's Conflict of Interest Code, most recently by Resolution No. 14188; and

WHEREAS, every even-numbered year every state agency and local governmental agency is required to review and, if necessary, revise its Conflict of Interest Code including review and revision of its list of designated employee positions and its list of disclosure categories, so as to incorporate such changes as the new titles of recently hired employees, deleted positions, and other organizational restructuring; and

WHEREAS, the Council has determined that the attached Appendices A and B accurately set forth those designated employee positions (Appendix A - Designated Employees) and disclosure categories of financial interest (Appendix B - Disclosure Categories), which should be made reportable under the City's Conflict of Interest Code; and

WHEREAS, the City Council desires to continue to use the FPPC's model Conflict of Interest Code, as set forth in Title 2, California Code of Regulations Section 18730, as the City's

Conflict of Interest Code, a copy of which is available for public review in the City Clerk's office;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL

RESOLVES AS FOLLOWS:

1. The above-recited facts are true and correct.

2. Resolution 14188 is hereby repealed.

3. The FPPC's model Conflict of Interest Code, as set forth in Title 2, California Code of Regulations Section 18730, is hereby re-adopted as the City's Conflict of Interest Code.

4. The attached list of designated employee positions (Appendix A) and list of disclosure categories (Appendix B) are hereby adopted and incorporated into the City of San Rafael's Conflict of Interest Code.

5. The officials and employees holding designated positions shall file statements of economic interests (Form 700) as required by regulations of the FPPC and by Section 4 (C) of the City's Conflict of Interest Code, with the City Clerk, and the City Council hereby delegates the authority of filing officer to the City Clerk.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on Tuesday, the 4th day of September 2018 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

Attached:

- 1. Appendix A - Designated Employees
- 2. Appendix B - Disclosure Categories

APPENDIX A
Designated Employees

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

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>	
Finance	Vegetation Management Specialist	2, 3d, 3e, 3g	
	Accounting Manager	1, 2	
	Revenue Supervisor	1, 2	
	ERP Project Manager (Fixed Term)	1, 2	
	Principal Accountant	1, 2	
	Senior Accountant	1, 2	
	Payroll Administrator	3a, 3c, 3g	
Library	Library Director	1, 2	
	Assistant Library Director	1, 2	
Management Services	Human Resources Director	1, 2	
	Human Resources Coordinator	1, 2	
	Management Analyst Series	1, 2	
	Information Technology Manager	1, 2	
	Senior Network Administrator	3a, 3d, 3g	
	Network Analyst	3a, 3d, 3g	
	Parking Services Manager	1, 2	
	Parking Operations Supervisor	2, 3a, 3d, 3g	
Police	Chief of Police	1, 2	
	Police Captain	1, 2	
	Police Lieutenant	1, 2	
	Police Support Services Supervisor	3d, 3e, 3f, 3g	
	Police Community Services Officer	3d, 3f, 3g	
	Youth Services Program Supervisor	3d, 3f, 3g	
Public Works / Sanitation District	Public Works Director	1, 2	
	Assistant Public Works Director / City Engineer	1, 2	
	Deputy Public Works Director	1, 2	
	Senior Civil Engineer	1, 2	
	Associate Civil Engineer	1, 2	
	Assistant Civil Engineer	1, 2	
	Sr. Associate Engineer	1, 2	
	Jr. Engineer	3e, 3g	
	GIS Analyst	3e, 3g	
	Engineering Technician I	3e, 3g	
	Engineering Technician II	3e, 3g	
	Traffic Engineer	1, 2	
	Traffic Engineering Technician I	3e, 3g	
	Traffic Engineering Technician II	3e, 3g	
	Streets Maintenance Supervisor	1, 2	
	Parks Maintenance Supervisor	1, 2	
	Operations and Maintenance Manager	1, 2	
	Facility Repair Supervisor	3d, 3e, 3f	
	Shop & Equipment Supervisor	3d, 3e, 3f	
	District Manager / District Engineer, Sanitation District	1, 2	
	Sr. Civil Engineer, Sanitation District	1, 2	
	Associate Civil Engineer	1, 2	
	Jr. Engineer	1, 2	
	Sewers Maintenance Supervisor	3d, 3e, 3f	
	Sewer Maintenance Superintendent	3d, 3e, 3f	
	Boards & Commissions	Design Review Board	1, 2

DEPARTMENT

POSITION

**DISCLOSURE
CATEGORY**

Consultants **

Park & Recreation Commission

1, 2

1, 2

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

Designated Employees 2018

APPENDIX B

Disclosure Categories

Category 1: All investments and sources of income.

Category 2: All interests in real property in the state of California.

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

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

NOTE: PENALTY FOR LATE FILING:

AS REQUIRED UNDER THE POLITICAL REFORM ACT OF 1974, AS AMENDED, SECTION 91013, IF ANY PERSON FILES AN ORIGINAL STATEMENT AFTER ANY DEADLINE, HE SHALL BE LIABLE IN THE AMOUNT OF \$10.00 PER DAY AFTER THE DEADLINE UNTIL THE STATEMENT IS FILED, UP TO A MAXIMUM OF \$100.00, WHICHEVER IS GREATER.

CITY OF SAN RAFAEL
San Rafael, California

INTERDEPARTMENTAL MEMORANDUM

DATE: June 28, 2018

TO: LINDSAY LARA, City Clerk

FROM: LAUREN M. MONSON, Deputy City Attorney II

RE: Amendment of Conflicts of Interest Code

=====
California Government Code §87306.5 requires that the City review and, if necessary, revise its Conflict of Interest Code every two years. The deadline for the current review and revision of the Conflict of Interest Code is October 1, 2018.

In 2004, the City of San Rafael adopted a Conflict of Interest Code (SRMC Chapter 2.10) which incorporated by reference the Fair Political Practice Commission’s (“FPPC”) model Conflict of Interest Code in 2 Cal. Code Regs. Section 18730. While this Code is automatically amended whenever the model code is changed, the City is required to review and, if necessary, to revise its list of “Designated Employees” (those employees required to file statements of economic interest, Form 700) and its list of “Disclosure Categories” (the economic interests which must be disclosed on the Form 700). The last review and revision was made on September 19, 2016 by City Council Resolution No. 14188, and the current lists of Designated Employees and Disclosure Categories are attached as Appendices “A” and “B” to that Resolution. Because of new positions, changed circumstances and structural reorganization within City Departments, the list of “Designated Employees” and the list of applicable “Disclosure Categories” may need to be revised. Please forward copies of those Appendices to all Department Directors. Department Directors should review their department employee positions, the disclosure categories applicable to those positions and, if appropriate, revise both lists. Revised lists should be forwarded to you in sufficient time for City Council adoption of any changes by its September 4, 2018 meeting.

WHO IS COVERED

Under the Political Reform Act (“PRA”), all local public officials, who foreseeably may materially affect their own economic interests through their decisions or participation in decisions in their official capacity, must disclose their economic interests by completing and filing with the City Clerk Form 700. Persons required to disclose such economic interests fall into two general classifications:

1. Those required to file disclosures because of their position (state constitutional officers, legislators, county supervisors, mayors, council members, etc.). Government Code §§87200-87210. Because the Government Code specifically covers these individuals, they are **not** covered under the City's Conflict of Interest Code. These positions include members of the City Council, the Mayor, members of the Planning Commission, the City Manager, the Finance Director, and the City Attorney.

2. Those required to file disclosures because of their duties (public officials and employees who make or participate in the making of governmental decisions). These include "Designated Employees", those members of City Boards and Commissions with decision-making authority and certain consultants. These positions are covered under the City's Conflict of Interest Code, adopted pursuant to Government Code §§87300-87313, and accordingly, are the focus of this review and revision.

A. **Boards & Commissions:**

The Fair Political Practices Commission has interpreted the PRA to apply to members of all City boards, committees and commissions with decision-making authority. (2 Cal. Code Regs. §18700(a) (1)). A board, committee or commission has decision-making authority if:

1. It may make a final governmental decision; or
2. It may compel or prevent the making of a governmental decision by its action or inaction; or
3. Its recommendations are, and historically have been, routinely and regularly followed

(2 Cal. Code Regs. §18700(a)(b) & (c)).

Accordingly, if historically, the recommendations of an advisory board (e.g. Design Review Board) have been consistently adopted by the Planning Commission or the City Council, the members of such board, committee or commission must file disclosure statements of their economic interests. Because a board or commission is titled "advisory" is not determinative of whether it has "decision-making authority"; only an historical analysis of a board or commission's "actions" can determine its status.

B. **Designated Employees:**

The PRA's requirements apply to those officials, employees or consultants who either make decisions or who participate in the decision-making process. The FPPC has determined that officials, employees or consultants who negotiate for, or provide advice to the decision-maker by way of research, reports or analysis, are "participating in the decision-making process." As such,

these officials, employees and consultants must be included in the list of “Designated Employees” and must file disclosure statements in the manner detailed in the City’s Conflict of Interest Code.

WHAT MUST BE DONE

In order to comply with the PRA’s requirement of updating the Conflict of Interest Code, each City Department Director should do the following:

1. Review his/her duties and the duties of the department/agency employees to determine whether particular positions should be added or deleted to the list of “Designated Employees.” Delete positions which no longer exist or no longer are involved in the decision making process and add those new positions which are involved in the decision making process.
2. Review the functions and duties of any boards, committees or commissions with which the department/agency interacts to determine whether they meet the criteria to file disclosure statements of economic interest.
3. Review the functions and duties of any department-retained consultants to determine whether they meet the criteria to file disclosure statements.

After determining what positions must be designated, the Department Directors should next determine which categories shall apply to each position. This determination is fact-driven by the job-functions of a particular position and their relationship to potential financial interests over which that position might have some control. In performing this review, department managers should keep in mind that the City’s Conflict of Interest Code and its listed “Designated Employees” and “Disclosure Categories” must:

1. Provide reasonable assurance that all foreseeable conflict-of-interest situations will be disclosed.
2. Provide each affected person a clear and specific statement of his/her duties under the Code.
3. Provide adequate differentiation between “Designated Employees” with different powers and responsibilities.

(Government Code §87309).

After making the revisions to their lists of designated employees and disclosure categories, Department Directors should forward their revisions to your office.

EXAMPLE

In order to assist Directors in their review, the following example may be helpful. An employee or consultant who negotiates, recommends or otherwise participates in the procurement of computers should be designated on the list of “Designated Employees” under the above criteria. Such an employee or consultant would be required to disclose any interests under category 3 (“Investments in Business Entities and Sources of Income”) but would most likely not be required to disclose real property interests. As a city official who has authority to purchase goods, the object of the PRA would be achieved by having this official disclose interests in businesses which sell computers. The same type of analysis would be applicable to employees or consultants who participate in the procurement of office supplies, library books, equipment, materials or services.

As an additional aid in determining who to include in a Department’s list of “Designated Employees,” I have attached the FPPC’s fact sheets on “How to Determine Who Should Be Designated in a Conflict of Interest Code,” and “Conflict-of-Interest Codes – Designating Positions.”

If you have any additional questions, please contact me.

Attachments

cc: Mayor & Council Members
Jim Schutz, City Manager
Rob Epstein, City Attorney

APPENDIX A
Designated Employees

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>
City Attorney	Assistant City Attorney	1, 2
	Deputy City Attorney II	1, 2
City Clerk	City Clerk	3b, 3g
	Deputy City Clerk	3b, 3g
City Manager	Assistant City Manager	1, 2
	Director of Homeless Planning & Outreach	1, 2
	Director of Economic Development and Innovation	1, 2
	Economic Development Program Coordinator	1, 2
	Events Coordinator	1, 2
Community Development	Community Development Director	1, 2
	Planning Manager	1, 2
	Senior Planner	1, 2
	Associate Planner	1, 2
	Assistant Planner	1, 2
	Planning Technician	1, 2
	Code Enforcement Official III	1, 2
	Code Enforcement Official II	
	Code Enforcement Official I	1, 2
	Chief Building Official	1, 2
	Permit Services Coordinator	1, 2
	Building Inspector II	3e
	Building Inspector I	3e
Community Services	Community Services Director	3f, 3g
	Senior Recreation Supervisor	3f, 3g
	Recreation Supervisor	3f, 3g
	Program Coordinator	3f, 3g
Fire	Fire Chief	2, 3d, 3e, 3g
	Deputy Fire Chief	2, 3d, 3e, 3g
	Battalion Chief - Operations	2, 3d, 3e, 3g
	Battalion Chief – Administration	2, 3d, 3e, 3g
	Administrative Fire Captain	2, 3d, 3e, 3g
	Deputy Fire Marshal	2, 3d, 3e, 3g
	Fire Prevention Specialist	2, 3d, 3e, 3g
	Fire Prevention Inspector II	2, 3d, 3e, 3g
	Fire Prevention Inspector I	2, 3d, 3e, 3g
	Environmental Management Coordinator	2, 3d, 3e, 3g
	Emergency Management coordinator	2, 3d, 3e, 3g
	Vegetation Management Specialist	2, 3d, 3e, 3g
	Finance	Finance Director
Accounting Supervisor		1, 2
Revenue Supervisor		2, 3 (in entirety)
Management Analyst		1, 2
Library	Library Director	3d, 3g
	Assistant Library Director	3d, 3g
Management Services	Human Resources Director	3a, 3g
	Senior Management Analyst	3a, 3g
	Information Technology Manager	3d, 3e, 3g

<u>DEPARTMENT</u>	<u>POSITION</u>	<u>DISCLOSURE CATEGORY</u>
	Senior Network Administrator	3d, 3e, 3g
	Network Analyst	3d, 3g
	Parking Services Manager	1, 2
	Parking Operations Supervisor	2, 3d, 3g
	Administrative Analyst	2, 3d, 3g
Police	Chief of Police	3d, 3e, 3f, 3g
	Police Captain	3d, 3e, 3f, 3g
	Police Lieutenant	3d, 3e, 3f, 3g
	Civilian Supervisor	3d, 3e, 3f, 3g
	Training Officer	3f, 3g
	Youth Services Program Supervisor	3r, 3g
Public Works / Sanitation District	Public Works Director	1, 2
	Assistant Public Works Director / City Engineer	1, 2
	Administrative Manager	1, 2
	Associate Civil Engineer	1, 2
	Assistant Civil Engineer	3g
	Sr. Associate Engineer	3g
	Jr. Engineer	3g
	Associate Engineer	3g
	Assistant Engineer	3g
	GIS Analyst	3g
	Engineering Technician I	3g
	Engineering Technician II	3g
	Traffic Engineer	3g
	Traffic Engineering Technician I	3g
	Traffic Engineering Technician II	3g
	Streets Superintendent	1, 2
	Streets Maintenance Supervisor	1, 2
	Parks Superintendent	3d, 3e
	Parks Maintenance Supervisor	3d, 3e
	Garage Shop & Equipment Supervisor	3d
	District Manager / District Engineer, Sanitation District	1, 2
	Sr. Civil Engineer, Sanitation District	1, 2
	Associate Civil Engineer	1, 2
	Sewers Maintenance Supervisor	3e
	Sewer Maintenance Superintendent	3e
Boards & Commissions	Design Review Board	1, 2
	Geotechnical Review Board	1, 2
	Park & Recreation Commission	1, 2
Consultants **		1, 2

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

Designated Employees 2016

APPENDIX B

Disclosure Categories

Category 1: All investments and sources of income.

Category 2: All interests in real property.

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

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

NOTE: PENALTY FOR LATE FILING:

AS REQUIRED UNDER THE POLITICAL REFORM ACT OF 1974, AS AMENDED, SECTION 91013, IF ANY PERSON FILES AN ORIGINAL STATEMENT AFTER ANY DEADLINE, HE SHALL BE LIABLE IN THE AMOUNT OF \$10.00 PER DAY AFTER THE DEADLINE UNTIL THE STATEMENT IS FILED, UP TO A MAXIMUM OF \$100.00, WHICHEVER IS GREATER.

California Fair Political Practices Commission

Conflict-of-Interest Codes - Designating Positions

Introduction

The FPPC is frequently asked why an agency cannot require all of its employees to file a Form 700, Statement of Economic Interests. The following discussion outlines the statutory¹ and regulatory requirements that provide the basis for determining which positions should be designated.

Discussion

One of the most frequent questions to FPPC staff is how does an agency determine which positions should be included in a conflict-of-interest code. The answer is that each agency is unique, and the list of positions is dependent upon several factors. For example, an analyst in one agency may not even be covered in a conflict-of-interest code because that position has no purchasing authority, and its regulatory related duties are substantially reviewed by more than one supervisor and director. In another agency, the analyst may have full authority with little oversight. The following discussion provides background on the statutes, regulations, and guidance provided through advice letters.

The Political Reform Act ("Act") requires that "every agency shall adopt and promulgate a conflict-of-interest code." (Section 87300.) Section 87302(a) provides that a conflict-of-interest code shall contain "specific enumeration of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest." The term "public official" is defined, in part, in Section 82048 as ". . . every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government." With respect to each such position, a code is required to list the specific types of investments, interests in real property, and income that must be disclosed. The responsibility for determining if a code meets these specifications rests with the "code reviewing body." (Section 87303.)

Section 87309 states what a conflict-of-interest code must contain before it may be approved by the code reviewing body. Paragraph (c) of that section provides that a code may not be approved if it "fails to adequately differentiate between designated employees with different powers and responsibilities." This provision is intended to ensure, first, that a conflict-of-interest code requires financial disclosure only from employees required to be designated by Section 87302(a) and, second, that a code

¹ All statutory references are to the Government Code unless otherwise noted.

relate disclosure to the specific duties of such designated employees. Thus, a code reviewing body would fail to fulfill its obligation under Section 87309(c) if it allowed designation of positions in a code which, to quote the language of Section 87302(a), do not entail the "making or participation in the making" of governmental decisions. It would be equally improper for a code reviewing body to require disclosure of interests that may not foreseeably be affected materially by decisions made or participated in by designated employees.

In *City of Carmel-by-the-Sea v. Young*, the Supreme Court held, in general, that there must be a balancing of interests between the government's need to expose or minimize possible conflicts of interest on the one hand, and the right to maintain privacy in one's personal financial affairs while seeking or holding public office on the other. (2 Cal.3d 259 (1970).) Required disclosure of economic interests under the Act has been found to be appropriate where it is narrowly tailored to avoid unwarranted intrusion into the privacy of the public officials involved. (See, *Hays v. Wood*, 25 Cal.3d 770 (1979).)

A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) Therefore, such positions should be designated in the agency's conflict-of-interest code.

A public official "participates in a governmental decision" when, acting within the authority of his or her position and without significant substantive or intervening review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) If a superior relies on an individual's professional judgment, then the individual is participating in making a governmental decision. In other words, if the individual influences the final decision by supporting a position or suggesting a course of action, he/she is participating in the decision even if he/she is not making the final decision. Therefore, the individual's position must be designated in the conflict-of-interest code.

There are several techniques to assist in making the determination of which positions need to be designated in the code. These include reviewing organizational charts – generally, the positions closest to the top must be designated in the code. The larger the agency, the more likely it is that lower level positions have narrower duties and additional, substantive review, and therefore, do not need to be designated. Meeting minutes and annual reports also provide information on the position responsibilities and provide insight as to which positions warrant supplementary review. Additionally, agency websites (such as the contact us page) may provide clues as to whether all positions on an organizational chart are up to date. And lastly, current job duty statements should be requested.

Summary

High level positions that have authority to vote on a matter, appoint a person, obligate or commit his or her agency to a course of action, or enter into any contractual agreement on behalf of his or her agency, mid-level positions that have authority to negotiate decisions on behalf of the agency without significant substantive review, and positions that advise or make recommendations to the decision-maker by conducting research or an investigation, preparing or presenting a report, analysis or opinion that requires the exercise of judgment on the part of the employee and the employee is attempting to influence the decision, should all be designated in the conflict-of-interest code. Positions that are strictly manual, clerical, or ministerial in nature should not be designated in the conflict-of-interest code. It is important to note that an express purpose of the Act is to ensure that the assets and income of public officials be disclosed so that conflicts of interests may be avoided. However, as discussed in the foregoing paragraphs, only those positions that make or participate in making governmental decisions are required to report assets and income on a public form. Thus, the agency and code reviewing body must take a careful look at the agency's governmental programs and functions as well as the specific duties of those positions being designated in the code.

How to Determine Who Should be Designated In a Conflict of Interest Code¹

Determining Who Makes or Participates in the Making of Governmental Decisions:

Making a governmental decision, means the person:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action; or
- (4) Enters into any contractual agreement on behalf of his or her agency.

Participating in the making of a decision, means the person:

- (1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or
- (2) Advises or makes recommendations to the decision-maker by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the employee and the employee is attempting to influence the decision.

Who is a Designated Employee?

A designated employee is an officer, employee, member or consultant of an agency whose position is designated in the code because the position entails the making or participation in the making of governmental decisions which may foreseeably have a material effect on any financial interest. (*Government Code Section 82019.*)

To determine who should be designated in the code, you need to know who within the agency makes or participates in the making of governmental decisions. (*FPPC Regulation 2 Cal. Code of Regs. Section 18701-18702.4.*)

Who Should Not be Designated?

The term "designated employee" does not include:

- Public officials specified in Government Code Section 87200
 - board of supervisors
 - chief administrative officers
 - district attorneys
 - county counsels
 - county treasurers
 - planning commissioners
 - city councilmembers
 - mayors
 - city managers
 - city attorneys
 - city treasurers
 - other city, county and local agency public officials who manage public investments
- Solely clerical, ministerial or manual positions
- Members of boards or commissions which are solely advisory and do not make substantive recommendations

Checking Duty Statement and Job Description:

You can determine who should be designated in the code by first eliminating those positions outlined above that are not designated employees.

Next, evaluate the remaining employees, members, officers or consultants of your agency. Top level management personnel are normally broad policy makers and should be designated. Look at each position to determine if it makes or participates in the making of governmental decisions. One way to accomplish this is by reviewing duty statements or job descriptions.

¹This fact sheet should not be used to determine whether your agency is required to adopt a conflict of interest code. Contact the FPPC for assistance in making that determination.

Consultants in a Conflict of Interest Code

Who is a Consultant? The Political Reform Act (Gov. Code Sections 81000-91015) provides that "no public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100.) In addition, the Act requires every public official to disclose those economic interests that could foreseeably be affected by the exercise of his or her duties. (Sections 87200-87313.)

The term "public official" includes consultants: "Public official at any level of state or local government" means a member, officer, employee, or consultant of a state or local government agency." (Gov. Code Section 82048.)

Regulation 18701(a)(2) defines "consultant" as an individual who, pursuant to a contract with a state or local government agency:

- (A) Makes a governmental decision whether to:
- (i) Approve a rate, rule, or regulation;
 - (ii) Adopt or enforce a law;
 - (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
 - (v) Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
 - (vi) Grant agency approval to a plan, design, report, study, or similar item;
 - (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof.

-OR-

- (B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision (Regulation 18702.2) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

Consultants are Individuals

It is not the business or firm providing services to your agency that is considered the consultant. The *individual(s)* working for the firm who provide the services are considered the consultants. These individuals must file statements of economic interests based on their *personal* financial interests and are subject to disqualification and other laws affecting public officials.

Serving in a Staff Capacity

The regulation includes only those individuals who either "participate in making" governmental decisions or are performing substantially all the same tasks that normally would be performed by staff members of a governmental entity. In most cases, individuals who work on just one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. (Memorandum to the Commission dated March 28, 1994.) For example, suppose an individual contracted with a city to study noise at a specified intersection. If the individual took the noise measurements in one day, and issued a report to the planning commission before its next meeting, the individual normally would not be serving in a staff capacity. If, however, a firm's

contract provided that it would provide all plan checking services for a city for five years, it is much more likely that individuals performing these services would be in a quasi-staff capacity.

An individual who makes a governmental decision listed above or serves in staff capacity with the agency is considered a public official who must file a statement of economic interests. This applies even if an agency fails to properly designate a consultant in a conflict of interest code because the disqualification provisions of the Political Reform Act operate as soon as an individual becomes a public official. The individual is subject to the Act's gift limits and conflict of interest provisions.

Examples

An attorney hired to perform ongoing legal services for an agency would usually be considered a consultant. Attorneys generally have broad powers to affect decisions which could foreseeably and materially affect their financial interests. These powers include the authority to represent and bind the agency to a course of action in litigation and contract matters. Attorneys often make governmental decisions listed in Regulation 18701(a)(2)(A) and/or serve in a staff capacity with the agency. However, an attorney hired to work on one discrete litigation matter, who was not making any governmental decisions listed above, would not be considered to be working in a "staff capacity" and, therefore, would not be a consultant. (Memorandum to the Commission, March 28, 1994.)

An investment firm provides consulting services to a county employee's retirement association. Pursuant to a contract, employees of the investment firm attend all board meetings and subcommittee meetings where investment issues are discussed. Employees of the investment firm are required to perform other services and provide reports on investment issues as requested by the retirement board or staff. Because the employees of the investment advisor serve on an ongoing basis as staff for the retirement board, and in that capacity participate in the making of all investment decisions, they are considered consultants under the Act. (Randolph Advice Letter, No. I-95-045.)

Individual members of a consulting firm who prepare an EIS/EIR report for the Sacramento Regional Transit District's ("RT") Folsom light rail extension are consultants and should be designated in a conflict of interest code. RT hires environmental consultants on an as-needed basis to prepare extensive or technical environmental studies which cannot be completed by its staff. RT hires environmental consultants for each project. The consulting firm will be under contract with RT to provide environmental services for three projects extending over at least three years. The consultant conducts research and makes investigations that require exercise of its expertise and judgment, and prepares the report. The consultant's role also encompasses recommending to RT's board of directors approval of agreements and permits it negotiates and approval of the environmental report. Although the RT board reviews the report and related documents, because of the technical nature of the study, the consultant's conclusions and recommendations are accepted without significant intervening substantive review. In addition, members of the consulting firm have authority to negotiate contracts and recommend RT's approval without significant independent review by RT. (Patterson Advice Letter, No. A-97-570.)

The Commission realizes that not all consultants participate in making decisions on behalf of public agencies. Rather than amend your code each time you retain a consultant who is in a decision-making capacity, you may use a specialized disclosure category which provides that the disclosure required of consultants shall be determined on a case-by-case basis by the chief executive officer. The chief executive officer may make a determination as to what disclosure, if any, is required by any particular consultant.

This consultant disclosure category should be part of the code. You should add the position "consultant" as a designated position in the appendix of the code with a footnote as shown in the following example:

Consultant*

**Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:*

The (executive director or executive officer) may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The (executive director's or executive officer's) determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.



This fact sheet highlights provisions of the Act concerning consultants. You should not rely on the fact sheet alone to ensure compliance with the Act. If you have any questions, consult the Act and regulations or contact the Fair Political Practices Commission at (916) 322-5660, or toll-free at (866) 275-3772. The Political Reform Act, regulations, fact sheets, and other important information are available on the Commission's website, www.fppc.ca.gov.

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

§ 18730. Provisions of Conflict of Interest Codes.

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

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

(1) Section 1. Definitions.

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

(2) Section 2. Designated Employees.

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

(3) Section 3. Disclosure Categories.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Contents of Initial Statements.

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

(B) Contents of Assuming Office Statements.

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

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

(D) Contents of Leaving Office Statements.

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

(7) Section 7. Manner of Reporting.

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

(A) Investment and Real Property Disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8.2) Section 8.2. Loans to Public Officials.

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

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

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

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

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

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

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

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

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

(8.3) Section 8.3. Loan Terms.

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

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

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

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

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

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

(8.4) Section 8.4. Personal Loans.

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

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

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

a. The date the loan was made.

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

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

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

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

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

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

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

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

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

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

(9) Section 9. Disqualification.

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

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

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

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

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

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

(9.3) Section 9.3. Legally Required Participation.

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

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

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

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

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

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

(10) Section 10. Disclosure of Disqualifying Interest.

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

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

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

(12) Section 12. Violations.

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

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

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

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

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

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

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

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

HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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




Agenda Item No: 4.e
Meeting Date: September 4, 2018

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Services

Prepared by: Susan Andrade-Wax
Community Services Director

City Manager Approval: 

TOPIC: WEST END NEIGHBORHOOD ASSOCIATION ANNUAL PICNIC ROAD CLOSURE

SUBJECT: RESOLUTION AUTHORIZING STREET CLOSURES FOR THE WEST END NEIGHBORHOOD ASSOCIATION ANNUAL PICNIC ON SUNDAY, SEPTEMBER 16, 2018, ON NEAME AVENUE FROM SANTA MARGARITA AVENUE TO WEST CRESCENT DRIVE, FROM 8 A.M. TO 6 P.M.

RECOMMENDATION: Adopt a resolution.

BACKGROUND:

The West End Neighborhood Association (WENA) is celebrating its 18th Annual Picnic event in San Rafael. This family-friendly event has been a successful opportunity for the neighborhood to come together to create community. In 2004, a resident of the West End neighborhood hosted the first picnic in their home. As attendance grew, the event moved locations and was held at the First United Methodist Church parking lot for six years. In 2010, the event outgrew the parking lot and WENA has since requested permission each year for their annual picnic to be held on the street on Neame Avenue.

WENA has requested a temporary street closure to accommodate the Annual Picnic. In order to continue this annual neighborhood celebration, staff is requesting a street closure to safely accommodate this yearly gathering. City staff will work with the neighborhood to help coordinate the street closure.

This year's event will feature a barbeque, jumpy house, crafts for kids, balloon artists and is open to all residents of the West End. The Annual Picnic will start on Neame Avenue at 12:00 p.m. on Sunday, September 16th and end at 3:00 p.m.

ANALYSIS:

City staff has determined and recommended that, in the interest of the safety and welfare of pedestrian and auto traffic in West End Neighborhood, the below listed street should be temporarily closed to through traffic for the date and times specified below:

Street to be closed Sunday, September 16, 2018 from 8:00 a.m. to 6:00 p.m.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

1. Neame Avenue from Santa Margarita Avenue to West Crescent Drive.

COMMUNITY OUTREACH:

This is a neighborhood association annual event. Communication is done through the association to their members.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

RECOMMENDED ACTION:

Adopt the resolution.

ATTACHMENTS:

1. Resolution
2. West End Neighborhood Association Picnic (WENA) Map
3. Event Application

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING STREET CLOSURE FOR THE WEST END NEIGHBORHOOD ANNUAL PICNIC ON SUNDAY, SEPTEMBER 16, 2018, ON NEAME AVENUE FROM SANTA MARGARITA AVENUE TO WEST CRESCENT DRIVE, FROM 8 A.M. TO 6 P.M.

WHEREAS, the West End Neighborhood Annual Picnic will occur on Sunday, September 16, 2018; and

WHEREAS, after reviewing plans for the event and the traffic patterns, City staff has determined and recommended that, in the interest of the safety and welfare of pedestrian and auto traffic in West End Neighborhood, the below listed street should be temporarily closed to through traffic for the date and times specified below:

Street to be closed Sunday, September 16, 2018 from 8:00 a.m. to 6:00 p.m.

1. Neame Avenue from Santa Margarita Avenue to West Crescent Drive.

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL HEREBY RESOLVES AS FOLLOWS:

1. That all of the above findings are true and correct;
2. That, pursuant to the authority of Vehicle Code section 21101(e), for the safety and protection of persons, both pedestrians and vehicle drivers, the City Council hereby authorizes the temporary closure of the above listed street for the date and times described.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Tuesday, the 4th day of September, 2018 by the following vote, to wit:

AYES: Councilmembers:

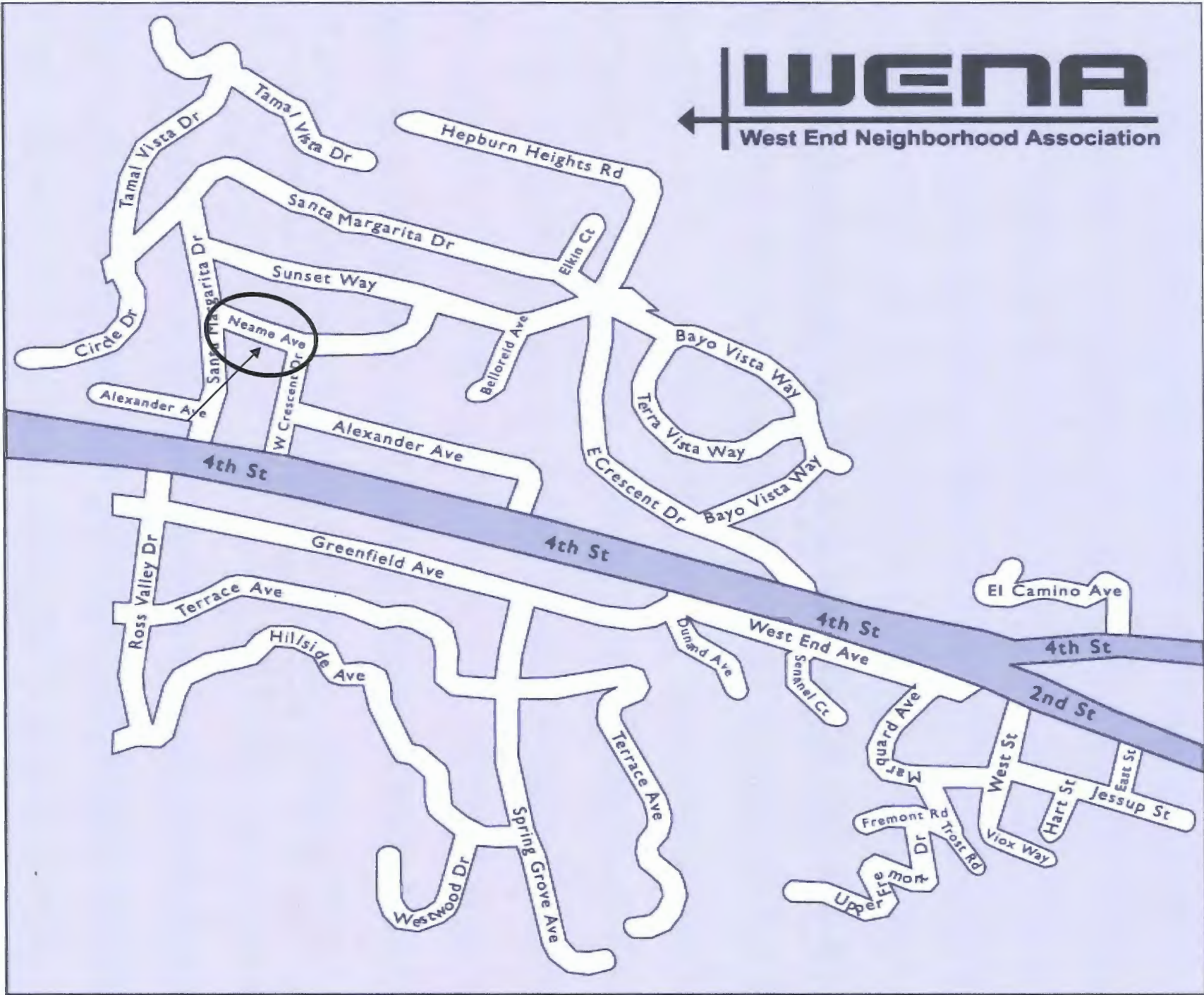
NOES: Councilmembers:

ABSENT: Councilmembers:

LINDSAY LARA, City Clerk

WENA

West End Neighborhood Association





Police Traffic Dept, 1400 Fifth Avenue (415) 485-3035
 Events Coordinator, 1313 Fifth Avenue (415) 485-3465
 San Rafael, CA 94901
 Website: www.cityofsanrafael.org

APPLICATION FOR AND PERMIT TO CONDUCT A PARADE, AND/OR HOLD A MEETING OR ASSEMBLY
 ON THE PUBLIC STREETS, PARK OR OTHER PUBLIC GROUNDS OF THE CITY OF SAN RAFAEL,
 OR IN SAN RAFAEL CITY PLAZA, AS REGULATED BY SRMC CHAPTER 5.70

Name of Organization West End Neighborhood Assoc. Authorized Representative David Borton, Director
 Name of Event Chairperson/Organizer Chris Leinbach, President CDL# N3551371
 Address 193 Tamal Vista Dr. Phone (415) 482-8009
 Cell Phone (415) 302-7084 Fax _____ E-mail wena.sanrafael@gmail.com
 Type of Event Block Party / Picnic Date 09/16/2018 Event Hours ^{12N} _____ am/pm to ^{3PM} _____ am/pm
 Purpose of Event Develop neighborhood communication
 Names of Speakers/Groups none
 List Type of Sound Equipment to be used (PA, microphone, stereo, etc.) PA system for raffle, low power
 Is Alcohol Going to be Sold/Available? Yes What Type? Beer & wine Has ABC Permit Been Obtained? No

ESTIMATED NUMBER OF (attach detailed diagram of layout)	
Participants <u>200</u>	Vendors <u>2</u> Garbage Cans <u>3</u> Dumpsters <u>0</u> Portable Toilets <u>1</u>
Vehicles (include types) <u>none</u>	
Animals (include species) <u>10 dogs (pets of participants)</u>	Estimated Attendance <u>200</u>
PARADE/PUBLIC GATHERING	
Location of Event or Starting Point and Route (be specific) _____	
Location of Assembly Area _____	Location of Dispersal Area _____
Plans for Assembly and Dispersal, Including Times _____	
Will Event Occupy All or Only a Portion of the Streets and Sidewalks? _____ If Inter-City Parade, Has Other City Issued Permit? _____	
PLAZA (attach detailed diagram of layout)	
Setup Date and Time <u>9 am, 9/16/18</u>	Takedown Date and Time <u>5 pm, 9/16/18</u> (If Different Than Hours Listed Above)
Number of Tables <u>10</u> Chairs <u>100</u> Generators <u>0</u> Tents <u>2</u> Dimensions of Tents <u>12'x12'</u>	
STREET CLOSURE(S) (attach additional sheets, if necessary)	
List Street(s) to be Closed <u>Neame Street</u>	Hours of Closure <u>9 am</u> am/pm to <u>5 pm</u> am/pm

IT IS UNDERSTOOD THAT THIS MEETING AND/OR PARADE WILL BE CONDUCTED IN AN ORDERLY MANNER. IT IS ALSO UNDERSTOOD THAT THE MEETING AND/OR PARADE WILL BE STOPPED, MOVED TO ANOTHER LOCATION, OR REDIRECTED, IF SO REQUESTED BY A POLICE OFFICER OF THE CITY OF SAN RAFAEL WHEN SUCH ACTION IS NECESSARY TO PERMIT THE NORMAL FLOW OF VEHICULAR OR PEDESTRIAN TRAFFIC. IT IS ALSO UNDERSTOOD THAT THE PARADE WILL BE CONDUCTED IN CONFORMITY WITH THE ROUTE AND HOURS SPECIFIED IN THIS PERMIT. APPLICANT AGREES TO CONDUCT THIS EVENT IN COMPLIANCE WITH SAN RAFAEL MUNICIPAL CODE CHAPTER 5.70 (SEE BACK OF THIS FORM). APPLICANT REALIZES THAT A VIOLATION OF ANY PROVISION OF THIS ORDINANCE WILL BE GROUNDS FOR IMMEDIATE REVOCATION OF THIS PERMIT.

IT IS ALSO UNDERSTOOD THAT THIS MEETING AND/OR PARADE WILL BE FULLY COMPLIANT WITH THE AMERICANS WITH DISABILITIES ACT (ADA) LEGAL REQUIREMENTS. QUESTIONS/CONCERNS MAY BE ADDRESSED TO APPROPRIATE DEPARTMENT LISTED AT THE TOP OF THIS FORM.

THIS APPLICATION, WHEN SIGNED BY ALL PARTIES, SERVES AS A CONTRACT BETWEEN THE CITY OF SAN RAFAEL AND THE ABOVE MENTIONED ORGANIZATION. PRIOR TO THE EXECUTION OF THIS CONTRACT, THE ORGANIZATION WILL PROVIDE THE CITY OF SAN RAFAEL WITH ANY AND ALL REQUIRED DOCUMENTS (EVENT DIAGRAM, ABC LIQUOR PERMIT, ETC.) AND APPLICABLE FEES, AS WELL AS A CERTIFICATE OF LIABILITY INSURANCE WITH A MINIMUM OF \$1,000,000 COVERAGE, AND IF DEEMED NECESSARY, BASED ON TYPE OF ACTIVITY, UP TO \$2,000,000 COVERAGE. ALSO REQUIRED IS AN ENDORSEMENT TO THE LIABILITY POLICY LISTING THE CITY OF SAN RAFAEL AS AN ADDITIONAL INSURED.

THIS PERMIT MUST BE IN POSSESSION OF PERSON CONDUCTING PARADE, MEETING OR ASSEMBLY, AND MUST BE SHOWN TO ANY POLICE OFFICER OR AUTHORIZED REPRESENTATIVE OF THE CITY OF SAN RAFAEL UPON DEMAND. IF THIS PERMIT IS FOR A MEETING OR ASSEMBLY ON A PUBLIC STREET, MEETING MUST START WITHIN TEN (10) MINUTES OF THE SCHEDULED TIME; OTHERWISE PERMIT IS AUTOMATICALLY CANCELLED.

Approved _____ Denied _____ OFFICIAL USE ONLY	Applicant <u>David P. Borton</u> Date <u>08/06/2018</u>	Insurance Requirement: \$1 Mil _____ \$2 Mil _____
	City Event Coordinator _____ Date _____ _____ By _____ Date _____ CHIEF OF POLICE	



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Economic Development

**Prepared by: Simon Vuong,
Economic Development Coordinator**

City Manager Approval:

TOPIC: DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD MEMBERS

**SUBJECT: A RESOLUTION APPOINTING THREE NEW BOARD MEMBERS TO THE
DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD**

RECOMMENDATIONS:

Adopt resolution to appoint three new Advisory Board members to the Downtown Business Improvement District (BID), for a period of two (2) years.

BACKGROUND:

The City Council is tasked with appointing vacancies to the BID Advisory Board (Board) according to SRMC 10.09.080, and three are now before the City Council as outlined in the attached resolution for review. The BID Advisory Board helps administer the affairs of the BID, and BID members must own or represent a business in the BID (or be a voluntary member).

The current BID boundaries and business member composition were substantially overhauled in 2013, greatly expanding the number of businesses within the district. Since that time, the City council has annually appointed the BID Advisory Board. In 2017, a completely new Advisory Board of five board members were appointed and City Council directed these board members to nominate an additional four board members, for a total of nine board members. According to existing bylaws of the BID, each Advisory Board member will serve a two (2) year term.

ANALYSIS:

The BID Advisory Board has had difficulty attracting members to serve, as members serve on the Board on a voluntary basis. As a result, mid-year vacancies have arisen as Advisory Board members focus their attention on other commitments. With these vacancies, the Advisory Board has been charged with recruiting new members, actively searching for members with diverse backgrounds in terms of gender, ethnicity, geographical location of businesses, and/or other appropriate characteristics that more accurately reflect the makeup of the downtown business community. The three nominated Advisory Board members before the City Council are represented by women, with one owning a business in the West End Village of downtown.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

Currently there is no formal process for recruitment of Advisory Board members, so the search is entrusted to the Executive Director and the existing members of the Advisory Board to select, vet, and nominate individuals to the Advisory Board for consideration by the City Council.

FISCAL IMPACT:

There is no fiscal impact associated with this action.

OPTIONS:

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

1. Adopt the resolution as recommended by staff.
2. Adopt the resolution with modifications.
3. Take no action.

RECOMMENDED ACTION:

1. Adopt resolution.

ATTACHMENTS

1. Resolution appointing three new BID Advisory Board Members

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
APPOINTING BUSINESS IMPROVEMENT DISTRICT (BID)
ADVISORY BOARD MEMBERS**

WHEREAS, the Downtown Business Improvement District (BID) has been established and requires a full Advisory Board to be appointed by the City Council pursuant to San Rafael Municipal Code section 10.09.080; and

WHEREAS, the City Council wishes to appoint business community members to fill three vacancies on the BID Advisory Board; and

WHEREAS, the existing BID Advisory Board consists of:

Jaime Ortiz	Bank of Marin
Bonnie Ayers Namkung	Bonnie Ayers Namkung Marketing Communications
Jed Greene	Five Corners Consulting Group
Melissa Prandi	PRANDI Property Management
Jeff Brusati	T&B Sports
Adam Dawson	Mike's Bikes

NOW, THEREFORE, BE IT RESOLVED that the following shall be appointed to the BID Advisory Board with terms expiring two (2) years from the date of this resolution, on September 4th, 2020:

Dezzy St. Andre	Rumor Has It
Joanne Vosmek	Copperfield's Books
Erika Bowkers	Pleasures of the Heart

I, LINDSAY LARA, CLERK of the City of San Rafael, HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of San Rafael, Marin County, California, at a regular meeting, held on the 4th day of September 2018, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk



**City of San Rafael
In recognition of
National Preparedness Month 2018**

- WHEREAS,** In San Rafael, our community is susceptible to human-caused and natural disasters including earthquakes, wild land fires, floods, and other large-scale emergencies we cannot predict; and
- WHEREAS,** when large scale emergencies occur law, fire, and emergency medical services will be overwhelmed with priority calls and our City employees will serve as Disaster Service Workers; and
- WHEREAS,** government agencies and disaster organizations cannot bear the sole responsibility to prepare for and respond to disasters; and
- WHEREAS,** working in partnership with our community members, Community Emergency Response Teams (CERT), and community organizations we can minimize the loss of lives, injuries, and help our community find a new normal post emergency; and
- WHEREAS,** the City of San Rafael will join the nation in focusing on this year's theme, "Disasters Happen. Prepare Now. Learn How." with an emphasis on preparedness for all community members. Each week of September 2018 the San Rafael Office of Emergency Services and Public Information Officers will share weekly themes and preparedness information with our community on social media. The San Rafael Emergency Operations Center team will join the Marin County Operational Area in a Bay Area Regional disaster exercise; and
- WHEREAS,** the time and effort residents, business owners, and San Rafael employees invest now in preparing will help them and their families navigate through and recover more quickly from a disaster; and

NOW, THEREFORE BE IT RESOLVED that I, Gary Phillips, Mayor of the City of San Rafael on behalf of the City Council and all residents, hereby proclaim the month of September 2018 as Emergency Preparedness Month and in doing so, urge all residents to take emergency preparation steps to increase our community's resiliency to large scale emergencies.

Mayor

Councilmembers

City Manager

Attested by my hand this ____ day of

City Clerk



SAN RAFAEL
THE CITY WITH A MISSION

Agenda Item No: 4.h

Meeting Date: September 4, 2018

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Finance

Prepared by: Nadine Hade,
Interim Finance Director

City Manager Approval:

TOPIC: GENERAL FUND UPDATE AND CITY-WIDE BUDGET AMENDMENTS

SUBJECT: UPDATE ON FISCAL YEAR 2017-2018 UNAUDITED RESULTS FOR THE GENERAL FUND AND RESOLUTION ADOPTING AMENDMENTS TO THE FISCAL YEAR 2017-2018 CITY-WIDE BUDGET FOR THE PURPOSE OF CONFIRMING AUTHORIZED APPROPRIATIONS AND TRANSFERS

RECOMMENDATION: ACCEPT REPORT AND ADOPT RESOLUTIONS AS PRESENTED

BACKGROUND: During the process of developing and recommending the fiscal year 2018-2019 budget, staff provided updates on the fiscal performance of the General Fund and projections through fiscal year-end. Now that the City has closed its books for the fiscal year, staff is in a position to provide an update to the City Council that will provide a more accurate picture of the year-end results.

The fiscal year 2017-2018 City-wide budget was last amended by the City Council on December 18, 2017, during an interim budget review. Since the close of the fiscal year on June 30, 2018, staff has reviewed the revenues and expenditures, particularly those in special revenue funds and other special purpose funds. This review has yielded a small number of adjustments that are clean up in nature. These adjustments are recommended by the City's outside auditors and their approval by the City Council provides for complete budget accountability.

The purpose of these amendments is to formally authorize the expenditures and transfers required in certain funds to fulfill their respective purposes and functions through June 30, 2018, as well as recognize the accounting treatment of the 2018 Lease Revenue Bonds for the Essential Public Safety Facilities project. None of these amendments results in a deficit fund balance in any of the subject funds. This item was reviewed by the City Council Finance Committee at its meeting of August 29, 2018.

ANALYSIS:
General Fund

At the June 18, 2018 City Council Meeting, staff projected a deficit of \$159,075 for the fiscal year-ended June 30, 2018. Following the preliminary year-end close, this number is projected at \$155,035, a

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

decrease of \$4,040. The reduction in the deficit is due to an increase in projected revenues of \$483,000 netted with additional expenditures of \$478,960. Staff is recommending increasing expenditure authorization by \$478,960 to cover the increase in expenditures. There is no net fiscal impact associated with this activity as it is offset by additional revenues.

The General Fund received \$53,733,397 in financing sources from the sale of 2018 Lease Revenue Bonds for the Essential Public Safety Facilities project, approved by the City Council on [March 5, 2018](#). From these proceeds, \$52,987,673 was transferred to the Essential Public Safety Facilities project fund. The remaining \$745,724 was retained in the general fund to make a bond interest payment of \$391,029 and to cover bond issuance costs of \$354,695. A portion of the bond proceeds earned \$48 of interest which was also transferred to the project fund, bringing the total amount transferred to \$52,987,721. This activity was not included in the budget projections presented to City Council on June 18, 2018 as the technical accounting analysis was not yet completed. Since the expenditures are accompanied with a revenue source, there is no net impact to the current year results.

Following the final accounting for the Public Safety Essential Facilities projects, capital transfers of \$8,788,886 were made from Measure E Transaction and Use revenues to the project fund. Of this amount, \$4,025,000 corresponds to revenues received in fiscal year 2017-2018 and \$4,763,886 corresponds to revenues set aside in prior years.

FY 17-18 Budget Projections	presented to City Council June 18, 2018	Updated to include bond, energy loan and capital activity June 30, 2018	Recommended Adjustments to Revenues/Expenditures September 4, 2018	Updated to include Recommended Adjustments September 4, 2018
General Fund				
Revenues	\$77,562,000	\$77,562,048	\$483,000	\$78,045,048
Transfers in	1,356,344	1,356,344	-	1,356,344
Financing Sources - 2018 Lease Rev Bonds	-	53,733,397	-	53,733,397
Financing Sources - PG&E CEC Loan	-	1,080,800	-	1,080,800
Total Resources	\$78,918,344	\$133,732,589	\$483,000	\$134,215,589
Expenditures	\$72,633,000	\$73,378,723	\$478,960	\$73,857,683
Transfers out – operating	2,350,000	2,350,000	0	2,350,000
Total Operating Uses	\$74,983,000	\$75,728,723	\$478,960	\$76,207,683
Measure E to Public Safety Facilities	\$4,025,000	\$8,788,886	-	\$8,788,886
Bond Proceeds to Public Safety Facilities	-	52,987,721	-	52,987,721
PG&E Loan to Energy Projects	-	1,080,800	-	1,080,800
Total Capital Transfers Out	\$4,025,000	\$62,857,407	\$0	\$62,857,407
Net Results before Allocations	(\$89,656)	(\$4,853,541)	\$4,040	(\$4,849,501)
(Allocations) / Use of reserved funds				
Measure E - Public Safety Facilities	-	\$4,763,886	-	\$4,763,886
Emergency reserve	(120,000)	(120,000)	-	(120,000)
Purchase Order rollover	50,581	50,581	-	50,581
Total Results	(\$159,075)	(\$159,075)	\$4,040	(\$155,035)
Allocation of unassigned funds	\$159,075	\$159,075	(\$4,040)	\$155,035
Net After Allocations	\$0	\$0	\$0	\$0

Other Funds

The following table lists the expenditures through June 30, 2018, for which a total of \$168,745 needs to be appropriated. The primary reasons for these changes include (1) unanticipated operational needs, and (2) underestimated expenditure amounts. Some expenditures were needed to provide services that were offset by grants or other revenue sources. There were sufficient resources in each of these funds to support these expenditures, and none of the expenditures has an impact on the assumptions under which the fiscal year 2018-2019 budget was developed.

As a result of making these changes, the City's financial statements for fiscal year 2018-2019 will reflect spending within the authorized levels.

Proposed adjustments to appropriations:

Fund	Purpose of authorization	Amount	Funding Source
230 – Police Youth Services	Camp Chance 2018 Program	\$33,117	donations
234 – Pt. San Pedro Median Assessment District	Median maintenance (work described in engineers report)	32,517	property assessments
235 – Baypoint Lagoon Assessment District	Miscellaneous costs	101	property assessments
237 – Loch Lomond Marina CFD #2	County collection charges	130	property assessments
281 – Safety Grants	Crime analytics, traffic enforcement	102,880	non-federal and federal grants
Total Recommended Adjustments		\$168,745	Special Revenue Funds

FISCAL IMPACT: This action authorizes the formal appropriation of resources in the 2017-2018 fiscal year to support the actual expenditure and transfer activity through June 30, 2018 as described in this report. No spending authority beyond what was actually spent or committed as of June 30, 2018 is created through this action.

RECOMMENDATION: Staff recommends that the City Council accept the report and adopt the Resolution as presented.

ATTACHMENT:
Resolution with exhibit

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING AMENDMENTS TO THE CITY OF SAN RAFAEL BUDGET FOR FISCAL YEAR 2017-2018 FOR THE PURPOSE OF CONFIRMING AUTHORIZED APPROPRIATIONS AND TRANSFERS

WHEREAS, the City Council approved Resolution 14342 adopting the fiscal year 2017-2018 budget; and

WHEREAS, the City Council approved Resolution 14445 amending the fiscal year 2017-2018 budget, and took other actions during the year to authorize spending; and

WHEREAS, as part of the fiscal year-end closing process, staff has reviewed and analyzed actual revenues, expenditures and transfers through June 30, 2018, has identified a need for additional budget adjustments, and has submitted its analysis and recommendations in a report to the City Council; and

WHEREAS, after examination, deliberation and due consideration, the City Council has approved the same report and recommendations;

NOW, THEREFORE, BE IT RESOLVED, by the San Rafael City Council that Resolution 14342 for fiscal year 2017-2018 is further amended to authorize the following adjustments to appropriations, which are reflected in the Consolidated Funds Schedule (Exhibit I attached hereto and incorporated herein by reference):

Fund	Description	Amount
General Fund – 001	increased costs; offset by revenue	\$478,960
Police Youth Services - 230	Camp Chance 2018; funded by donations	33,117
Pt. San Pedro A.D. – 234	median maintenance; funded by assessments	32,517
Baypoint Lagoon A.D. – 235	misc costs; funded by assessments	101
Loch Lomond CFD #2 - 237	county charges; funded by assessments	130
Safety Grants – 281	crime analytics, traffic enforcement; funded by grants	102,880
Total Special Revenue Funds		\$168,745

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a special meeting of the Council of said City on Tuesday, the 4th of September 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

TABLE I
CHANGES TO GENERAL FUND REVENUES AND OTHER SOURCES

General Fund	Adopted Budget FY 2017-18	Approved Changes	Current Budget	Proposed Changes	Revised Budget
Revenues	76,724,443	837,605	77,562,048	483,000	78,045,048
Transfers in	1,356,344		1,356,344	-	1,356,344
Financing Sources	-	54,814,197	54,814,197	-	54,814,197
FY17-18 Sources	78,080,787	55,651,802	133,732,589	483,000	134,215,589
FY16-17 Rollover	50,549	32	50,581		50,581
Total Resources	78,131,336	55,651,834	133,783,170	483,000	134,266,170

TABLE II
CHANGES TO GENERAL FUND EXPENDITURES AND OTHER USES

General Fund	Adopted Budget FY 2017-18	Approved Changes	Current Budget	Proposed Changes	Revised Budget
Expenditures	72,513,946	916,272	73,430,218	478,960	73,909,178
Transfer out	2,350,000		2,350,000		2,350,000
Transfer out-CIP	4,025,000	58,832,407	62,857,407		62,857,407
Total Appropriation	78,888,946	59,748,680	138,637,626	478,960	139,116,586

TABLE III
CHANGES TO OTHER FUNDS

Other Funds	Adopted Budget FY 2017-18	Approved Changes	Current Budget	Proposed Changes	Revised Budget
Revenues	44,376,578	2,732,926	47,109,504	-	47,109,504
Transfers in	6,475,000	61,786,020	68,261,020		68,261,020
FY17-18 Sources	50,851,578	64,518,946	115,370,524	-	115,370,524
FY16-17 Rollover		7,806,379	7,806,379		7,806,379
FY16-17 CIP Carry Over		-	-		-
Total Resources	50,851,578	72,325,325	123,176,903	-	123,176,903
Expenditures	51,526,218	37,966,407	89,492,625	168,745	89,661,370
Transfer out	1,456,344	2,953,565	4,409,909	-	4,409,909
Total Appropriation	52,982,562	40,919,972	93,902,534	168,745	94,071,279
Net Results	(2,130,984)	31,405,353	29,274,369	(168,745)	29,105,624


TABLE IV
CITY-WIDE APPROPRIATION SUMMARY

All Funds	Adopted Budget FY 2017-18	Approved Changes	Current Budget	Proposed Changes	Revised Budget
General Fund	78,888,946	59,748,680	138,637,626	478,960	139,116,586
Other Funds	52,982,562	40,919,972	93,902,534	168,745	94,071,279
Net Expenditures	131,871,508	97,715,087	229,586,595	647,705	230,234,300



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Police Department

Prepared by: Scott Eberle, Lieutenant **City Manager Approval:** 

TOPIC: Approval of a traffic safety and enforcement grant through the California Office of Traffic Safety (OTS).

SUBJECT: RESOLUTION APPROVING USE OF STATE OF CALIFORNIA OFFICE OF TRAFFIC SAFETY GRANT FUNDS IN THE AMOUNT OF \$175,000 FOR THE “SELECTIVE TRAFFIC ENFORCEMENT PROGRAM” (“STEP”) GRANT FROM OCTOBER 1, 2018 THROUGH SEPTEMBER 30, 2019, AND AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT AND ANY OTHER DOCUMENTS RELATED TO THE GRANT

RECOMMENDATION: Staff recommends that the City Council approve acceptance of the \$175,000 grant from the California Office of Traffic Safety.

BACKGROUND: For the past seventeen years, the Office of Traffic Safety (OTS) of the State of California has awarded over \$2 million dollars in traffic safety grants to the City of San Rafael. These grants have included the Marin County “Avoid the Marin 13” DUI/ DL campaign, Click it or Ticket grants, DUI Mini grants, DUI Enforcement and Awareness grants and STEP grants. Each of the grants have provided critical traffic enforcement and education operations by funding the deployment of officers for DUI / DL checkpoints, DUI saturation patrols, red light and speed enforcement, seat belt enforcement and distracted driving enforcement. As of October 1st, 2016, OTS no longer offers the countywide “Avoid the Marin 13” grants. The only funding available is through the STEP grant program. This development has greatly reduced our funding for traffic and DUI related enforcement activities. The San Rafael Police Department (SRPD) currently has two officers assigned full-time to traffic enforcement. This is down from seven full-time officers in 2007.

ANALYSIS: The project goal of this OTS grant is to reduce the number of persons killed or injured in vehicle collisions involving alcohol, speed, red light violations and other primary collision factors, by implementing “best practice” strategies. Enforcement and education have shown to be critical in reducing vehicle collisions.

The acceptance and implementation of this \$175,000 grant is critical to maintain traffic safety levels in San Rafael as it will provide the necessary resources for traffic enforcement and education operations. A review of the City of San Rafael collision data from 2017-2018 indicates San Rafael continues to

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

have a high number of injury collisions associated with pedestrians, intoxicated drivers, and unsafe speeds. San Rafael has had two pedestrian fatalities and 190 injury collisions in the past nine months.

The SRPD encourages patrol and traffic officers to conduct focused enforcement for the purpose of reducing alcohol, pedestrian, and speed related collisions, however current staffing levels inherently limit the frequency by which more proactive traffic enforcement efforts can occur because officers are primarily focused on responding to emergency calls for service.

The goals of the grant are to reduce the number of people injured or killed in collisions, to reduce alcohol involved collisions, to reduce drug involved collisions, and to reduce the number of hit and run collisions.

Should the City Council approve this grant, the SRPD will have the resources to implement numerous enforcement programs including, but not limited to, various safety and awareness campaigns, a program to identify repeat DUI offenders, and DUI checkpoints. The grant also includes funding for numerous officer trainings and enforcement operations for distracted driving, motorcycle safety, and bicycle/pedestrian safety, among others. See attachment 1 for a full list of grant-funded programs.

In addition to these enforcement programs, the grant has allocated \$36,000 to purchase an Electronic Citation Data Collection System. The traffic citation database system will use hand-held devices to collect citation data electronically in the field, print a violator copy of the citation, and transfer the information electronically to the Records Management System and the courts for prosecution.

The STEP grant has also allocated \$15,500 for a fully equipped changeable message sign trailer with a radar device and digital display that is portable and fully programmable. The trailer will determine and display the speed of vehicles or post traffic safety information and messages during STEP funded operations.

Operations for this grant will be scheduled between October 1, 2018 and September 30, 2019.

The SRPD will report statistics quarterly to the Office of Traffic Safety, the City Council and the general public. This grant will be evaluated by how well the stated goals and objectives were accomplished.

Nothing in the grant agreement is to be interpreted as a requirement, formal or informal, that a particular police officer issue a specified or predetermined number of citations in pursuance of the goals and objectives.

COMMUNITY OUTREACH: A significant aspect of this grant is educating the community and increasing awareness regarding traffic safety. This will be accomplished through press releases and the use of social media. The Police Department has 13,700 Twitter and 7,500 Facebook followers, as well as 1,200 subscribers to press release email notifications.

FISCAL IMPACT: The Grant will be included in the non-general fund revenue for the SRPD. The total projected cost for this project is as follows:

Category-Eden Expense Code	Amount	Note(s)
Supplies and Services-07	\$51,500	Equipment. (Electronic Citation System and Message Trailer)

Personnel-08	\$120,861	Overtime for captains, lieutenants, sergeants, corporals, police officers, police service specialists, dispatchers, records clerks, cadets
Other Elements-99	\$2,639	Travel expenses for training classes
Total Projected Cost	\$175,000	

Funding Source

Staff recommends the City Council approve \$175,000 for the projects, from the following funding source(s):

Source	Amount	Note(s)
State of California, Office of Traffic Safety	\$175,000	Selective traffic enforcement program
Total Available Funds	\$175,000	

OPTIONS:

1. Accept the \$175,000 in Office of Traffic Safety STEP grant as submitted.
2. Decline to accept the Office of Traffic Safety grant (The OTS grants require the implementation of all the grant components for funding to be provided).

ACTION REQUIRED: Adopt the Resolution approving the use of the \$175,000 from Office of Traffic Safety Grant Funds, and authorizing the City Manager to execute the Grant Agreement and any other related documents in a form approved by the City Attorney.

ATTACHMENTS:

1. Resolution
2. List of grant-funded enforcement and community education programs
3. Selective Traffic Enforcement Program (STEP) Grant Agreement

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING USE OF STATE OF CALIFORNIA OFFICE OF TRAFFIC SAFETY GRANT FUNDS IN THE AMOUNT OF \$175,000 FOR THE “SELECTIVE TRAFFIC ENFORCEMENT PROGRAM” (“STEP”) GRANT FROM OCTOBER 1, 2018 THROUGH SEPTEMBER 30, 2019, AND AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT AND ANY OTHER DOCUMENTS RELATED TO THE GRANT.

Whereas, the State of California, Office of Traffic Safety granted the City of San Rafael \$175,000 in grant funds for the period of October 1, 2018 through September 30, 2019; and

Whereas, this grant money may be spent to pay overtime costs, travel and equipment purchase associated with the Selective Traffic Enforcement Program (“STEP”) Grant Program to mitigate traffic safety program deficiencies and expand ongoing activity; and

Whereas, to improve traffic safety, the San Rafael Police Department will use the STEP Grant funds to conduct DUI checkpoints and saturation patrols, distracted driving enforcement, warrant service operations, court stings and stakeouts on DUI offenders, high collision intersection enforcement, speed enforcement patrols, and enforcement traffic stops; and

Whereas, the Police Department will use the STEP Grant funds for overtime personnel costs of Captains, Lieutenants, Sergeants, Corporals, Officers, Community Service Officers, Dispatchers and Cadets incurred in connection with the enforcement activities; and

Whereas, the Police Department will use the STEP Grant funds for travel and training, equipment purchases, and expenses related to the enforcement activities;

NOW, THEREFORE BE IT RESOLVED, that the City Council approves the use of \$175,000 in California Office of Traffic Safety grant funds for the City’s “Selective Traffic Enforcement Program” from October 1, 2018 through September 30, 2019, with funds to be appropriated in the Safety Grant Fund 281, and authorizes the City Manager to execute a Grant Agreement and any documents related to the Grant in a form approved by the City Attorney.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of

the San Rafael City Council meeting held on September 4, 2018 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Lindsay Lara, City Clerk

Attachment 1 – Grant-Funded Enforcement and Community Educational Programs

- 1) Issue a press release announcing the kick-off of the grant by November 15, 2018.
- 2) Participate in the following campaigns:
 - National Walk to School Day – October 2018
 - National Teen Driver Safety Week – October 2018
 - NHTSA Winter Mobilization – December 2018 to January 2019
 - National Distracted Driving Awareness Month – April 2019
 - National Bicycle Safety Month – May 2019
 - National Motorcycle Safety Month – May 2019
 - National Click It or Ticket Mobilization – May 2019
 - NHTSA Summer Mobilization – August 2019 to September 2019
 - National Child Passenger Safety Week – September 2019
 - California's Pedestrian Safety Month – September 2019
- 3) Develop and maintain a "HOT Sheet" program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions.
- 4) Send **2** law enforcement officers to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.
- 5) Send **2** law enforcement officers to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.
- 6) Send **1** law enforcement officer to the Drug Recognition Expert (DRE) training.
- 7) Send **1** law enforcement officers to the DRE Recertification training.
- 8) Conduct **2** DUI/DL Checkpoints. ***Note:** A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the NHTSA Summer Mobilization.*
- 9) Conduct **25** DUI Saturation Patrol operation(s).
- 10) Conduct **1** Court Sting operation to cite individuals driving from court after having their driver's license suspended or revoked.
- 11) Conduct **2** Warrant Service operations(s) targeting multiple DUI offenders who fail to appear in court.
- 12) Conduct **37** Traffic enforcement operation(s), including but not limited to, primary collision factor violations.
- 13) Conduct **8** Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.
- 14) Conduct **10** highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or collisions resulting from

Attachment 1 – Grant-Funded Enforcement and Community Educational Programs

- unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary collision factor violations by motorcyclists and other drivers.
- 15) Conduct **6** Night-Time (1800hrs-0559hrs) Click It or Ticket enforcement operation(s).
 - 16) Conduct **10** highly publicized Pedestrian and Bicycle enforcement operation(s) in areas of or during events with a high number of pedestrian and/or bicycle collisions resulting from violations made by pedestrians, bicyclists, and drivers.
 - 17) Conduct **4** Traffic Safety educational presentations with an effort to reach community members.

10. PROJECTED EXPENDITURES						
FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
405c TR-19	20.616	0521-0890-101	2018	2018	29/18	\$36,000.00
164-AL-19	20.608	0521-0890-101	2018	2018	29/18	\$69,000.00
402PT-19	20.600	0521-0890-101	2018	2018	29/18	\$70,000.00
				AGREEMENT TOTAL		\$175,000.00
				AMOUNT ENCUMBERED BY THIS DOCUMENT		\$175,000.00
<i>I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.</i>				PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT		\$ 0.00
				TOTAL AMOUNT ENCUMBERED TO DATE		\$175,000.00
OTS ACCOUNTING OFFICER'S SIGNATURE <i>ES</i>			DATE SIGNED			

1. PROBLEM STATEMENT

The City of San Rafael is located in Marin County. San Rafael serves as the County Seat and has a population of approximately 59,237 people. Traffic volume is extremely heavy throughout the city due to several reasons. Business and commerce bring people into the city from other areas of the Bay Area, the population of San Rafael during the day swell to well over 100,000 people. US 101 and I-580 intersect in San Rafael, providing a very large volume of traffic during morning and evening commute hours along with a steady traffic flow during non-commute hours.

The roadway in San Rafael's Downtown area is a large grid pattern. There are multi-lane streets intersecting with other multi-lane streets, some of which are "one way". Much of the traffic is concentrated in the downtown grid area, which is congested by on and off-ramps connected northbound and southbound US 101, plus eastbound/westbound I-580. The Golden Gate Transit Center, the largest transit center in Marin County, is also located downtown. In July 2017, the Sonoma Marin Area Rail Transit (SMART Train) began operating 34 daily trains from the Sonoma County Airport, through Santa Rosa and Petaluma into Downtown San Rafael. The SMART Train station is adjacent to the Golden Gate Transit Center. SMART Train is conducting further expansion south towards the Larkspur Ferry Terminal. We have seen an increase in pedestrian traffic in an area that is already heavily congested. This a major concern for our department due to the fact that there have been numerous fatal and near-fatal collisions involving pedestrians in this area.

Collision data from the 2016 base year indicated that most of the injury collisions occur due to speed, unsafe turns, and red light violations. The Department has also struggled to reduce fatal and injury collisions involving pedestrians and bicyclists.

The Department has encouraged patrol officers and traffic officers for enforcement focused on reducing the alcohol and speed related collisions, along with increased pedestrian and bicyclist safety. Unfortunately, due to significantly reduced staffing and recent budget reductions, the routine workload per officer has increased dramatically and the two officers assigned to traffic enforcement are regularly used for basic patrol staffing. This increase in workload has resulted in a significant decrease in proactive traffic enforcement by officers.

We also were once the host of the Avoid the Marin 13 county wide DUI/DL enforcement effort. That funding stream has been eliminated. As such the enforcement efforts (checkpoints and saturation patrols) that were conducted within the jurisdiction of San Rafael will not occur this coming year. I am asking for additional funding to continue the enhanced enforcement that was traditionally conducted.

This Strategic Traffic Enforcement Program (STEP) grant would greatly increase this department's ability to employ enforcement strategies to reduce persons killed or injured in traffic collisions. With a focused enforcement plan designed through a Strategic Traffic Enforcement Program, this department will be more successful in curbing the problems associated with intoxicated drivers, red light runners, speeding vehicles, other aggressive driving behavior and increase pedestrian and bicyclist safety.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic collisions.
2. Reduce the number of persons injured in traffic collisions.
3. Reduce the number of pedestrians killed in traffic collisions.
4. Reduce the number of pedestrians injured in traffic collisions.
5. Reduce the number of bicyclists killed in traffic collisions.
6. Reduce the number of bicyclists injured in traffic collisions.
7. Reduce the number of persons killed in alcohol-involved collisions.
8. Reduce the number of persons injured in alcohol-involved collisions.
9. Reduce the number of persons killed in drug-involved collisions.
10. Reduce the number of persons injured in drug-involved collisions.
11. Reduce the number of persons killed in alcohol/drug combo-involved collisions.
12. Reduce the number of persons injured in alcohol/drug combo-involved collisions.

13. Reduce the number of motorcyclists killed in traffic collisions.
14. Reduce the number of motorcyclists injured in traffic collisions.
15. Reduce hit & run fatal collisions.
16. Reduce hit & run injury collisions.
17. Reduce nighttime (2100 - 0259 hours) fatal collisions.
18. Reduce nighttime (2100 - 0259 hours) injury collisions.

B. Objectives:	Target Number
1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov , and copied to your OTS Coordinator, for approval 14 days prior to the issuance date of the release.	1
2. Participate and report data (as required) in the following campaigns, National Walk to School Day, NHTSA Winter & Summer Mobilization, National Bicycle Safety Month, National Click it or Ticket Mobilization, National Teen Driver Safety Week, National Distracted Driving Awareness Month, National Motorcycle Safety Month, National Child Passenger Safety Week, and California's Pedestrian Safety Month.	1
3. Develop (by December 31) and/or maintain a "HOT Sheet" program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. Updated HOT sheets should be distributed to patrol and traffic officers monthly.	1
4. Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.	2
5. Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.	2
6. Send law enforcement personnel to the Drug Recognition Expert (DRE) training.	1
7. Send law enforcement personnel to the DRE Recertification training.	1
8. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.	2
9. Conduct DUI Saturation Patrol operation(s).	25
10. Conduct Court Sting operation(s) to cite individuals driving from court after having their driver's license suspended or revoked.	1
11. Conduct Warrant Service operation(s) targeting multiple DUI offenders who fail to appear in court.	2
12. Conduct Traffic Enforcement operation(s), including but not limited to, primary collision factor violations.	37
13. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	8
14. Conduct highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or collisions resulting from unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary collision factor violations by motorcyclists and other drivers.	10
15. Conduct Nighttime (1800-0559) Click It or Ticket enforcement operation(s).	6
16. Conduct highly publicized pedestrian and/or bicycle enforcement operation(s) in areas or during events with a high number of pedestrian and/or bicycle collisions resulting from violations made by pedestrians, bicyclists, and drivers.	10
17. Conduct Traffic Safety educational presentation(s) with an effort to reach community members. Note: Presentation(s) may include topics such as distracted driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	4

3. METHOD OF PROCEDURE

A. Phase 1 – Program Preparation (1st Quarter of Grant Year)

- The department will develop operational plans to implement the “best practice” strategies outlined in the objectives section.
- All training needed to implement the program should be conducted this quarter.
- All grant related purchases needed to implement the program should be made this quarter.
- In order to develop/maintain the “Hot Sheets,” research will be conducted to identify the “worst of the worst” repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The Hot Sheets may include the driver’s name, last known address, DOB, description, current license status, and the number of times suspended or revoked for DUI. Hot Sheets should be updated and distributed to traffic and patrol officers at least monthly.
- Implementation of the STEP grant activities will be accomplished by deploying personnel at high collision locations. Media Requirements
- Issue a press release announcing the kick-off of the grant by November 15, but no earlier than October 1. If unable to meet the November 15 date, communicate reasons to your OTS Coordinator. The kick-off press releases and any related media advisories, alerts, and materials must be emailed for approval to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, 14 days prior to the issuance date of the release.

B. Phase 2 – Program Operations (Throughout Grant Year)

- The department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes. Media Requirements
- Send all grant-related activity press releases, media advisories, alerts and general public materials to the OTS Public Information Officer (PIO) at pio@ots.ca.gov, with a copy to your OTS Coordinator. The following requirements are for grant-related activities and are different from those regarding any grant kick-off release or announcement.
 - If an OTS-supplied, template-based press release is used, there is no need for pre-approval, however, the OTS PIO and Coordinator should be copied when at the same time as the release is distributed to the press.
 - If an OTS-supplied template is not used, or is substantially changed, a draft press release shall be sent to the OTS PIO for approval. Optimum lead-time would be 10 days prior to the release distribution date, but should be no less than 5 working days prior to the release distribution date.
 - Press releases reporting the immediate and time-valued results of grant activities such as enforcement operations are exempt from the recommended advance approval process, but still should be copied to the OTS PIO and Coordinator when the release is distributed to the press.
 - Activities such as warrant or probation sweeps and court stings that could be compromised by advanced publicity are exempt from pre-publicity, but are encouraged to offer embargoed media coverage and to report the results.
- Use the following standard language in all press, media, and printed materials: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.
- Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 30 days in advance, a short description of any significant grant-related traffic safety event or program so OTS has sufficient notice to arrange for attendance and/or participation in the event.
- Submit a draft or rough-cut of all printed or recorded material (brochures, posters, scripts, artwork, trailer graphics, etc.) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval 14 days prior to the production or duplication.
- Space permitting, include the OTS logo, on grant-funded print materials; consult your OTS Coordinator for specifics and format-appropriate logos.
- Contact the OTS PIO or your OTS Coordinator, sufficiently far enough in advance of need, for consultation when deviation from any of the above requirements might be contemplated

C. Phase 3 – Data Collection & Reporting (Throughout Grant Year)

- Invoice Claims (due January 30, April 30, July 30, and October 30)
- Quarterly Performance Reports (due January 30, April 30, July 30, and October 30)
 - Collect and report quarterly, appropriate data that supports the progress of goals and objectives.
 - Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special

accomplishments.

- Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
- Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the “Final Evaluation” section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant’s accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
405c TR-19	20.616	State Traffic Safety Information System Improvements	\$36,000.00
164 AL-19	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	\$69,000.00
402PT-19	20.600	State and Community Highway Safety	\$70,000.00

COST CATEGORY	CFDA	TOTAL COST TO GRANT
A. PERSONNEL COSTS		
Positions and Salaries		
Full-Time		\$0.00
Overtime		
Court Stings	20.608	\$2,720.00
Distracted Driving	20.600	\$5,760.00
DUI Saturation Patrols	20.608	\$36,488.00
DUI/DL Checkpoints	20.608	\$25,920.00
Motorcycle Safety	20.600	\$7,200.00
Night-time Click It Or Ticket	20.600	\$4,320.00
Pedestrian and Bicycle Enforcement	20.600	\$7,200.00
Traffic Enforcement	20.600	\$26,640.00
Warrant Service Operations	20.608	\$2,880.00
PT Benefits @ 1.45 %	20.600	\$741.00
AL Benefits @ 1.45%	20.608	\$992.00
Part-Time		\$0.00
Category Sub-Total		\$120,861.00
B. TRAVEL EXPENSES		
In State Travel	20.600	\$2,639.00
		\$0.00
Category Sub-Total		\$2,639.00
C. CONTRACTUAL SERVICES		
		\$0.00
Category Sub-Total		\$0.00
D. EQUIPMENT		
Electronic Citation Data Collection System	20.616	\$36,000.00
Changeable Message Sign Trailer with Radar	20.600	\$15,500.00
Category Sub-Total		\$51,500.00
E. OTHER DIRECT COSTS		
		\$0.00
Category Sub-Total		\$0.00
F. INDIRECT COSTS		
		\$0.00

Category Sub-Total		\$0.00
GRANT TOTAL		\$175,000.00

BUDGET NARRATIVE	
PERSONNEL COSTS	QUANTITY
Court Stings - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	1
Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	8
DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	25
DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	2
Motorcycle Safety - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	10
Night-time Click It Or Ticket - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	6
Pedestrian and Bicycle Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	10
Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	37
Warrant Service Operations - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	2
PT Benefits @ 1.45 % - 1.45% Benefits Medicare 1.45%	1
AL Benefits @ 1.45% - 1.45% Benefits Medicare 1.45%	1
TRAVEL EXPENSES	
In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. Anticipated travel may include Governor's Highway Safety Association (GHSA) and International Association of Chiefs of Police DRE Conference in Anaheim. All conferences, seminars or training not specifically identified in the Budget Narrative must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.	1
CONTRACTUAL SERVICES	
-	
EQUIPMENT	
Electronic Citation Data Collection System - a traffic citation database system, using a hand-held device, to collect citation data electronically in the field, print a violator copy of the citation, and transfer the information electronically to the agency RMS system and the courts for prosecution. The	1

system will be used by traffic officers to improve the efficiency and accuracy of writing traffic citations. Costs include the purchase of electronic citation devices, with mag-strip readers, fingerprint readers, audio recorder, camera, docking/charging station, software, licenses, accessories, training, and associated shipping and taxes.	
Changeable Message Sign Trailer with Radar - fully equipped changeable message sign trailer(s) with a radar device and digital display that is portable and fully programmable and will determine and display the speed of vehicles or post traffic safety information and messages during OTS funded operations. Cost includes a device, warranty, software, licenses, accessories, training, and shipping and taxes.	1
OTHER DIRECT COSTS -	
INDIRECT COSTS -	
STATEMENTS/DISCLAIMERS Program Income default statement: There will be no program income generated from this grant. Enforcement Grant Quota Disclaimer: Nothing in this "agreement" shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives here under.	

CERTIFICATIONS AND ASSURANCES**HIGHWAY SAFETY GRANTS****(23 U.S.C. CHAPTER 4 AND SEC. 1906, PUB. L. 109-59, AS AMENDED)**

Failure to comply with applicable Federal statutes, regulations, and directives may subject Grantee Agency officials to civil or criminal penalties and/or place the State in a high-risk grantee status in accordance with 49 CFR §18.12.

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR Part 1300—Uniform Procedures for State Highway Safety Grant Programs

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

“During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding

recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and

- e. To insert this clause, including paragraphs (a) through (e), in every subcontract and sub agreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, 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-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was 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.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant 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 by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
8. 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
9. Nothing contained in the foregoing shall be construed to require establishment of a 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.
10. Except for transactions authorized under paragraph 6 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 other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

- (1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. 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 or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant 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 by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
7. 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
8. Nothing contained in the foregoing shall be construed to require establishment of a 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.

9. Except for transactions authorized under paragraph 5 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 other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

LAW ENFORCEMENT AGENCIES

All subrecipient law enforcement agencies shall comply with California law regarding profiling. Penal Code section 13519.4, subdivision (e), defines "racial profiling" as the "practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." Then, subdivision (f) of that section goes on to provide, "A law enforcement officer shall not engage in racial profiling."



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

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

City Manager Approval:

File No.: 07.04.12

TOPIC: CALTRANS LOCAL PROCEDURES

SUBJECT: RESOLUTION ADOPTING CHAPTER 10 OF THE CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL, ENTITLED "CONSULTANT SELECTION", AS THE PROCESS BY WHICH THE CITY RETAINS ARCHITECTURAL AND ENGINEERING CONSULTANT SERVICES RELATED TO FEDERAL AND STATE FUNDED TRANSPORTATION PROJECTS

RECOMMENDATION: Adopt the resolution as presented.

BACKGROUND: The City of San Rafael manages many capital improvement projects every year, some of which are funded with federal or state grants. The federal government has granted Caltrans oversight authority of these federal funds, which are administered by Caltrans Office of Local Assistance. As the administering agency of federal and state funds, Caltrans has created the Local Assistance Procedures Manual (Manual) which guides, directs, and outlines all the requirements that cities across the State of California are required to adhere to when receiving federal or state funds on transportation projects. The Manual undergoes frequent updates to incorporate changes in federal law and procedures.

ANALYSIS: The most recent major update to the Manual requires the City to specifically adopt Chapter 10 of this Manual for the selection of architectural and engineering consultants. While the City has always followed the process and procedures outlined in the most current version of the Manual, Caltrans now requires Council adoption to insure City staff are fully aware of the current federal requirements.

Chapter 10 of the Manual sets forth requirements to be included in City Requests for Proposals (RFPs) and subsequent consultant proposals, including but not limited to, having a clearly defined scope of work, staff performing an independent cost analysis of what the consultant contract may cost prior to receiving proposals, procedures for

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: 08-20-2018

Disposition: _____

evaluating and scoring of proposals, and certain financial documents required to be submitted at the time proposals are received.

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

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

1. Adopt the resolution as presented.
2. The City Council may decline to adopt the resolution, in which case the City would become ineligible to use federal or state funds for consultant services for projects administered through Caltrans Office of Local Assistance.

RECOMMENDED ACTION: Adopt the resolution as presented.

ATTACHMENTS:

1. Resolution
2. Chapter 10, *Consultant Selection*, of the Local Assistance Procedures Manual

RESOLUTION NO. _____

A RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING CHAPTER 10 OF THE CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL, ENTITLED “CONSULTANT SELECTION”, AS THE PROCESS BY WHICH THE CITY RETAINS ARCHITECTURAL AND ENGINEERING CONSULTANT SERVICES RELATED TO FEDERAL AND STATE FUNDED TRANSPORTATION PROJECTS

WHEREAS, the City of San Rafael receives transportation funds from the Federal and State governments through the California Department of Transportation (“Caltrans”) Office of Local Assistance; and

WHEREAS, Caltrans recently updated Chapter 10 of the Local Assistance Procedures Manual (“LAPM”), entitled “Consultant Selection”; and

WHEREAS, Chapter 10 of the LAPM now requires that all cities and counties in California receiving federal or state funding for consultant services adopt the outlined policies and procedures in order to receive federal or state reimbursements;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael hereby adopts Chapter 10 of the Local Assistance Procedures Manual, entitled “Consultant Selection”, as the process and procedures to be followed when requesting proposals and awarding consultant contracts for federal and state funded transportation project.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on Tuesday, the 4th day of September 2018, by the following vote, to wit:

AYES: **COUNCILMEMBERS:**

NOES: **COUNCILMEMBERS:**

ABSENT: **COUNCILMEMBERS:**

LINDSAY LARA, City Clerk

Chapter 10 **Consultant Selection**

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Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)

[Exhibit 10-B: Suggested Consultant Evaluation Sheet](#)

[Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#)

[Exhibit 10-H: Sample Cost Proposal \(Example#1 thru #3\)](#)

[Exhibit 10-I: Notice to Proposers DBE Information](#)

[Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)

[Exhibit 10-01: Consultant Proposal DBE Commitment](#)

[Exhibit 10-02: Consultant Contracts DBE Commitment](#)

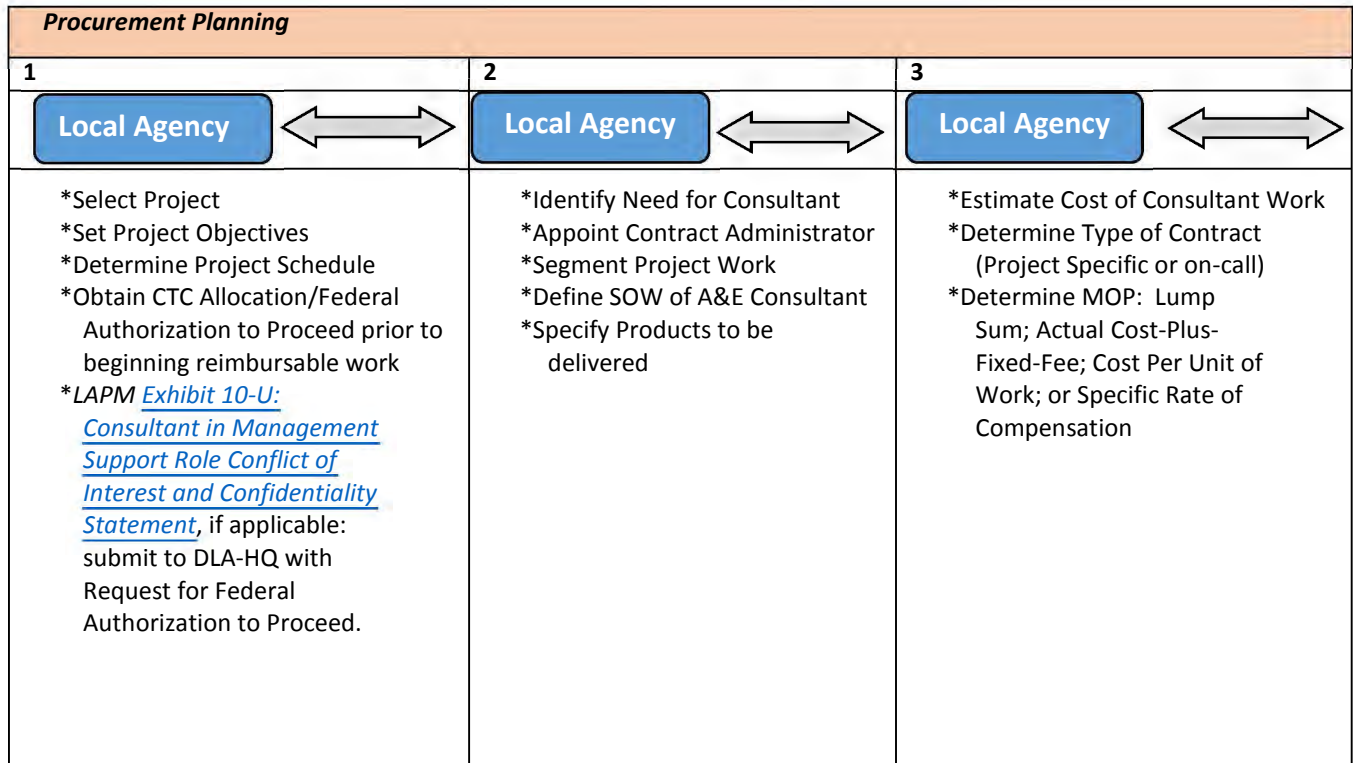
[Exhibit 10-Q: Disclosure of Lobbying Activities](#)

[Exhibit 10-R: A&E Sample Contract Language](#)

[Exhibit 10-S: Consultant Performance Evaluation](#)




[Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#)

[Exhibit 10-U: Consultant in Management Support Role Conflict of interest and Confidentiality Statement](#)



A&E = Architectural and Engineering
A&I = Caltrans Audits and Investigations
CT = Caltrans
DBE = Disadvantaged Business Enterprise
DLA = Division of Local Assistance
DLAE = District Local Assistance Engineer
DLA-HQ = Division of Local Assistance-Headquarters
LAPG = Local Assistance Program Guidelines
LAPM = Local Assistance Procedures Manual
MOP = Method of Payment
RFP = Request for Proposal
RFQ = Request for Qualifications
SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram

Solicitation Documents and Advertisement		
4	5	6
		
<ul style="list-style-type: none"> *Determine Solicitation Document; RFP or RFQ *Appoint Consultant Selection Committee *Collect signed Conflict of Interest forms and Confidentiality Statements (see Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement) from all committee members *Determine Procurement Schedule *Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ 	<ul style="list-style-type: none"> *Prepare RFP or RFQ documents *Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see Exhibit 10-H: Sample Cost Proposal) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see Exhibit 10-I: Notice to Proposers DBE Information), submittal deadline *Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites) *Issue RFP or RFQ (direct mailing, web posting) 	<ul style="list-style-type: none"> *Prepare to respond to RFP/RFQ questions *Conduct Proposers Conference, if applicable *Receive Proposals or SOQs

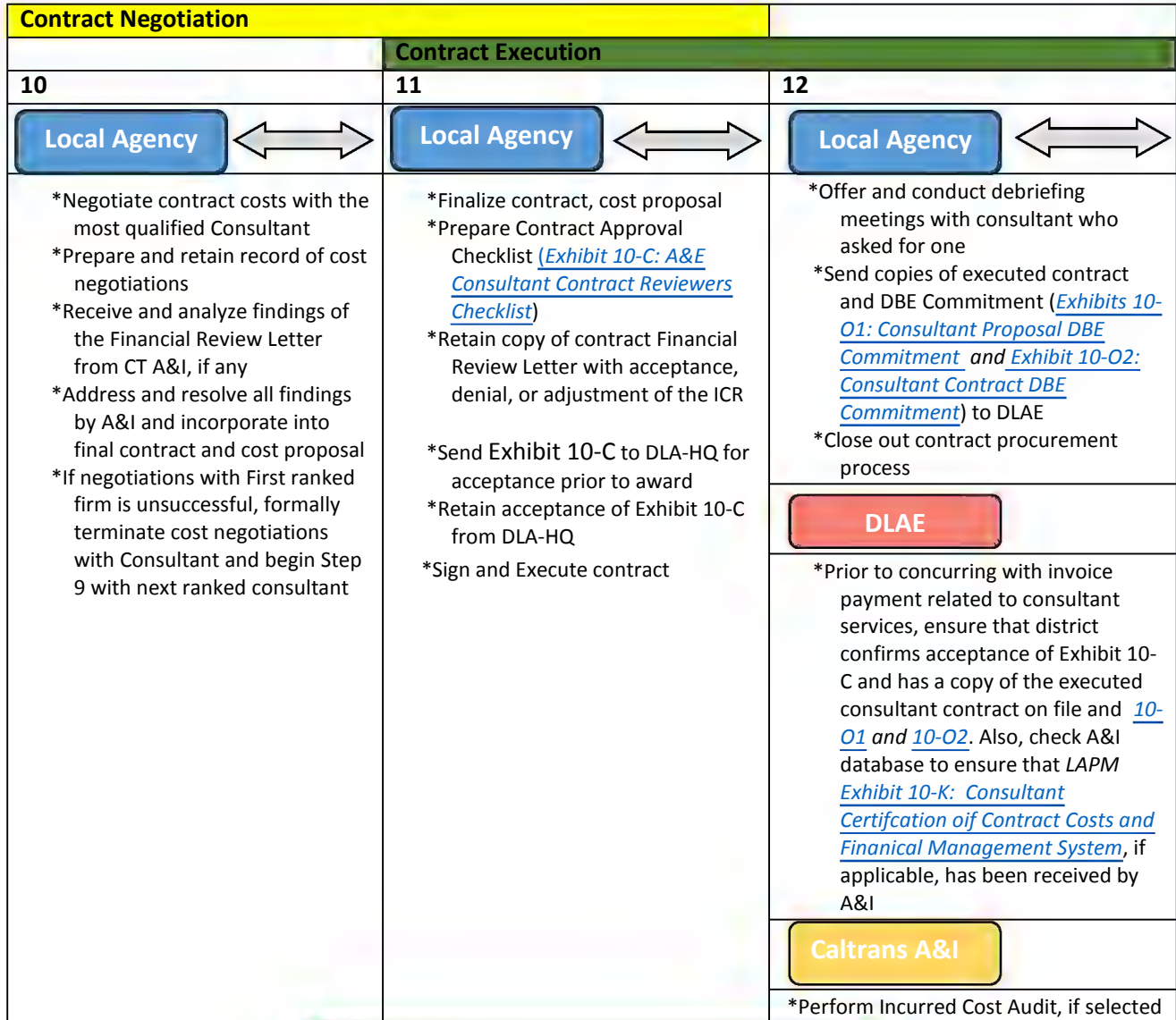
A&E = Architectural and Engineering
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SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

Evaluation and Selection of Consultant		
		Contract Negotiation
7	8	9
<div style="border: 1px solid blue; background-color: #4a86e8; color: white; padding: 5px; display: inline-block;">Local Agency</div> ↔	<div style="border: 1px solid blue; background-color: #4a86e8; color: white; padding: 5px; display: inline-block;">Local Agency</div> ↔	<div style="border: 1px solid blue; background-color: #4a86e8; color: white; padding: 5px; display: inline-block;">Local Agency</div> ↔
<ul style="list-style-type: none"> *Distribute Proposals or SOQs to Selection Committee members *Ensure Committee members receive the appropriate score sheet to use (see Exhibit 10-B: Suggested Consultant Evaluation Sheet) *Convene Selection Committee and evaluate submittals; Perform reference checks *Develop Final Ranking or Short List for Interviews *Notify proposers of ranking/Short List *Retain all original score sheets and summaries 	<ul style="list-style-type: none"> *Send out Invitations to Short List for Interviews *Conduct Interview of Short List *Develop Final Ranking of Consultants, and notify all interviewees *Retain all original score sheets and summaries *Provide a copy of Standard Contract language to top ranked consultant and invite for negotiations (see Exhibit 10-R: A&E Sample Contract Language for standard contract language and provisions) 	<ul style="list-style-type: none"> *Open and analyze cost proposal from the Highest Ranked firm *Initiate CT A&I Financial Review Section (LAPM Section 10-3) and send documents (Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System) and/or <i>Consultant Audit Request Letter and Checklist</i> request (Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist), if applicable, to Caltrans A&I <div style="border: 1px solid orange; background-color: #f1c232; padding: 5px; text-align: center; margin: 10px 0;"> Caltrans A&I </div> <ul style="list-style-type: none"> *Review and evaluate Exhibit 10-A and supporting documents, if applicable *Issue Financial Review Letter, if applicable *Perform contract audits and reviews, if applicable, or review of CPA audited ICR workpapers to issue Cognizant Letter of Approval

- A&E = Architectural and Engineering**
- A&I = Caltrans Audits and Investigations**
- CT = Caltrans**
- DBE = Disadvantaged Business Enterprise**
- DLA = Division of Local Assistance**
- DLAE = District Local Assistance Engineer**
- DLA-HQ = Division of Local Assistance-Headquarters**
- LAPG = Local Assistance Program Guidelines**
- LAPM = Local Assistance Procedures Manual**
- MOP = Method of Payment**
- RFP = Request for Proposal**
- RFQ = Request for Qualifications**
- SOQ = Statement of Qualifications**
- SOW = Statement/Scope of Work**

Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued



A&E = Architectural and Engineering
A&I = Caltrans Audits and Investigations
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DLA = Division of Local Assistance
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LAPM = Local Assistance Procedures Manual
MOP = Method of Payment
RFP = Request for Proposal
RFQ = Request for Qualifications
SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

Chapter 10 **Consultant Selection**

10.1 **GENERAL**

Introduction

A local agency may engage consultants to perform architectural, engineering, and related services to develop a federal-aid or state funded project. Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or construction project management services are termed Architectural and Engineering (A&E) Consultants. Local agencies requesting federal or state funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

Architectural and Engineering Consultants

The Brooks Act (40 USC, Section 1104) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency, if above the small purchase procurement threshold, must be sealed and may not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the local agency must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the local agency.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations websites below:

- [DIR FAQ](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website:
http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
- [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>

Non A&E Consultants

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal. The Brooks Act and the audit and review process for approving ICR's described in [Section 10.3: A&E Consultant Audit and Review Process](#) of this chapter are optional for non A&E Consultant contracts.

Non-A&E contract procurement on highway projects must also comply with California State Public Contract Code, Section 10335-10381.

For more details on non-A&E consultants, see Section 10.10 [Section 10.10: Non-A&E Consultants](#) of this chapter.

Selecting the Project

The local agency is responsible for selecting and initiating a federal-aid or state financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project's objectives including the general level of improvement or service, operating standards, maximum cost and the target date for project completion before commencing any consultant selection process.

Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract.

Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway or state funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest.

A conflict of interest occurs when a public official's private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

Federal Regulation Governing Conflict of Interest (23 CFR 1.33) Requires that:

- No contracting agency employee who participates in the procurement, management, or administration of federal or state funded contracts or

subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;

- No person or entity performing services for a contracting agency in connection with a federal or state funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project.

Consultants Performing Work on Multiple Phases of Federal-aid Projects

Local agencies sometimes wish to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, direct or indirect, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an

extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted. All consultants acting in a management support role must complete [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) (see [Section 10.9: Miscellaneous Considerations](#) in this chapter) and retain it in the local agency files.

Section 10.9: Miscellaneous Considerations Authorization to Proceed

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the [LAPM Chapter 3: Project Authorization](#)). For state funded projects see the [Local Assistance Program Guidelines \(LAPG\), Chapter 23: Local Agency State Transportation Improvement Program Projects](#), for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency project files for future audit.

10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS

The need for a consultant is identified by comparing the project's schedule and objectives with the local agency's capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid or state funds are to be requested for the project segment to be contracted out.

Appointing the Contract Administrator

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator's duties include, but are not limited to:

- Ensures that all records, files and other documents related to contract procurement and management activities are retained in contract/project files;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Reviews and approves the consultant's invoices and/or progress payments to ensure that billings are in accordance with the terms and conditions of the contract, and correspond accurately to the work performed during the billing period;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports ([Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises \(DBE\) and First-Tier Subcontractors](#)).

Determining the Project Schedule

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;
- Completing the A&E consultant contract audit process;
- Conducting meetings and project reviews.

Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see [LAPM Chapter 6 Environmental Procedures](#) and [Standard Environmental Reference \(SER\) Chapters 31: Environmental Assessment \(EA\) and Finding of No Significant Impact \(FONSI\)](#) and [Chapter 32: Environmental Impact Statement \(E\)](#)). Final detailed design shall not begin until environmental clearance has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

Figure 10-2: Segmenting Consultant Work

Specify Products to be Delivered

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

Scope of Consultant Work

The scope of work, which the contract must include, is a detailed description of the products or

services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

Non-Discrimination Clause

The Non-Discrimination Clause ([Exhibit 10-R: A&E Sample Contract Language](#), Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the nondiscrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

Disadvantaged Business Enterprise (DBE) Participation

When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants and, when feasible, organizing the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts. For detailed information and requirement on the DBE Program, see [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises](#).

The consultant must ensure that certified DBE firms have the opportunity to participate in the performance of the contract and must take all necessary and reasonable steps to facilitate participation by DBE firms for such assurance.

A DBE goal must be established by the local agency for each contract.. [Exhibit 10-I: Notice to Proposers DBE Information](#) must be included in the RFQ or RFP if the proposed contract will include federal-aid funds. The consultant must meet the goal by using DBEs, or if not able to meet the DBE goal, document that a good faith effort was made to meet the contract goal. Good faith efforts must be documented by the consultant and approved by the local agency (see [Exhibit 15-H: DBE Information-Good Faith Efforts](#)). If the consultant's documented good faith efforts are found to be inadequate by the local agency, the consultant must be offered an opportunity for reconsideration.

If a DBE subconsultant is unable to perform its subcontracted services and the goal is not otherwise met, the consultant must make a good faith effort to replace it with another DBE subconsultant to the extent needed to meet the DBE goal. For more detailed information see [Exhibit 10-I](#). A contract provision for DBE Participation must be included in all consultant contracts with federal-aid funds. For sample contract clauses with and without specified DBE goals see [Exhibit 10-R](#), Article XX Disadvantaged Business Enterprise (DBE) Participation.

Reporting DBE Commitments and DBE Information

For Contracts with DBE Goals:If the local agency has set a DBE goal, [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) must be included in the proposal package provided to the local agency by each (prime consultant) proposer. The purpose of [Exhibit 10-01](#) is to demonstrate the

proposer's commitment to meet the DBE goal set by the local agency. [Exhibit 10-O2: Consultant Contract DBE Commitment](#), must be completed at the conclusion of cost negotiations, incorporated into the final agreement and a copy sent the DLAE. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. This form must include the names, addresses, and phone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a subcontracted item of work is not to be performed or furnished by the DBE firm, a description of the exact portion of work to be performed or furnished by that DBE must be included in the DBE commitment, including the planned location of that work. A proposer certified as a DBE firm must describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by the DBE subconsultant, suppliers, and trucking companies.

The winning proposer must provide written confirmation from each DBE firm participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the proposer must submit a copy of the joint venture agreement.

For Contracts with No DBE Goals:

For contracts with no DBE contract goal, [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) is not necessary and only [Exhibit 10-O2: Consultant Contract DBE Commitment](#) must be included in the award package and provided by the winning proposer.

Reporting DBE Final Utilization (Contracts with or without Goals):

Upon completion of the contract a summary of the DBE final utilization must be prepared, certified correct, and submitted on [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) and First-Tier Subcontractor](#) or equivalent to the local agency showing total dollars paid to each subconsultant and supplier. [Exhibit 17-F](#) is reviewed by the local agency and certified as complete and accurate. The local agency must send the original, plus one copy of the completed [Exhibit 17-F](#) with the final invoice to the DLAE within 30 days after completion of the contract.

Estimated Cost of Consultant Work

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost analysis of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation

of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

Some of the costs estimating techniques are:

Analogous Estimating:

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

Parametric Estimating:

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

Bottom-up Estimating:

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

Determine Type of Contract

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-purpose or Multi-phased contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses. On-call contract is a contract for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity are needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use

these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172).

- To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
 - Must define a general scope of work, complexity, and professional nature of services.
 - Specify a task order procedure the local agency uses to procure project specific work under the contract.
 - No task order is valid unless the on-call contract is still enforced. For example, if the on call contract is expired, all task orders will become invalid.
 - If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services:
 - Identify the number of consultants that may be selected or contracts that may be awarded.
- Specify procedures in the contracts the local agency will use to award/execute task orders among the consultants:
- Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
 - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only.

Determine Method of Payment

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed:

- Actual Cost-Plus-Fixed Fee (see [Exhibit 10-H: Sample Cost Proposal, Example #1](#));
- Cost Per Unit of Work (see [Exhibit 10-H, Example #3](#));
- Specific Rates of Compensation (see [Exhibit 10-H, Example #2](#));
- Lump Sum (see [Exhibit 10-H, Example #1](#)).

Actual Cost-Plus-Fixed Fee

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated

from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. Fixed fees apply to the total direct and indirect costs. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H: Sample Cost Proposal Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, *Option 1* in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

Cost Per Unit of Work

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance; but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #3 and [Exhibit 10-R](#), Article V *Option 2*).

Specified Rates of Compensation

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #2 and [Exhibit 10-R](#), Article V, *Option 3*).

Lump Sum or Firm Fixed Price

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see [Exhibit 10-H: Sample Cost Proposal, Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language, Article V, Option 4](#)).

Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

10.3 A&E CONSULTANT AUDIT AND REVIEW PROCESS

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

APPLICABLE STANDARDS

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed. The local agencies, consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants. Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between the local agency and Caltrans, i.e. Master Agreements;
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation, Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;

- 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards
 - Generally accepted government auditing standards (GAGAS);
- California Government Code sections 4525-4529; and
- Proposed contract terms and conditions.

See section [10.10 “References”](#) of this Chapter for links to above referenced standards.

AUDIT GUIDANCE AVAILABLE

The American Association of State Highway Officials, Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)), which is referred to frequently in this section, is an invaluable tool to guide local agencies, consultants and certified public accountants (CPA) through the requirements for establishing, and audits of, FAR compliant Indirect Cost Rate (ICR). The [AASHTO Audit Guide](#) is used extensively as an industry guide in the audit and review process.

The local agency may seek financial and accounting assistance from its own internal audit staff and independent CPAs for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the [AASHTO Audit Guide](#), Ch 2.5 C. *Selection of CPA Firm as Overhead Auditor* for guidance in the selection process. Training is also offered by FHWA’s National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

If consultants seek training that provides resources on how to build an ICR and basic timekeeping, there are Indirect Cost Rate and Timekeeping webinars created by the Washington State Department of Transportation (WA DOT). The link to the webinars is available at <http://www.dot.ca.gov/hq/audits/>. For training and additional information provided by the Caltrans Local Assistance, visit Caltrans Local Assistance Blog at <http://www.localassistanceblog.com/>. For FHWA’s Q&A for ICRs and audits, and A&E related services, visit FHWA at <http://www.fhwa.dot.gov/programadmin/172qa.cfm>.

ALLOWABLE COSTS

23 USC 112 (b)(2)(B) provides that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, shall be performed and audited in compliance with the Federal cost principles. Local agencies are required to perform a cost analysis to ensure all costs are

allowable in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs shall be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Local agency may use a sample Cost Analysis Worksheet (See Exhibit 10-H1 through 4).

Indirect costs incurred by local agencies are required to apply consultant or subconsultant's ICR, which has been accepted by Caltrans to contracts. An ICR is valid for the one-year applicable accounting period. ICRs shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the firm is subject to CAS, the firm must use the applicable indirect cost rate for the contract.

A consultant's accepted ICR for its one-year applicable accounting period shall be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period and agreed by all concerned parties.

Consultants shall account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with the Federal cost principles.

A&I and representatives of the Federal Government have the right to conduct an audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever the local agencies, consultants and contractors are unable to provide requested information, it shall be viewed that the required actions were either never performed or not properly recorded. Therefore, retention of all the relevant documents is not only required but also important as it minimizes negative findings, **disallowed costs** and assumptions. For more references, refer to Applicable Standards in this chapter.

APPROVAL OR ACCEPTANCE OF INDIRECT COST RATES

Cognizant Letters of Approval

A cognizant approved ICR refers to the ICR established by an audit in accordance with GAGAS or CPA Workpaper Review in accordance with GAGAS to test compliance with the Federal cost principles and accepted by a cognizant agency.

Once reasonable assurance is obtained, the cognizant agency establishes and approves the ICR and a cognizant approval letter is issued. A cognizant agency may be the home state Department of Transportation (DOT) (the state where the consultant's accounting and financial records are located), a federal agency, or a State transportation agency to which

cognizance for the particular ICRs of a consulting firm has been delegated or transferred in writing. When providing cognizant ICR approval, the cognizant agency may perform either an ICR audit or review of an audit report and related work performed by, and the workpapers prepared by a CPA in accordance with GAGAS.

Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans shall perform an audit or review of a consultant's and subconsultant's ICR to provide reasonable assurance of compliance with the Federal cost principles. An audit or review may consist of one or more of the following:

- Conduct a risk-based review of the ICR calculation and supporting documents;
- Perform an audit in accordance with GAGAS and issuing an audit report;
- Review and accept an audit report and related workpapers prepared by a CPA or another State Transportation Agency;

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies shall ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. Local agencies may check A&I's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by A&I that is posted to A&I's website at <http://www.dot.ca.gov/hq/audits/>. This ID number should be referenced on all future contracts that use the same fiscal year ICR.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period but an ICR accepted by Caltrans may only be applied to A&E contracts entered into with the Caltrans and local agencies. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agency that receive federal funds from Caltrans.

Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than \$150K are subject to a financial review of the ICR by A&I. The financial documents required are detailed in the Exhibit 10-A, *A&E Consultant Financial Review Request Letter and Exhibit 10-A Checklist*. A&I will review the ICR financial documents to either accept, adjust, or reject the rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Financial stability;
- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;
- The approximate dollar amount of all A&E contracts awarded to the consultant by

- Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- Stability of organizational staffing.

For ICRs that have been adjusted or rejected by A&I, the consultant must provide a revised cost proposal that reflects the adjusted or excluded indirect costs.

Local Agencies' Responsibilities

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A (*A&E Consultant Audit Request Letter*) and the Exhibit 10A-Checklist. Local Agencies are responsible for forwarding these documents to A&I for review and acceptance of the ICR. Local agencies are also required to ensure that A&I has copies of the Exhibit 10-K "*Consultant Certification of Contract Costs and Financial Management System*" and Exhibit 10-H "*Cost Proposal*" for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract.

The Exhibit 10-H "*Cost Proposal*" includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, allowable, and allocable to the contract and comply with federal cost principles.

Contracts below \$150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 23 CFR Part 172 and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Consultants' Responsibilities (Both prime consultants and subconsultants)

A&E prime consultants and sub-consultants in contract with local agencies using state or federal-aid highway fund should refer to Exhibit 10-A and the 10-A Checklist for the ICR

financial documents required to be submitted to their local agency for forwarding to A&I. Consultants must complete the “Annual Certification of Indirect Costs and Financial Management System” (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR Part 31) and that the consultant’s financial management system is adequate to accumulate and segregate, reasonable, allowable and allocable direct and indirect project costs. For all future contracts in one fiscal year, the consultant need only provide a copy of the Exhibit 10-K to the Local Agency. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to A&I along with all other related and required financial documents.

Consultants must also follow all the federal, state, and contract requirements outlined above in the Section above, “*Applicable Standards*”. Each contracting consultant must ensure its ICR is not combined with any parent company’s or subsidiaries’ ICR.

ICR schedules should be prepared using the accrual basis of accounting and presented in compliance with the Federal cost principles for both the prime consultant and subconsultants.

All workers employed on public works project must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. Prime and subconsultant consultants must include prevailing wage rate information in the cost proposal (see Exhibit 10-H1-3 for example) and provide a Prevailing Wage Rate Policy on company letterhead, signed and dated. The policy must document their accounting treatment for prevailing wage deltas and including the following information:

- Description of types of work they perform which require payment of prevailing wage rates
- Explanation of how the firm pays prevailing wage deltas to affected employees (e.g. pay directly to employee as single amount to cover delta base and delta fringe, pay delta base to employee and pay delta fringe amount to a third party plan, etc.)
- Accounting method used for prevailing wage delta base costs
- Accounting method used for prevailing wage delta fringe costs
- Effect on firm’s most recently completed indirect cost rate

For guidance see Caltrans’ Prevailing Wage Interpretive Guidance on A&I’s website www.dot.ca.gov/audits

Consultant’s labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid), wages earned, and benefits accrued by all of the consultant’s employees. The labor summary report should detail, but not be limited to, employee names, salaries, hourly rates, total hours worked, direct hours, indirect hours by type, general ledger accounts, paid time off hours, uncompensated hours and amounts, etc.

Executive compensation analysis is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with the Federal cost principles and AASHTO Audit Guide. The executive compensation analysis using the

National Compensation Matrix or independent compensation surveys demonstrates and supports the allow ability and reasonableness of executive compensation.

Audits and Investigations' Responsibilities

After A&I receives a complete financial document packet (per Exhibit 10-A) from the local agency, A&I will review the consultants' proposed ICR and supporting documents and then notify consultants and local agencies in writing whether the proposed ICRs are accepted, adjusted, or denied.

Caltrans A&I and representatives of the federal government have the right to conduct a final audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment.

Contracts will be executed after A&I either accepts, adjusts, or rejects the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans A&I before executing the contract. The letter of acceptance along with the executed contract shall be retained in the project file. Failure to reflect the adjusted or denied ICR in a revised final cost proposal may result in the disallowance of costs.

Instructions are provided in the Exhibit 10-A on how to submit a complete Financial Review packet. Submit documents for Financial Review requests to conformance.review@dot.ca.gov.

Alternatively, if you do not have Internet access, you can mail Financial Review packets to Caltrans' A&I mailing address:

Department of Transportation
Independent Office of Audits and
Investigations, MS 2 Attention:
External Audit Manager
P.O. Box 942874 Sacramento, CA 94274-0001

AUDITS AND REVIEWS TO BE PERFORMED

An audit, as defined in 23 CFR 172.3, is defined as a formal examination, in accordance with professional standards of a consultant's accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allow ability, and allocability of costs in accordance with the Federal cost principles (as specified in 48 CFR part 31.) AASHTO Audit Guide Chapter 1.3 defines an audit as a formal examination, in accordance with professional standards, of accounting systems, incurred cost records, and other cost presentations to verify their reasonableness, allowability, and allocability for negotiating agreement fees and for determining allowable costs to be charged to government contracts. Audit objectives include the identification and evaluation of all activities that contribute to, or have an impact on, proposed or incurred costs related to government contracts.

Indirect Cost Rate Audits

During an ICR audit, the auditors (A&I or independent CPAs) will examine the consultant's proposed ICR for the applicable one-year accounting period on the proposed contract to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements. As a result of the audit, the local agency will work with the consultant to adjust the ICR and contract costs, if applicable, where disallowed costs are identified based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. The review program in the AASHTO Audit Guide, Appendix A, should be used as a guide in performing ICR audits. This review program is used for reviews of CPA audited ICR workpapers.

CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, A&I will review the CPA's audit workpapers to determine whether it is appropriate to issue a Cognizant Letter of Approval or accept the ICR. The CPA Workpaper Review is conducted to determine whether: (a) the CPA's audit of the ICR was conducted in accordance with generally accepted government auditing standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations, and (c) the audit report format and contents are acceptable. Figure 10-3 Standard Indirect Cost Rate Schedule provided at the end of this chapter provides required format and contents. Chapter 11 of the AASHTO Audit Guide provides information for the audit and required disclosures. CPAs are required to furnish copies of their workpapers as requested. A CPA Workpaper Review may apply to all contracts selected for review. The outcome of the CPA Workpaper Review is a Cognizant Letter of Approval or Caltrans Acceptance of ICR. The review program in the AASHTO Audit Guide, Appendix A, is used in performing CPA Workpaper Reviews.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. Use of the AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

Contract Audits

During a Contract Audit or Review, auditors will review contracts and the consultants' financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;

- Costs are reasonable, allowable, and allocable and are supported adequately;
- The contract contains all required fiscal provisions and the provisions are verbatim;
- Proper state and federal procurement requirements were followed; and
- Other audits/reviews of the contract as necessary.

Incurred Cost Audits

During an Incurred Cost Audit auditors will review incurred contract costs to determine if:

- Cost data are maintained in an acceptable accounting control system that gathers, records, classifies, analyzes, summarizes, and report accurate and timely financial data, which includes subsystems such as project and other direct costs, compensation, billing, and labor.
- Costs are adequately supported;
- Reasonable, allowable, and allocable;
- Compliance with state and federal laws and regulations;
- Compliance with the Master Agreement and Supplemental Agreement:
- Compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

AUDIT FINDINGS AND REVIEW DEFICIENCIES

If audited or reviewed, local agencies are responsible for ensuring contracts, cost proposals, and ICR(s) are modified to conform to audit and review recommendations as necessary, and to ensure that audit findings and review deficiencies are resolved in a timely manner. Failure to do so may result in costs being disallowed.

The local agencies may be subject to sanctions outlined in [LAPM Chapter 20: Deficiencies and Sanctions](#) if the state or federal government determines that any reimbursements to the consultant are the result of the lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

FAR Compliant, Inc. - Statement of Direct Labor, Fringe Benefits, and General Overhead For the year ended December 31, 20xx

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	\$123,456,789	(\$934,568)	(1)(15)	\$122,522,221	\$85,765,555	\$36,756,666
Fringe Benefits						
Vacation/Paid Leaves	\$17,283,950			\$17,283,950	\$12,098,765	\$5,185,185
Payroll Taxes	\$1,530,864	(\$30,617)	(15)	\$1,500,247	\$1,050,173	\$450,074
Medical Insurance	\$10,864,197			\$10,864,197	\$7,604,938	\$3,259,259
401K Match	\$4,938,272			\$4,938,272	\$3,456,790	\$1,481,481
Incentives and Bonus	\$15,308,642	(\$3,123,456)	(2)	\$12,185,186	\$8,529,630	\$3,655,556
Other Employee Benefits	\$2,515,280	(\$553,433)	(3)	\$1,961,847	\$1,373,293	\$588,554
Total Fringe Benefits	\$52,441,206	(\$3,707,506)		\$48,733,700	\$34,113,590	\$14,620,110
General & Administrative Overhead						
Indirect Overhead Labor	\$72,696,030	(\$4,452,541)	(1)(2)(4)(15)	\$68,243,489	\$65,790,948	\$2,452,541
Purchased Labor/Subconsultants	\$22,433,019	(\$22,433,019)	(5)	\$ -	\$ -	\$ -
Office Rent	\$12,345,679	(\$987,654)	(6)	\$11,358,025	\$11,038,025	\$320,000
Supplies & Utilities	\$5,753,086			\$5,753,086	\$4,027,160	\$1,725,926
Postage and Shipping	\$1,770,000	\$321,456	(5)	\$2,091,456	\$1,464,019	\$627,437
Equipment and Maintenance	\$3,812,346			\$3,812,346	\$2,512,789	\$1,299,557
Depreciation Expense	\$6,202,469	(\$1,345,678)	(7)	\$4,856,791	\$3,205,482	\$1,651,309
Interest	\$123,456	(\$123,456)	(8)	\$ -	\$ -	\$ -
Dues and Subscription	\$123,456	(\$12,345)	(9)	\$111,111	\$77,778	\$33,333
Advertising & Marketing	\$427,406	(\$45,678)	(10)	\$381,728	\$267,210	\$114,518
Vehicles	\$5,896,123	(\$147,403)	(5)(11)(14)	\$5,748,720	\$4,024,104	\$1,724,616
Bad debts	\$12,345	(\$12,345)	(12)	\$ -	\$ -	\$ -
Legal and Accounting Services	\$3,713,580	(\$222,815)	(13)	\$3,490,765	\$3,490,765	\$ -
Fines and Penalties	\$80,000	(\$80,000)	(16)	\$ -	\$ -	\$ -
Total General & Admin. Overhead	\$135,388,995	(\$29,541,478)		\$105,847,517	\$95,898,280	\$9,949,237
Total Indirect Costs				\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates				126.17%	151.59%	66.84%

Figure 10.3: Standard Indirect Cost Rate Schedule

FAR References:

- (1) FAR 31.202: Uncompensated overtime.
- (2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- (3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
- (4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
- (5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- (6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- (7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- (8) FAR 31.205-20: Interest and other financial costs not allowable.
- (9) FAR 31.201-2: Non-business related dues and subscriptions.
- (10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- (11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- (12) FAR 31-205-3: Bad debts and collection costs.
- (13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- (14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- (15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- (16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

10.4 CONSULTANT SELECTION METHODS

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.

The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant.

In addition, there are other methods used in special situations such as noncompetitive procurement and small purchases under \$150,000.

Beginning with [Section 10.5: Consultant Selection Using the One-Step RFP Method](#) Using the One-Step RFP Method each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 172.

One-Step RFP

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

One-Step RFQ

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two step selection process is used for procurement of on-call contract(s).

Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. For more information, refer to description of on-call contract in [Section 10.2: Identifying & Defining a Need for Consultants](#). This method requires substantially more work and time than the other two methods described above.

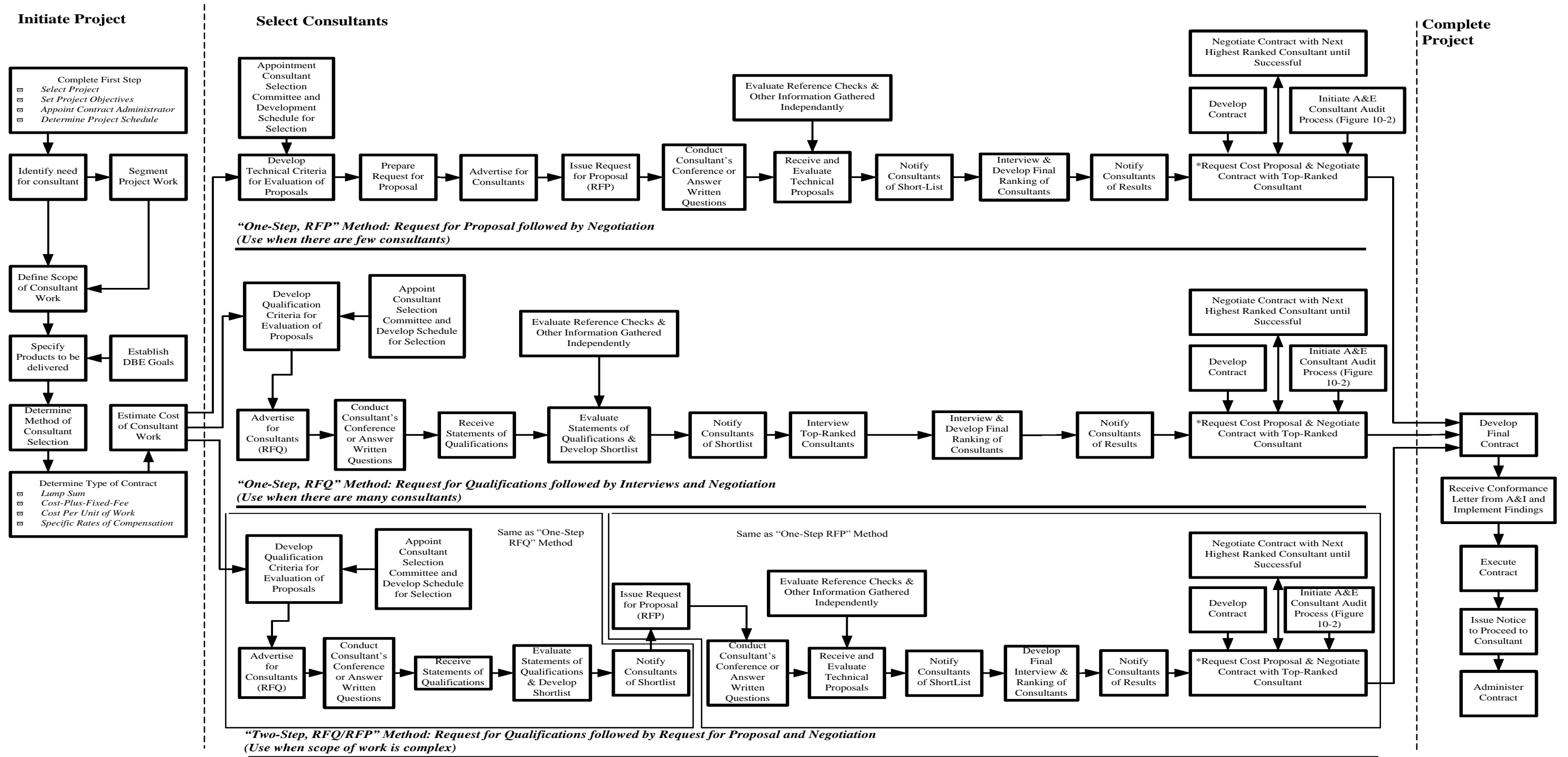


Figure 10-4: Consultant Selection Flowchart

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10.5 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. For non-A&E consulting contracts, a cost proposal shall be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#).

Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

Prepare RFP

The information required in a RFP includes the following:

- Description of project;
- Scope of work;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See [Exhibit 10-H: Sample Cost Proposal \(Example 3\)](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: A&E Consultant Audit and Review Process](#));
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- A DBE contract goal is specified (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#);
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant’s project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);

- References.

Financial Management and Accounting System Requirements

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services shall be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

Issue/Publish RFP

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

Conduct Proposer's Conference or Answer Written Questions

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be

considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee discusses and documents the strengths and weaknesses of each proposal; interviews the three or more highest ranked consultants (short listed); and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others, and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System](#) of Costs and Financial Management System and [Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#), whichever applicable (see [Section 10.3: A&E Consultant Audit and Review Process](#)) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations

commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be properly disposed of by permanently deleting the cost proposals and/or any copy of the cost proposals.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see [Section 10.3: A&E Consultant Audit and Review Process](#) in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans A&I within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans A&I will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans A&I Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element
- Hours, level of effort by task and/or classification

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#)), and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, the local agency must submit a completed [Exhibit 10-C](#) signed by the Contract Administrator for all new or amended federal and/or state funded A&E consultant contracts to aeoversight@dot.ca.gov for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of [Exhibit 10-C](#), the local agency must notify Caltrans and provide a copy of an updated [Exhibit 10-C](#) and all contract amendments to aeoversight@dot.ca.gov. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of [Exhibit 10-C](#) to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

10.6 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#).

Develop Technical Criteria for Evaluation of Qualifications

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

Prepare RFQ

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See [Exhibit 10-H: Sample Cost Proposal](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: A&E Consultant Audit and Review Process](#));
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#); Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;

- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);
- References.

Financial Management and Accounting System Requirements

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFQs shall then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

Issue/Publish RFQ

The local agency shall publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ on line as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

Receive/Evaluate Statements of Qualifications and Develop Shortlist

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

Notify Consultants of Shortlist

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Interview Top-Ranked Consultants

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the local agency in writing. It is required that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the

interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

Develop Final Ranking and Notify Consultants of Results

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

Conduct Scoping Meeting

The Contract Administrator meets with the first-ranked consultant's project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

Request Cost Proposal

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein.

Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) and [Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#), whichever applicable (see [Section 10.3: A&E Consultant Audit and Review Process](#)) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and compares it with the local agency's confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be properly disposed of by permanently deleting the cost proposals and/or any copy of the cost proposals.

A contract audit and review may be required (see [Section 10.3: A&E Consultant Audit and Review Process](#) earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans A&I in a timely fashion, including all

documents for a Financial Review, if applicable. Caltrans A&I will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans A&I Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on actual cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#)), and receive Caltrans A&I's Financial Review acceptance letter, if applicable.

Prior to contract award, the local agency must submit a completed [Exhibit 10-C](#) signed by the Contract Administrator for all new or amended federal and/or state funded A&E consultant contracts to aeoversight@dot.ca.gov for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of [Exhibit 10-C](#), the local agency must notify Caltrans and provide a copy of an updated [Exhibit 10-C](#) and all contract amendments to aeoversight@dot.ca.gov. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of [Exhibit 10-C](#) is not required for non-A&E consultant contracts..

10.7 CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD

Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals.

The initial steps in this method (up to the development and notification of the shortlist) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in

Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is very complex or unusual. The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through single solicitation. The outcome of the first step - RFQ will be multiple contracts, or on-call list of consultants with cost/price agreements. The subsequent project work will be procured thru individual competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

10.8 COMPLETING THE PROJECT

Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans A&I that accepts, denies or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. For informational purposes, sample contract language and format have been included as [Exhibit 10-R: A&E Sample Contract Language](#).

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) exceeding \$150,000, must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal Exhibit 10-O2: Consultant Contract DBE Commitment is included for all contracts regardless of goal.;
- [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subs), and [Exhibit 10-A: A&E Consultant Audit Request Letter](#) and Checklist and all supporting documents, if applicable, have been submitted to Caltrans A&I;

- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#) must be used to ensure that required documentation has been provided;
- A cost proposal (see [Exhibit 10-H: Sample Cost Proposal](#)), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant's organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract shall also provide that the consultant establish a working office at a place acceptable to the local agency. The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the local agency, but in any event shall be retained for a three-year period after processing of the final voucher by the State or FHWA.

Execute Contract and Issue Notice to Proceed to Consultant

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be send to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved.

Administer the Contract

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing and assessing reports, plans, and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
 - [DIR FAQ](http://www.dir.ca.gov) website:
http://www.dir.ca.gov/OPRL/FAQ_PrevalingWage.html
 - [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;
- Completing the consultant performance evaluations (see [Exhibit 10-S: Consultant Performance Evaluation](#)).

Substitution of Consultant Personnel and Subconsultants

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the local agency. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

Invoicing (or Progress Payments)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see [LAPM Chapter 3: Project Authorization](#)) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the local agency.

For federal or state reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) (federally funded projects only);
- [Exhibit 10-O2: Consultant Contract DBE Information](#) (federally funded projects only);

DLAE must confirm that the local agency has submitted copies of [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subconsultants) to Caltrans A&I and received acceptance of [Exhibit 10-C: Consultant Contract Reviewers Checklist](#) from Caltrans.

Invoices should include the following:

- Prepared on the consultant's letterhead;
- Signed by the consultant's project manager;
- Have a unique invoice number;
- Appropriate documentation attached;
- If the contract involved milestones, each milestone should be invoiced separately;
- If the contract involved subconsultants, a separate invoice for each subconsultant should be attached in the same format as the prime consultant's invoice and should be included in the summary of the prime consultant's invoice.

The following are requirements associated with each invoice that the local agency should include:

- A summary of the reimbursements to-date and a summary of the funds remaining in the contract. This should be compared to the local agency's own record of reimbursements to-date and a summary of the funds remaining in the contract.
- A summary of all payments to-date and funds remaining in the contract for each subconsultant.

The local agency is to follow the procedures given in [LAPM Chapter 5: Invoicing](#), to obtain reimbursement of federal or state funds.

Contract Amendments

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see [Q&As](#) at: http://www.fhwa.dot.gov/programadmin/172qa_01.cfm).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and can not include any new work.

All contract amendments must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. [Section 10.3: A&E Consultant Audit and Review Process](#) of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment.

Performance Evaluation

Pursuant to 23 CFR §172.9(d) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See [Exhibit 10-S: Consultant Performance Evaluation](#) for a suggested format for use by the local agency.

Project Records

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR Part 200). These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR Part 200.333).

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) and [Exhibit 10-O2: Consultant Contract DBE Commitment](#));
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#));
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)) for contracts over \$150,000 or more;
- A&E Consultant Audit Request Letter and Checklist ([Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)) for contracts over \$150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see [Exhibit 10-R: A&E Sample Contract Language](#) and [Exhibit 10-H: Sample Cost Proposal](#));
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;

- Performance evaluation (see [Exhibit 10-S: Consultant Performance Evaluation](#));
- Consultant contract checklists (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#));
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms ([Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#), [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) and [Exhibit 10-Q: Disclosure of Lobbying Activities](#), as appropriate).

Retention Clauses

At the option of the local agency, a retention clause may be included in the consultant contract. The usual retained amount is five percent; appropriate securities on deposit may be substituted for the retention. A retention clause in the consultant contract is recommended (see [Exhibit 10-R: A&E Sample Contract Language](#), Article XXXI).

Review of Local Agency Actions

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

[Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#) is to be completed and signed. A copy shall be emailed to Caltrans at aeoversight@dot.ca.gov prior to contract award for acceptance. This acceptance of [Exhibit 10-C](#) must be retained in the local agency project files.

10.9 MISCELLANEOUS CONSIDERATIONS

Engineering Services Under \$150,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR 172.7(a)(2) and 48 CFR 2.101.

Local agencies should be fully aware that consultant services costing in aggregate no more than \$150,000 per contract may be obtained through a relatively simple and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and the project files must contain justification for the selection. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible. The Brooks Act and the consultant audit process described in [Section 10.3: A&E Consultant Audit and Review Process](#) of this chapter do not apply to consultant service contracts under \$150,000. Although this method of procurement is informal, it must still comply with [Sections 10.1: General](#), [10.2: Identifying & Defining a Need for Consultants Completing the Project](#), and [Section 10.9: Miscellaneous Considerations](#), of this chapter.

Project splitting should not be used to take advantage of the small purchase procedure in order to circumvent the Brooks Act.

Table 10-1: Summary of Required/Non-Required Activities for Small Purchase Procedure

REQUIRED	NOT REQUIRED
<ul style="list-style-type: none"> • Competitive process (collect three bids) • Conflict of interest determination • Assigned Contract Administrator • Defined scope of work/schedule of deliverables/start and end dates for contract • Defined deliverables/Prime and Subconsultant responsibilities • DBE goal for contract; Exhibit 10-O1: Consultant Proposal DBE Commitment, Exhibit 10-O2: Consultant Contract DBE Commitment • Cost estimate prior to receiving bids • Best method of payment determination • Contract provisions/clauses • Evaluation of consultant, justification of selection • Contract management responsibilities <p>Exhibit 10-C: A&E Consultant Contract Reviewers Checklist</p>	<ul style="list-style-type: none"> • No RFP/RFQ • No Selection/Evaluation Panel • No Evaluation criteria disclosure requirements • No record of costs/profit negotiations <p>No audit and review requirement of contract (no Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist or Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System)</p>

Price or rate quotation may be considered in the selection of A&E consultants on contracts below \$150,000 and must be documented in the project files. Qualified small business firms shall be considered for selection on federal-aid and state reimbursed contracts. Additionally, on federal-aid contracts, qualified DBE firms shall be considered for selection, and the appropriate federal contract language shall be included.

The full amount of any contract modification or amendment that would cause the total contract amount to exceed the Federal simplified acquisition threshold (currently established at \$150,000) would be ineligible for federal funding. Also, FHWA reserves the right to withdraw all federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

Noncompetitive Negotiated Contracts (Sole-Source)

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#)).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency shall:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

A Public Interest Finding (see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#)) is not required for a local agency to be reimbursed for contract administration activities associated with non-infrastructure type projects such as many Safe Routes to School or Transportation Alternatives Program projects. However, an indirect cost allocation plan must be approved in order to be reimbursed for this work (see <http://www.fhwa.dot.gov/legsregs/directives/policy/indirectcost.htm>).

Personal Services Contracts

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel who essentially perform similar duties as the employees. When personal engineering services less than \$150,000 or non-engineering consultant or vendor services for non-infrastructure programs are needed and federal or state reimbursement will be sought, these services may be obtained through Small Purchase Procedures up to a limit of \$150,000 each.

The \$150,000 is a cumulative limit for services provided by any individual consultant or consulting firm. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus a fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

For personal service contracts, the following information must be documented by the local agency and retained in the project files:

- Explanation of the services needed, and why they cannot be provided by the local agency;
- Name and qualification of the consultant, who provided the services;
- Documentation of the fees showing how the fee was calculated, and that it is reasonable by comparative standards;
- Any other records needed to show compliance with federal-aid program regulations.

Retaining a Consultant as an Agency Engineer or in Management Support Role

A local agency may retain qualified consultants in a management support role on its staff in professional capacities for state funded or federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the City, selecting other consultants, approving changes to schedule, scope, deliverables or costs, and approving invoices
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects or the work of other consultants and contractors on behalf of the public agency
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency

However, a consultant in a management support role is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency
- A consultant “project manager” performing contract management on behalf of the consultant on the public agency’s consultant contract.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;

- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
- For a state funded or federal-aid project, completion of [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#) by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a state funded or federal-aid project, a local agency consultant in a management support role shall not:
 - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
 - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
 - Apply for or receive reimbursement of federal-aid funds for the local agency's federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
 - Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal or state reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants in a management support role are procured with federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer or agent of the subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

- Subparagraph of 23 CFR §172.7(b) requires that the local agency shall receive approval from FHWA. In addition, any federal-aid projects designated as High Profile projects may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency shall submit a request for approval via email the Scope of Work and Conflict of Interest Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at aeoversight@dot.ca.gov, prior to solicitation.
- Once the local agency receives FHWA’s written response, the local agency can proceed with the RFQ.
- After consultant selection, the local agency shall submit the completed *Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement* to the DLA-HQ at aeoversight@dot.ca.gov. Local agency will receive FHWA’s approved *Exhibit 10-U* via email.

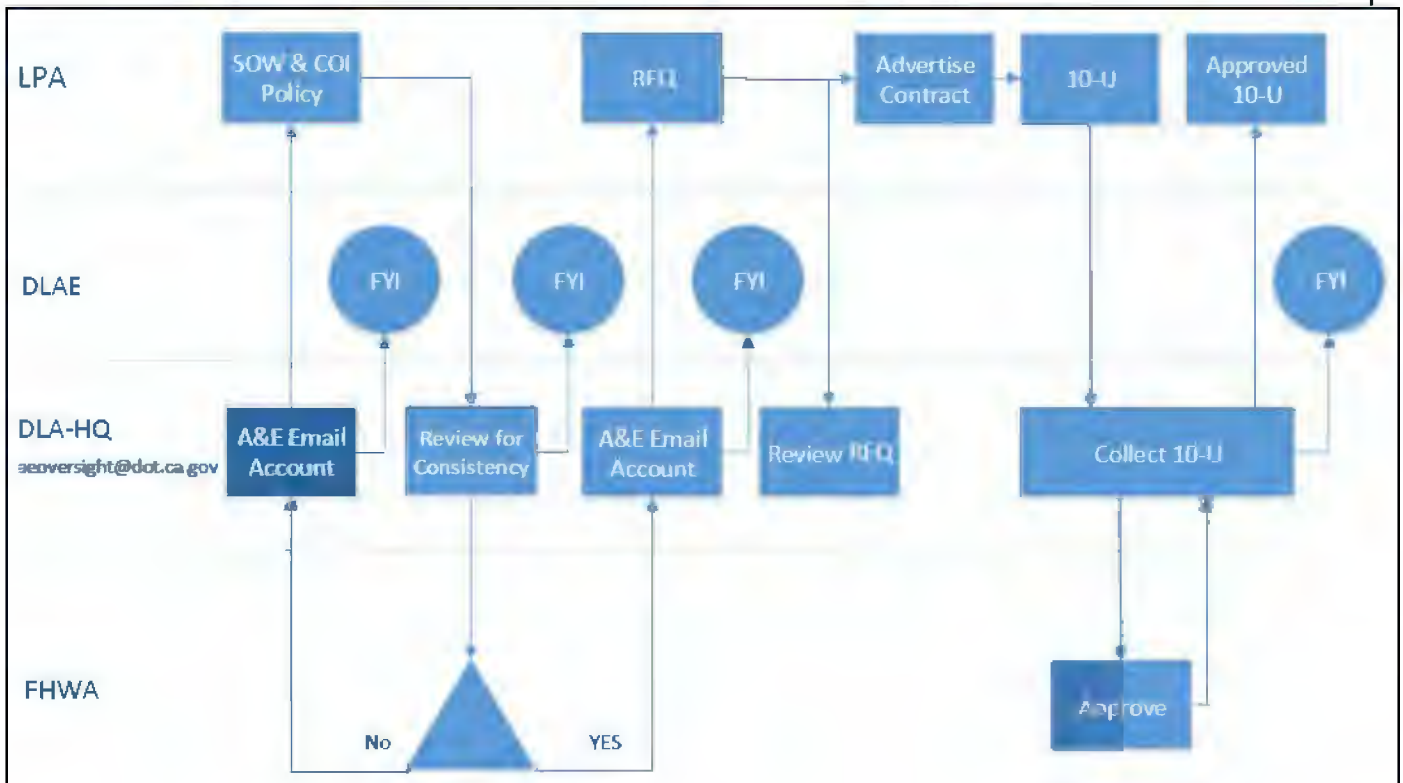


Figure 10-5: Consultant in a Management Support Role Flowchart

Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The contract shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

10.10 Non-A&E CONSULTANTS

Definition

Services and planning studies that are not included in the definition of A&E related services or are not directly related to a construction project may be considered non-A&E. These services include Right-of-Way appraisal and acquisition activities, conducting public outreach during environmental clearance or construction, and Active Transportation Program educational and outreach activities.

The determining factor for the required use of competitive negotiation/qualifications based selection procedures is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect. If a planning study is to determine the need for improvements within a corridor, to conduct travel demand studies, or to obtain information on costs for planning and programming processes, the consultant may not need to be procured under a qualifications based selection process.

Intelligent Transportation System (ITS) Projects

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, funds the acquisition of

technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (or A&E), construction, and non-engineering/non-architectural (or Non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves considerable software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it would be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a Non-A&E consultant contract. Examples of Non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system
- Software systems for arterial and freeway management systems
- Operating the 511 traveler information service
- Nonprofessional services for system support such as independent validation and verification, testing and specification development, and development of a concept of operations

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to *LAPG, Chapter 13* [LAPG Chapter 13: Intelligent Transportation Systems](#).

Non-Infrastructure Projects

- Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to LAPM Chapter 13), or the eventual physical construction of transportation facilities.

Procurement of Non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to *LAPM Chapter 3 Project Authorization*. [LAPM Chapter 3: Project Authorization](#).

Procurement of Non-A&E Consultant Contracts

Local agencies must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal laws and regulations (2 CFR Part 200). All non-A&E

procurements for federal-aid funded projects must be conducted by competitive proposals in a manner providing full and open competition consistent with federal and state standards. Refer to California State Public Contract Code 10335-10381 for more information.

- a. Request for proposals must be publicized and all evaluation factors and their relative importance identified
- b. Proposals must be solicited from an adequate number of qualified sources (no less than three)
- c. Local agency must have a written procedure for evaluating proposals
- d. Consultants other than A&E consultants shall be selected using cost or cost and qualifications (best value)
- e. Public agencies contracting with other public agencies to perform work need an executed Memorandum of Understanding (MOU) or interagency agreement
- f. A consultant firm that was instrumental or listed in the application process for projects, such as ATP, is not entitled to be awarded a contract for its implementation without a competitive procurement. All federal/state funded contracts must be competitively solicited.

Determining Need for Consultant

To identify if a non-A&E professional services contract is needed, consider the following:

- Types of services needed
- Special licensing (not considered A&E)
- How necessary are the services
- When are the services needed
- One-time or on-going services
- Routine or extraordinary/unique
- Scope of Work

Preparing the Request for Proposal

An RFP for professional services should be as detailed and precise as possible and include minimum qualification requirements, solicitation and award time frames, term of agreement, scope of work, evaluation criteria and process, and technical proposal and performance specifications.

Be sure to attach complete scopes of work outlining local agency and consultant responsibilities and all special provisions for the work/services needed, and have all funding approved. Local agency contacts, or the Contract Administrator should be identified in the RFP.

An example RFP is provided on the Local Assistance Website at <http://www.dot.ca.gov/hq/LocalPrograms/AE/index.htm> and may be modified.

Scope of Work

Clear and concise scopes of work are critical elements of service contracts. SOWs must be detailed and specific and be organized in a logical manner. Sort work details by similar actions or requirements. Clearly define roles and responsibilities of consultant and local agency. Agency Contract Administrator should write SOWs to indicate what qualifications are required to perform the work and to express when, where, and how the work/service is to be performed.

Technical Proposal

The Technical proposal should include the following information:

- **Consultant Project Manager** – qualifications, roles and responsibilities.
- **Methodology** - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- **Workplan and Work Schedule** - the technical proposal should include activities and tasks, and their delivery schedule.
- **Personnel** - List of personnel who will be working on the project, and their resumes.
- **Facilities and resources** (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- **Sub-contracts** - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
- **References** - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

Cost Proposal Worksheet

The RFP should provide a standard format for cost proposal that all proposers must include in their technical proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

DBE Consideration

DBE consideration is required on all federal-aid funded contracts including non-A&E..

Solicitation and Award of Contracts

Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days.

The solicitation should inform potential bidders that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to bidder's questions shall be provided to all potential bidders. Written responses to all questions will be collectively compiled and provided as an addendum.

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities shall be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate shall not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

Evaluation Criteria

Review all eligible proposals (i.e., those filed on time and in the manner prescribed) to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements can then be rated or scored. Those proposals shall be submitted to an agency evaluation committee. The evaluation committee will evaluate and score proposals using the methods specified in the RFP. The contract must be awarded to the responsible proposer whose proposal is given the highest score by an evaluation committee.

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Note that all criteria to be used to evaluate the technical proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

To establish effective competition, a minimum of three proposal must be evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) ([LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding](#)) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Oral Presentations

Oral presentations are optional. The evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon this criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

Protest/Appeals/Reinstatement Procedures

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthens the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with 2 CFR 200.318(k)

10.11 REFERENCES

- [23 CFR, Part 172](#)
Administration of Engineering and Design Related Service Contracts
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
- [40 USC, Section 1104](#)
Brooks Act <http://www.fhwa.dot.gov/programadmin/121205.cfm>
- [41 CFR](#)
Public Contracts and Property Management
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl
- [41 USC](#)
Public Contracts
<http://law.onecle.com/uscode/41/index.html>
- [23 USC](#)
Letting of Contracts
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- [48 CFR, Chapter 1, Part 15.404](#)
<https://www.acquisition.gov/far/html/FARTOCP15.html>

- [48 CFR, Chapter 1, Part 31](https://www.acquisition.gov/far/html/FARTOCP15.html)
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [Title 48, Part 16 – Types of Contracts](http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1)
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>
- [48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts](https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3)
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- [48 CFR 31.201-3](https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf)
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- [48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900](https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99)
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>
- [2 CFR Part 200](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- [49 CFR, Part 26](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl
- [American Association of State Highway and Transportation Officials \(AASHTO\) Uniform Audit and Accounting Guide](http://audit.transportation.org/Pages/default.aspx)
<http://audit.transportation.org/Pages/default.aspx>
- [Caltrans Division of Procurement and Contracts Website](http://www.dot.ca.gov/dpac/index.html)
<http://www.dot.ca.gov/dpac/index.html>
- [California Labor Code, Section 1775](http://law.onecle.com/california/labor/1775.html)
<http://law.onecle.com/california/labor/1775.html>
- [Government Auditing Standards \(GAS\) issued by the United States Government Accountability Office](http://www.gao.gov/yellowbook/overview)
<http://www.gao.gov/yellowbook/overview>
- [Government Code Sections 4525 through 4529.5](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5)
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>

- [OMB Circular A-110](https://www.whitehouse.gov/omb/circulars_a110)
Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
https://www.whitehouse.gov/omb/circulars_a110
- [Standard Environmental Reference \(SER\)](http://www.dot.ca.gov/ser/)
<http://www.dot.ca.gov/ser/>



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

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

City Manager Approval:

A handwritten signature in black ink, appearing to be 'AS', written over a horizontal line.

File No.: 16.11.46

TOPIC: 2017 STORM DAMAGE REPAIR – #70 IRWIN STREET

SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A \$1,129,369 CONSTRUCTION AGREEMENT TO VALENTINE CORPORATION, AND AUTHORIZING A TOTAL APPROPRIATED AMOUNT OF \$1,245,000, FOR THE REPAIR OF 2017 STORM DAMAGE AT #70 IRWIN STREET, QUALIFYING FOR FEMA REIMBURSEMENT FOR ALL BUT \$77,813 IN LOCAL MATCHING FUNDS

RECOMMENDATION: Adopt a resolution awarding the construction contract for the 2017 Storm Damage Repair - #70 Irwin Street.

BACKGROUND: In January 2017, the City of San Rafael, as well as other communities throughout California, experienced a significant storm event. On February 14, 2017, the President declared a major disaster, making federal disaster aid available to 34 counties, including Marin County. From January 3, 2017 to January 12, 2017 a 'slip-out' (or landslide) occurred adjacent to #70 Irwin Street. At the time of the incident, the slip-out affected the entire roadway and in the spring of 2017 the roadway was closed due to its instability. For the last year, the site has been covered with plastic and monitored by Public Works staff.

The City has applied for Federal Emergency Management Agency (FEMA) assistance for this federally declared disaster. At this time, the City has not received the final FEMA documentation for this project. However, City staff has received a copy of the California Office of Emergency Services (CalOES) documentation that acknowledges the project and anticipates receiving the federal documentation following approval at the federal level. Miller Pacific Engineering Group was hired by the City in July 2017 to provide recommendations for the repair. The Public Works Engineering division utilized the report provided by Miller Pacific Engineering Group to design a concrete soldier pile wall system with tiebacks at this location. The repair includes the installation of drilled concrete piles and a concrete wall system with

FOR CITY CLERK ONLY

File No.

Council Meeting:

Disposition: Resolution

tiebacks, as well as grading and drainage on both sides of the wall. Two of the walls are located below the roadway while the third wall is located adjacent to Irwin Street.

This complex project includes the installation of a three tiered wall system similar to the existing walls that were present prior to the 2017 storm damage occurring. The City has been working closely with adjacent property owners where two of these wall systems will be installed and has received approvals to enter the property and install the retaining walls. This project is a roadway repair, which falls within the Class 1 categorical exemption from environmental review under the California Environmental Quality Act ("CEQA", 14 Cal Code Regs §15301).

The project was publicly advertised in accordance with San Rafael's Municipal Code on June 27, 2018. The engineer's estimate of the construction cost was \$1,050,000.

ANALYSIS:

On August 14, 2018 the following bids were received:

Contractor	Bid Amount
Valentine Corporation	\$1,129,369.00
Maggiora and Ghilotti Inc.	\$1,345,345.00

Public Works staff reviewed the construction bids and determined that the low bid of \$1,129,369 from Valentine Corporation is both responsive and responsible. The cost difference between the engineer's estimate and the low bid can be attributed to the current construction climate as well as the complexity of the repair. Staff recommends awarding the construction contract to Valentine Corporation for the amount bid and also recommends that the City Council authorize a construction contingency of approximately ten percent for the project in an amount of \$115,631, for a total authorized amount of \$1,245,000.

PUBLIC OUTREACH: The City has been in close contact with the adjacent property owners and has secured the necessary right of entry to construct from two of the four property owners the project. Staff anticipates securing the remaining right to enter approvals within the next few weeks. In addition, prior to the start of construction, the contractor is required to meet with the adjacent property owners to coordinate the work.

FISCAL IMPACT: For this FEMA event, the Federal share is 75 percent of the total cost, State cost share is 18.75 percent, and the remaining cost is supported by local funds (6.25 percent); for this construction contract, this equates to a local share of \$77,812.50. FEMA allows staff time to be used to offset the local match and we will seek reimbursement for in house design work that will likely offset most if not all of the local contribution. The City will need to support the construction cost for the project and then seek reimbursement from the State. Staff will submit a letter to the CalOES requesting that their authorization amount match that of the bid, plus the cost of the design, such that when this project is eventually audited there will be no reasons for discrepancies between the actual construction and the authorized amount.

This project is identified in the City's Capital Improvement Program and funding for this construction is available in the Gas Tax Fund (Fund No. 206).

OPTIONS:

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

1. Adopt the resolution as presented.

2. Reject all bids and direct staff to rebid the construction for this project. If this option is chosen, soliciting new proposals or rebidding the project will delay construction.
3. Reject all bids and direct staff to stop work on the project.

RECOMMENDED ACTION: Staff recommends that the City Council adopt a resolution authorizing the City Manager to execute the construction contract with Valentine Corporation for the amount bid and authorize a construction contingency for the project in an amount of \$115,631, for a total authorized amount of \$1,245,000.

ATTACHMENTS:

1. Resolution
2. Exhibit 1 to resolution: Agreement

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A \$1,129,369 CONSTRUCTION AGREEMENT TO VALENTINE CORPORATION, AND AUTHORIZING A TOTAL APPROPRIATED AMOUNT OF \$1,245,000, FOR THE REPAIR OF 2017 STORM DAMAGE AT #70 IRWIN STREET, QUALIFYING FOR FEMA REIMBURSEMENT FOR ALL BUT \$77,813 IN LOCAL MATCHING FUNDS.

WHEREAS, on the 27th day of June 2018, pursuant to due and legal notice published in the manner provided by law, inviting sealed bids or proposals for the work hereinafter mentioned, as more fully appears from the Affidavit of Publication thereof on file in the office of the City Clerk of the City of San Rafael, California, the City Clerk of said City did publicly open, examine, and declare all sealed bids or proposals for doing the following work in said City, to wit:

“2017 Storm Damage Repair - #70 Irwin Street”

City Project No. 11308

in accordance with the plans and specifications therefore on file in the Department of Public Works, 111 Morphew Street, San Rafael; and

WHEREAS, the bid of \$1,129,369.00 from Valentine Corporation, at the unit prices stated in its bid, was and is the lowest and best bid for said work and said bidder is the lowest responsible bidder; and

WHEREAS, staff has recommended that the project budget include a contingency amount of \$115,631.00; and

WHEREAS, this project is to make repairs to infrastructure damage caused by the major 2017 storm event, and qualifies for assistance from the Federal Emergency Management Agency (“FEMA”) for 75 percent of the total cost, and from the California Office of Emergency Services for 18.75 percent of the total cost, resulting in an anticipated net cost to the City of 6.25 percent or \$77,812.50; and

WHEREAS, the Council finds that this project is for the repair of an existing facility that is categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”, 14 Cal Code Regs §15301);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL

RESOLVES as follows:

1. The plans and specifications for the 2017 Storm Damage Repair - #70 Irwin Street, City Project No. 11308, on file in Department of Public Works, 111 Morphew Street, San Rafael, are hereby approved.
2. The bid of \$1,129,369.00. from Valentine Corporation is hereby accepted at the unit prices stated in its bid, and the contract for said work and improvements is hereby awarded to Valentine Corporation. at the stated unit prices.
3. The City Manager is authorized and directed to execute a contract with Valentine Corporation for the bid amount, in the form attached hereto as Exhibit 1 and incorporated herein, subject to final approval as to form by the City Attorney, and to return the bidder's bond upon the execution of the contract.
4. Funds for the project totaling \$1,245,000.00, which includes the construction award amount and contingency, will be appropriated for City Project No. 11308, from the Gas Tax Fund #206.
5. The City Manager is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Tuesday, the 4th day of September, 2018 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

File No.: 16.11.46

City of San Rafael ♦ California

Form of Agreement for

2017 STORM DISASTER REPAIR #70 Irwin Street Project Number 11308

This Agreement is made and entered into this ___ day of _____ 2018 by and between the City of San Rafael (hereinafter called City) and **Valentine Corporation**. (hereinafter called Contractor). Witnesseth, that the City and the Contractor, for the considerations hereinafter named, agree as follows:

I - Scope of the Work

The Contractor hereby agrees to furnish all of the materials and all of the equipment and labor necessary, and to perform all of the work described in the specifications for the project entitled: **2017 STORM DISASTER REPAIR #70 Irwin Street**, all in accordance with the requirements and provisions of the Contract Documents as defined in the General Conditions which are hereby made a part of this Agreement. The required additional insured coverage for City under contractor's liability insurance policy shall be primary with respect to any insurance or coverage maintained by city and shall not call upon city's insurance or self-insurance for any contribution.

II- Time of Completion

- (a) The work to be performed under this Contract shall be commenced within **Five (5) Working Days** after the date of written notice by the City to the Contractor to proceed.
- (b) All work shall be completed, including all punchlist work, within **Sixty (60) Working Days** and with such extensions of time as are provided for in the General Provisions.

III - Liquidated Damages

It is agreed that, if all the work required by the contract is not finished or completed within the number of working days as set forth in the contract, damage will be sustained by the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City, the sum of **\$1,900** for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above; and the Contractor agrees to pay said liquidated damages herein provided for, and further agrees that the City may deduct the amount thereof from any moneys due or that may become due the Contractor under the contract.

IV - The Contract Sum

The City shall pay to the Contractor for the performance of the Contract the amounts determined for the total number of each of the units of work in the following schedule completed at the unit price stated. The number of units contained in this schedule is approximate only, and the final payment shall be made for the actual number of units that are incorporated in or made necessary by the work covered by the Contract.

BASE BID ITEMS

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1.	Mobilization	1	LS @	30,000.00	= 30,000.00
2.	Signs and Traffic Control	1	LS @	43,907.00	= 43,907.00
3.	Clearing and Grubbing	1	LS @	101,305.00	= 101,305.00
4.	Cast in Drilled Hole (CIDH) Piles **	320	LF @	450.00	= 144,000.00
5.	Concrete Retaining Wall **	119	CY @	1,430.00	= 170,170.00

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
6.	Tieback Anchors **	745	LF @	219.00	= 163,155.00
7.	Excavation **	213	CY @	621.00	= 132,273.00
8.	Backfill **	600	CY @	131.00	= 78,600.00
8.	MSE Block Wall	<u>676</u>	SF @	64.00	= 43,264.00
9.	¾" Clean Crushed Drainrock	170	TON @	183.00	= 31,110.00
10.	Mirafi 140 N Filter Fabric	5000	SF @	1.00	= 5,000.00
11.	6" Diameter Perforated & <u>Non Perforated</u> Subdrain	560	LF @	42.00	= 2,3520.00
12.	Subdrain Cleanout	12	EA @	380.00	= 4,560.00
13.	6 Foot Conform Grind	40	LF @	145.00	= 5,800.00
14.	Class 2 Aggregate Base	50	TON	156.00	= 7,800.00
15.	Hot Mix Asphalt Concrete	25	TON @	600.00	= 15,000.00
16.	AC Berm	50	LF @	150.00	= 7,500.00
17.	Redwood Fence	165	LF @	160.00	= 26,400.00
18.	Furnish and Install 12" Diameter HDPE	<u>170</u>	LF @	110.00	= 18,700.00
19.	Minor Concrete Minor Structures				
	a. Driveway	2	EA @	500.00	= 1,000.00
	b. Sidewalk	<u>800</u>	SF @	25.00	= 20,000.00
	c. Curb and Gutter	80	LF @	145.00	= 11,600.00
	d. Type C Catch Basin	1	EA @	6,000.00	= 6,000.00
	e. Manhole	4	EA @		=
	f. Drop Inlet	3	EA @	3,500.00	= 10,500.00
	g. Wall Gutter (Type B3-6)	141	LF @	39.00	= 9,729.00
	h. Concrete Lined Ditch	160	LF @	75.00	= 12,000.00
	i. Down Drain Holddowns (Type D87B)	3	EA @	800.00	= 2,400.00
	<u>j. Flagstone Steps</u>	<u>1</u>	<u>LS @</u>	<u>1,700.00</u>	<u>1,700.00</u>
20.	6" Minus – Rock Rip Rap	18	TON @	132.00	= 2,376.00

****Final Pay Item**

GRAND TOTAL BID \$ 1,129,369.00

One million one hundred twenty-nine thousand three hundred sixty-nine dollars and 00/100
(GRAND TOTAL BID WRITTEN IN WORDS)

V - Progress Payments

- (a) On not later than the 6th day of every month the Public Works Department shall prepare and submit an estimate covering the total quantities under each item of work that have been completed from the start of the job up to and including the 25th day of the preceding month, and the value of the work so completed determined in accordance with the schedule of unit prices for such items together with such supporting evidence as may be required by the City and/or Contractor .
- (b) As soon as possible after the preparation of the estimate, the City shall, after deducting previous payments made, pay to the Contractor 95% of the amount of the estimate as approved by the Public Works Department.
- (c) Final payment of all moneys due shall be made within 15 days after the expiration of 35 days following the filing of the notice of completion and acceptance of the work by the Public Works Department.
- (d) The Contractor may elect to receive 100% of payments due under the contract from time to time, without retention of any portion of the payment by the public agency, by depositing securities of equivalent value with the public agency in accordance with the provisions of Section 22300 of the Public Contract Code. Such securities, if deposited by the Contractor, shall be valued by the City's Finance Director, whose decision on valuation of the securities shall be final.

VI - Acceptance and Final Payment

- (a) Upon receipt of written notice that the work is ready for final inspection and acceptance, the Engineer shall within 5 days make such inspection, and when he finds the work acceptable under the Contract and the Contract fully performed, he will promptly issue a Notice of Completion, over his own signature, stating that the work required by this Contract has been completed and is accepted by him under the terms and conditions thereof, and the entire balance found to be due the Contractor, including the retained percentage, shall be paid to the Contractor by the City within 15 days after the expiration of 35 days following the date of recordation of said Notice of Completion.
- (b) Before final payment is due the Contractor shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with work have been paid, except that in case of disputed indebtedness or liens the Contractor may submit in lieu of evidence of payment a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.
- (c) Contractor shall provide a "Defective Material and Workmanship Bond" for 50% of the Contract Price, before the final payment will be made.
- (d) The making and acceptance of the final payment shall constitute a waiver of all claims by the City, other than those arising from any of the following: (1) unsettled liens; (2) faulty work appearing within 12 months after final payment; (3) requirements of the specifications; or (4) manufacturers' guarantees. It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.
- (e) If after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Engineer so certifies, the City shall, upon certificate of the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted.

Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

IN WITNESS WHEREOF, City and Contractor have caused their authorized representatives to execute this Agreement the day and year first written above.

CITY OF SAN RAFAEL:

Jim Schutz
City Manager

ATTEST:

Valentine Corporation.
By:

Lindsay Lara
City Clerk

Printed Name Officer:
Title of Corporate Officer:

APPROVED AS TO FORM:

and,

Robert F. Epstein
City Attorney
File No. 16.01.285

Printed Name of Officer:
Title of Corporate Officer:



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

Prepared by: Bill Guerin, Director

City Manager Approval:

A handwritten signature in black ink, appearing to be 'AS', written over a horizontal line.

TOPIC: TRANSIT CENTER UPDATE

SUBJECT: INFORMATIONAL UPDATE FROM GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT REGARDING THE NEW DOWNTOWN SAN RAFAEL TRANSIT CENTER

RECOMMENDATION: Accept the informational report and provide feedback to staff.

DISCUSSION: In June 2012, the City Council approved the [Downtown Station Area Plan](#), setting the stage to create vibrant, mixed-use, livable areas supported by a mix of transit opportunities, including passenger rail service by the Sonoma Marin Area Rail Transit (SMART) downtown San Rafael station. SMART is now in full revenue operations on their Initial Operating Segment (IOS 1) from the Sonoma Airport to downtown San Rafael and has begun construction of their operating segment from the downtown train station, located between Fourth Street and Third Street, to the final termination of the rail line in Larkspur. This new operating segment will bisect the existing Bettini Transit Center and then cross several significant City streets including Third, Second, Irwin, Rice and Anderson Drive. The impact to the existing transit center is significant, necessitating the expansion and/or relocation of the existing Transit center.

Staff from the City of San Rafael, Golden Gate Bridge, Highway and Transportation District (GGBHTD), Marin Transit, SMART, and others developed and evaluated a series of options that culminated in three recommended alternatives. The three alternatives were presented to Council on 10/17/2016 in the [San Rafael Transit Final Report](#). In spring of 2017, the Transportation Authority of Marin (TAM) provided \$1.25 million to GGBHTD to complete the environmental analysis and develop the conceptual design for the new transit center. The GGBHTD stated their willingness to explore additional options that would be developed before beginning environmental review, and assessed as a part of the environmental review process. GGBHTD hired a team led by Kimley Horn to develop their environmental analysis and preliminary design that will culminate in a preferred option when the environmental review is completed. Staff from the City (and its consultant ALTA Planning), Marin Transit, and SMART are working with GGBHTD and their consultants to refine the existing options and to prepare variations as well.

FOR CITY CLERK ONLY

File No.:

Council Meeting:

Disposition:

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

GGBHTD has held public outreach meetings, conducted surveys and reached out to various advisory groups to get feedback on the proposed ideas. As a result of that effort, refinements have been made to the original concepts and new ideas have been introduced. GGBHTD has spent considerable time developing all of the ideas and is expected to select a preferred alternative in the fall. The City of San Rafael has a critical role in the approval of the final concept and GGBHTD is seeking to update the City Council as to what has taken place to date and the next steps. GGBHTD staff will present the background and concepts to the City Council in order for the Council and public to provide input.

COMMUNITY OUTREACH: GGBHTD has created a project webpage (<http://goldengate.org/SRTC/>) to share information about the project, including the public meetings and open houses, surveys, videos of presentations, and ways to get involved in the planning process. The City of San Rafael helps to promote these opportunities to the community through the City's website, social media and the City Manager's newsletter.

FISCAL IMPACT: There is no direct fiscal impact to the action requested in this report.

RECOMMENDATION: Accept the informational report and provide feedback to staff.

reviewed the project and determined that the project: complies with all applicable General Plan land use polices; the development standards for the High-Density Residential (HR1) District zone; and the required criteria supporting the *Parking Modification*. Further, the findings for approval of both the Use Permit and the Environmental and Design Review Permits can be made. In addition, the Planning Commission required additional conditions of approval to further alleviate concerns regarding parking and parking impacts, adequacy of affordable housing and safety.

BACKGROUND:

History

In 2006, the City Council certified an Environmental Impact Report (EIR), adopted a Statement of Overriding Considerations, and conditionally approved an Environmental and Design Review Permit, Use Permit and Vesting Tentative Subdivision Map to allow construction of a 36-unit multifamily residential condominium building on the site, with landscaping and drainage improvements.

In 2007, a building permit was issued for the demolition of the prior historic motor court (formerly 1203 Lincoln Ave.) and the residential building (formerly 1211 Lincoln Ave.) on the site. All improvements on the site were subsequently demolished and the debris removed.

In 2008, 2009, 2011, 2013, 2015 and 2016, these project entitlements were extended both automatically by the State legislature (through extension of the approved subdivision map), and by the Planning Commission, and these entitlements just recently expired August 7, 2018.

Current Proposed Project – Assisted Living Facility

On October 19, 2017, the new owner of the site submitted Use Permit (UP17-030) and Environmental Design Review Permit applications proposing a new project; an 88-bed, assisted living facility with garage parking and associated site improvements, including minor grading, drainage, landscaping, lighting, and signage. The application included a request for a *Parking Modification* to reduce the required on-site parking, from 42 to 40 parking spaces.

On June 5, 2018, the Design Review Board (DRB) reviewed the proposed building and site design and unanimously recommended approval of the proposed site and building design, including the request for *Parking Modification*, subject to final review of landscaping, exterior lighting and outdoor terrace details.

On July 10, 2018, the Planning Commission reviewed and conditionally approved the project and adopted Planning Commission Resolution 18-04 (on a 4-2-1 vote, with Robertson and Schoppert nay and Lubamersky absent), Use Permit (UP17-030), and Environmental and Design Review Permit (ED17-090), subject to adding the following as conditions: 1) Accept the property owner's voluntary offer to increase the affordable housing in-lieu fee payment, from \$318,095.36 to \$500,000; 2) Require the applicant to submit a Transportation Demand Management Plan (TDMP), as prepared by a licensed traffic engineer, identifying strategies and recommendations for reducing employee/staff vehicle trips and minimizing parking and traffic impacts; and 3) Reserve the right to require additional traffic measures, such as pavement markings and signs, both on-site and off-site, to improve vehicle circulation. The entire [7/10/18 staff report to Planning Commission with exhibits](#) can be found on the City's website. A copy of the [approved project plans](#) are included as part of the 7/10/18 Planning Commission staff report

On July 17, 2018, three (3) San Rafael residents collectively filed an appeal (Attachment 2) of the Planning Commission's approval of the project. Generally, the appeal points question the proposed commercial use on a residential-zoned site, the adequacy of the proposed parking, and the adequacy and process in determining the required affordable housing component.

Video proceedings of both the Board meeting and the Planning Commission hearing can be viewed at www.cityofsanrafael.org/meetings.

ANALYSIS:

On July 17, 2018, a timely appeal of the Planning Commission's approval of the project was filed by a group of three (3) residents. Generally, the appeal letter asserts that the project approval is not in accordance with the General Plan and Zoning Ordinance. More specifically, the appeal lists three (3) points of appeal which are paraphrased by staff below and followed by staff's response. In addition, the applicant has provided their written response to the appeal letter (Attachment 3).

Appeal Point #1 - The project approval is not in accordance with the General Plan and findings required to approve the Use Permit.

Response: General Plan consistency is determined by reviewing and weighing the goals and policies of *all* elements of the San Rafael General Plan 2020. Both the San Rafael General Plan 2020 and case law interpreting general plan requirements recognize that the General Plan is a collection of competing goals and policies, which must be read together and not in isolation. In reviewing a project for consistency with the General Plan, the City is required to 'balance' the competing goals and policies. Case law has determined that a project "*need not be in perfect conformity with each and every policy*" and that "*no project could completely satisfy every policy stated in the General Plan, and that state law does not impose such a requirement.*" (*Sequoyah Hills Homeowners Association vs. City of Oakland* (1993) 23 Cal.App.4th 704).

The project has been reviewed for consistency with the San Rafael General Plan 2020. A complete analysis of the pertinent policies and programs is presented in the *General Plan Consistency Table* ([Exhibit 4; 7/10/18 Planning Commission Packet](#)). Overall, while the project has the potential to conflict with one or more General Plan policies, it would be consistent with most of the applicable General Plan policies.

The subject property is a choice housing site for any sort of housing due to its close proximity to the Downtown and the project proposes residential development, where residents, guests and staff would re-activate a portion of Lincoln and Mission Aves. and help contribute to the City's long-term goal of creating 'alive after 5' activity in the Downtown and provide economic opportunities to Downtown businesses. The City supports the development of housing, at all levels, to help meet the needs of all San Rafael residents; this includes our older population. The proposed project would assist the City in its goal of providing options for older residents who wish to "age-in-place".

On July 10, 2018, the Planning Commission reviewed and conditionally approved the project, including the Use Permit to allow the proposed "large residential care facility" use on the site. At that time, the Planning Commission determined that all findings were adequately met, including consistency with the applicable General Plan policies. A complete analysis of the project's consistency with the findings required for Use Permit approval is presented in the *Zoning Ordinance Consistency Table* ([Exhibit 5; 7/10/18 Planning Commission Packet](#)).

Appeal Point #2 – The project proposes a commercial use on a residential-zoned site.

Response: The site is located within the High Density Residential (HR1) District zoning. All densities of housing are permitted on the site by right. However, residential care facilities, which include assisted living facilities such as this project, are also allowed on the site with a Use Permit by the Planning Commission. Staff has determined the project proposes a commercially-operated residential

use (assisted living facility) and is comparable to a hotel use. The proposed facility would provide rooms or suites without individual kitchens and offer ancillary service opportunities to the residents like communal dining options, fitness, barber/salon, cinema and activities areas. None of these services would be available to the public or non-residents.

Although a good case could be made that conventional, residential market rate housing in this prime downtown location may be a better use for the City and Downtown, the issue is that the City's regulations, including both the General Plan 2020 and the Zoning Ordinance, allow for both market rate housing and assisted living facility uses in the High Density Residential General plan land use designation and the High Density Residential Zoning District. This assisted living facility is considered a residential care facility (large) under the Zoning Ordinance. Residential Care Facilities (large) for non-disabled persons are a conditionally permitted use in the Zoning District. Therefore, the use is allowable, and the use permit allows the city to screen for potential impact and apply conditions. Denial of the use solely based on the type of use is not legally permissible. The Commission grappled with this consideration in their deliberations. Ultimately, they did find that although they would rather see market rate housing at this site, the City does not have the authority to deny the use based on the use itself. There is also a need for senior housing throughout the community to allow seniors in need of care to move out of larger single-family homes into smaller units or care facilities, thereby freeing up larger market rate dwellings for families.

On July 10, 2018, the Planning Commission reviewed and conditionally approved the Use Permit, and the Environmental and Design Review Permit, subject to adding three new conditions, two of which were intended to further mitigate unforeseeable impacts of this commercially-operated residential use. One of these new conditions (Condition 3; UP17-030) requires the applicant to submit a Transportation Demand Management Plan (TDMP), prepared by a licensed traffic engineer, for identifying strategies and recommendations for reducing employee/staff vehicle trips and minimizing parking and traffic impacts. This TDMP is subject to review and approval by the Department of Public Works and Community Development Department, who reserve the right to require modifications to the TDMP. The applicant also agrees to incorporate all recommendations outlined in the TDMP, including modifications required by the City, during the occupancy of the site by the approved use. In another of these new conditions (Condition 92; ED17-090), the Department of Public Works/City Engineer reserves the right to further review traffic conditions, both on- and off-site circulation patterns generated by the use, and require improvements, such as pavement striping and signage. The applicant also agrees to incorporate these recommended on- and off-site improvements.

Appeal Point #3 - The parking proposed by the project is inadequate.

Response: The Zoning Ordinance identifies parking requirements for residential care facilities. The adopted parking standards for 'large' residential care facilities, like this project, require the following parking:

- One (1) parking space for each five (5) clients; plus
- One (1) parking space for each staff person or employee on a maximum staffed shift.

Of the 88 beds proposed by the project, 63 beds are proposed in the assisted living portion and 25 beds are proposed in the memory care portion. These 63 beds of assisted living would require 13 on-site parking spaces for the residents. The 25 beds of memory care would create no parking demand since memory care residents are prohibited from vehicle ownership due to cognitive difficulties. In addition, 29 on-site parking spaces would be also required for the maximum anticipated staffed shift of 29 employees. The total required parking for the project is 42 on-site parking spaces. The project proposes to provide 40 on-site parking spaces.

Therefore, the project includes a request for a *Parking Modification*, through the Use Permit application submittal, to reduce the parking requirement by two (2) parking spaces, from 42 to 40 on-site parking spaces, based on the historic operational needs from other Aegis assisted living facilities similar in size of the project. The project supported this request with a traffic and parking study prepared by Transpogroup, dated May 30, 2018 ([Exhibit 6 of 7/10/18 Planning Commission Packet](#)), which anticipates peak parking demand of 31 parking spaces for residents, guest and staff, based on a proposed 88-bed assisted living facility. All requests for *Parking Modification* require the review and recommendation of both the Community Development Director and the City Engineer, and the approval of the Planning Commission. The Community Development Director, through Planning staff, and the City Engineer support this request for *Parking Modification*, concurring with the analysis and findings in the submitted traffic and parking study, and determining that parking demand would be further reduced by the site's close proximity to the adjacent SMART Downtown station and the Bettini Transit Center which is located approximately 1,000' southeast of the site.

On July 10, 2018, the Planning Commission reviewed and conditionally approved the project, including the *Parking Modification* request, subject to adding three new conditions that included the requirement that the applicant submit a TDMP, as prepared by a licensed traffic engineer, identifying strategies and recommendations for reducing employee/staff vehicle trips and minimizing parking and traffic impacts and the applicant agrees to incorporate these TDMP recommendations (Condition 3, UP17-030).

Appeal Point #4 - The process for determining the affordable housing requirement during the Planning Commission hearing was flawed and the affordable housing requirement itself is inadequate.

Response: [Section 14.16.030](#) of San Rafael Municipal Code Title 14 ("the Zoning Ordinance") requires all that all residential and non-residential development projects comply with the City's adopted inclusionary (affordable) housing requirement. For residential projects, a certain percentage of the total units are required to be set aside as affordable, with the amount of required affordability ranging from 10%-20%, depending on the size of the development. Section 14.16.030 also requires affordable housing for non-residential project based on the affordable housing need that would be generated by the employment from the new non-residential use. For non-residential developments, the requirement can be satisfied through the creation of on-site units or more commonly, through the payment of an in-lieu fee.

Historically, it has been difficult to administer the affordable housing requirement for assisted living facility types of projects, given that, aside from the rent/housing component to the use, there is also a service component (medical, food, care, etc.) of the use which would not be subject to the affordable housing ordinance. For example, if the affordable housing requirement was imposed on a care facility such as this, the rent/housing portion of the unit would be set at affordable rates, but the non-housing services (care/services/medical) would not. That would put residents who qualify for affordable unit in a care facility in a difficult position of having the discounted rent for which they qualify, but not being able to afford the care/medical/service costs.

The General Plan includes a policy goal (Housing Policy H-12c) which encourages staff to explore the feasibility of requiring affordable housing units in assisted living facilities as, for example, reduced housing costs uncoupled from and access to market-rate services costs. Since the adoption of the current General Plan, the City has approved a total of two (2) assisted living facilities, both within the past eight (8) months. Until recently, staff has not seen the urgent need to review the affordable housing requirement for assisted living facilities.

This project proposes an assisted living facility with memory care services, which is subject to the non-residential inclusionary housing requirement. The Zoning Ordinance includes a table (SRMC [Table 14.16.030-3](#)) with the number of affordable units required by development type. There are only five development categories listed in the table: 1) office/R&D, 2) retail/restaurant/personal services, 3) manufacturing/light industrial, 4) warehouse or 5) hotel uses. For other uses, the Community Development Director is tasked to determine the number of units based on comparable factors to the uses that are listed in the development categories.

The proposed facility would provide rooms or suites without individual kitchens and offer ancillary services to the residents like communal dining options (both indoor and outdoor), fitness, barber/salon, cinema and activities areas, in which some of these services would not be typically found in a hotel. Therefore, it was determined to be appropriate to apply a hybrid rate for determining the affordable housing requirement linkage fee. The proposed facility is 64,054 square feet in size and would employ 73 service employees within a 24-hour period (3 work shifts). Applying both the hotel (0.0075 affordable units per 1,000 gross sq. ft.) and personal service rates (0.0225 affordable units per 1,000 gross sq. ft.) identified in Zoning Ordinance [Table 14.16.030 – 3](#), the Community Development Director has determined an average non-residential affordable housing rate of 0.015 affordable units per 1,000 gross sq. ft., which translates to 0.96 low income units or an affordable housing in-lieu fee of approximately \$318,095.36 for the project, using the current affordable housing in-lieu fee of \$331,070.00 per unit. This was consistent with the rationale and formula used recently for the only other assisted living facility processed since the adoption of this Ordinance in 2005 (Oakmont Senior Living at 3773 Redwood Hwy.)

The Planning Commission grappled with this issue during the hearing and struggled with whether assisted living uses should be subject to the residential or non-residential inclusionary housing requirement. Further, the Commission believed that the need for affordable housing units generated by this type of land use should be greater than the 0.96 unit. During the Planning Commission hearing on the project, the property owner voluntarily offered to increase the affordable housing in-lieu fee payment, from \$318,095.36 to \$500,000. At the hearing, staff presented the Planning Commission the option to continue their review of the project so that this offer, and the project's proposed affordable housing, could be studied further. Instead, using its independent review authority, the Planning Commission approved the project and accepted the property owner's voluntary offer to increase the affordable housing in-lieu fee payment (Condition 20, ED17-090).

Staff would like to report that early discussions with the applicant focused on the possibility of providing on-site inclusionary residency for qualifying assisted living residences. This approach was taken with the Aegis of Corte Madera project, but it has been found to be challenging and problematic. While the qualifying assisted living resident would pay a reduced, affordable monthly rent rate, the resident would still pay market-rate for the level of assistance that is needed. An option that wasn't fully explored by the Planning Commission would be to build several affordable residential units on-site, within the assisted living facility, for qualifying employees (workforce housing). Consistent with our inclusionary housing policies and regulations, these units could be deed restricted for employees of the facility, with a caveat that if no employees utilize or qualify for the units, the affordable units be put into the general affordable housing inventory. Staff has met with the applicant to present this option, but it has not received support.

COMMUNITY OUTREACH:

Since the appeal was filed, staff has met individually with a representative of both the appellants and the applicant to answer substantive and procedural questions. In addition, staff presented a brief summary

of the project to the City Council-Economic Development Subcommittee where representatives of both the appellants and the applicant provided brief statements.

The project review has included two public hearings before the Design Review Board and the Planning Commission. Video proceedings from these hearings may be reviewed at the City's website at <http://www.cityofsanrafael.org/meetings>.

All public comments received by staff on the project prior to the Planning Commission hearing are included as [Exhibit 8 of the 7/10/18 Planning Commission meeting agenda packet](#). Notice of all public hearings on the project, including this appeal to the City Council, has been conducted in accordance with the public review period and noticing requirements contained in Chapter 14.29 of the Zoning Ordinance. All notices of public meeting or hearing on the project were mailed to all property owners and occupants within a 300-foot radius of the site and the representing neighborhood group (Lincoln-San Rafael Hill Neighborhood Association) at least 15 days prior to each meeting or hearing. In addition, notice of each hearing was posted at the site, at the northwest corner of the Lincoln Avenue and Mission Avenue intersection, at least 15 days prior to each hearing. Copies of the public hearing notice and notification map for the City Council hearing is provided (Attachment 4).

All correspondence received by staff after the Planning Commission hearing are included as Attachment 5. In general, there has been both comments in support and in opposition to the project throughout the public process. Comments in support wish to see housing, any sort of housing through particularly housing to accommodate seniors, in the Downtown and San Rafael, believe senior housing communities minimize impacts, and like the Mission Revival-like architecture. Comments opposed have focused on generally the same as those outlined in the appeal.

FISCAL IMPACT:

The review and processing of this project is a private development and would have no direct fiscal impact on the City budget, given that the review, including the appeal, is subject to cost recovery fees paid by the applicant. The project would generate eight (8) new net peak hour vehicle trips, which would be subject to the payment of a Traffic Mitigation Fee of \$33,968 (8 x \$4,246/new peak hour traffic trip) by the applicant to assist in funding needed off-site transportation improvements. All utility connections (sewer, water, gas/electric) will be constructed at the cost of the property owner. Further, all public improvements along the site frontages, both Lincoln and Mission Avenues) will be constructed at the cost of the property owner.

The costs associated with processing the planning applications for this project, including this appeal, are borne by the applicant and are subject to 100 percent cost recovery of staff time associated with the review and processing of the project.

OPTIONS:

The City Council has the following options:

1. Adopt a resolution denying the appeal and upholding the Planning Commission's conditional approval of the project.
2. Adopt a resolution denying the appeal and upholding the Planning Commission's approval of the project with modifications or additions to the conditions of approval.
3. Continue the matter and direct staff to return with additional information to address any comments or concerns of the City Council.

4. Direct staff to return with a revised resolution granting the appeal and overturning the Planning Commission decision, thereby denying the project.

RECOMMENDED ACTION:

Adopt a resolution denying the appeal of the Planning Commission's conditional approval of the project and upholding the Planning Commission's conditional approval of the assisted living facility.

ATTACHMENTS:

1. Draft Resolution Denying Appeal and Upholding Planning Commission's Condition Approval
2. Letter of Appeal to City Council from Brandy Wilson, Kay Law and Susan Adler, dated July 16, 2018
3. Letter from applicant in response to appeal, dated August 24, 2018
4. Public Hearing Notice and Notification Map
5. Public Comments since the 7/10/18 Planning Commission hearing

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL DENYING AN APPEAL (AP18-002) AND UPHOLDING THE PLANNING COMMISSION'S JULY 10, 2018 CONDITIONAL APPROVAL OF A USE PERMIT (UP17-030) AND AN ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED17-090) TO ALLOW THE CONSTRUCTION OF A NEW, 88-BED, ASSISTED LIVING FACILITY WITH GARAGE PARKING SPACES AND ASSOCIATED SITE IMPROVEMENTS (GRADING, DRAINAGE AND LANDSCAPING) ON TWO VACANT DOWNTOWN LOTS LOCATED AT 800 MISSION AVE. (FORMERLY 1203 AND 1211 LINCOLN AVE.; APNS: 011-184-08 & -09)

WHEREAS, on August 7, 2006, the City Council certified an Environmental Impact Report (EIR), adopted a Statement of Overriding Considerations, and conditionally approved an Environmental and Design Review Permit, Use Permit and Vesting Tentative Subdivision Map to allow demolition of an historic motor court and construction of a 36-unit multifamily residential condominium building on the project site; and

WHEREAS, on July 11, 2007, a building permit was issued for the demolition of the prior historic motor court at 1203 Lincoln Ave. and the residential building on the adjacent parcel, at 1211 Lincoln Ave., and all improvements on these parcels were subsequently demolished and removed; and

WHEREAS, in 2008, 2009, 2011, 2013, 2015 and 2016, the project entitlements were extended either automatically by the State legislature, through extension of the approved subdivision map, or by the Planning Commission; and

WHEREAS, the approved entitlements on the site expired on August 7, 2018; and

WHEREAS, on October 19, 2017, the new owners of the site submitted Use Permit (UP17-030) and Environmental and Design Review Permit (ED17-090) applications, proposing a new project: a new, 88-bed assisted living facility with memory care services, garage parking spaces, landscaping, drainage and vehicle access improvements on the site; and

WHEREAS, on June 5, 2018, the City of San Rafael Design Review Board (Board) conducted a duly-noticed public meeting and reviewed the proposed new project and unanimously recommended approval conditioned on the project returning to the Board for final review of details on landscaping, exterior lighting and outdoor terrace areas, prior to building permit issuance; and

WHEREAS, the proposed project changes have been reviewed with the requirements of the California Environmental Quality Act (CEQA) and staff has found that since the historic motor court was demolished in 2007, the proposed project is now eligible for a categorical exemption to CEQA review (*Class 32; In-Fill Development Projects*) with the mitigation measures from the original EIR requiring documentation of the prior historic motor court on the project site as a condition to allow the CEQA exemption; and

WHEREAS, on July 10, 2018, the San Rafael Planning Commission (Planning Commission) held a duly-noticed public hearing on the new project, including a Use Permit (UP17-030) and an Environmental and Design Review Permit (ED17-090), accepted all oral and written public testimony and the written report of the Community Development Department Planning staff, and closed said hearing on that date; and

WHEREAS, on July 10, 2018, the Planning Commission adopted Resolution 18-04 (4-2-1 vote; Robertson and Schoppert nay and Lubamersky absent), approving the Use Permit (UP17-030) and the

Environmental and Design Review Permit (ED17-090) and accepting the CEQA determination, subject to the following additional conditions: 1) Accept the property owner's voluntary offer to increase the affordable housing in-lieu fee payment, from \$318,095.36 to \$500,000; 2) Require the applicant to submit a Transportation Demand Management Plan (TDMP), as prepared by a licensed traffic engineer, identifying strategies and recommendations for reducing employee/staff vehicle trips and minimizing parking and traffic impacts; and 3) Reserve the right to require additional traffic measures, such as pavement markings and signs, both on-site and off-site, to improve vehicle circulation; and

WHEREAS, on July 17, 2018, an appeal of the Planning Commission's action was filed by a group of three (3) residents. Generally, the appeal points question the proposed commercial use on a residential-zoned site, the adequacy of the proposed parking, and the adequacy and process in determining the required affordable housing component.; and

WHEREAS, on September 4, 2018, the City Council held a duly-noticed public hearing to consider the Appeal (AP18-002), accepting and considering all oral and written public testimony and the written report of the Community Development Department Planning staff; and

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

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby denies the Appeal (AP18-002) finding and determining that the points of the appeal cannot be supported for the following reasons:

Appeal Point #1 - The project approval is not in accordance with the General Plan and findings required to approve the Use Permit.

Response: General Plan consistency is determined by reviewing and weighing the goals and policies of *all* elements of the San Rafael General Plan 2020. Both the San Rafael General Plan 2020 and case law interpreting general plan requirements recognize that the General Plan is a collection of competing goals and policies, which must be read together and not in isolation. In reviewing a project for consistency with the General Plan, the City is required to 'balance' the competing goals and policies. Case law has determined that a project "need not be in perfect conformity with each and every policy" and that "no project could completely satisfy every policy stated in the General Plan, and that state law does not impose such a requirement." (*Sequoyah Hills Homeowners Association vs. City of Oakland* (1993) 23 Cal.App.4th 704).

The project has been reviewed for consistency with the San Rafael General Plan 2020. A complete analysis of the pertinent policies and programs is presented in the *General Plan Consistency Table* ([Exhibit 4; 7/10/18 Planning Commission Packet](#)). Overall, while the project has the potential to conflict with one or more General Plan policies, it would be consistent with most of the applicable General Plan policies.

The subject property is a choice housing site for any sort of housing due to its close proximity to the Downtown and the project proposes residential development, where residents, guests and staff would re-activate a portion of Lincoln and Mission Aves. and help contribute to the City's long-term goal of creating 'alive after 5' activity in the Downtown and provide economic opportunities to Downtown businesses. The City supports the development of housing, at all levels, to help meet the needs of all San Rafael residents; this includes our older population. The proposed project would assist the City in its goal of providing options for older residents who wish to "age-in-place".

On July 10, 2018, the Planning Commission reviewed and conditionally approved the project, including the Use Permit to allow the proposed “large residential care facility” use on the site. At that time, the Planning Commission determined that all findings were adequately met, including consistency with the applicable General Plan policies. A complete analysis of the project’s consistency with the findings required for Use Permit approval is presented in the *Zoning Ordinance Consistency Table* ([Exhibit 5; 7/10/18 Planning Commission Packet](#)).

Appeal Point #2 – The project proposes a commercial use on a residential-zoned site.

Response: The site is located within the High Density Residential (HR1) District zoning. All densities of housing are permitted on the site by right. However, residential care facilities, which include assisted living facilities such as this project, are also allowed on the site with a Use Permit by the Planning Commission. Staff has determined the project proposes a commercially-operated residential use (assisted living facility) and is comparable to a hotel use. The proposed facility would provide rooms or suites without individual kitchens and offer ancillary service opportunities to the residents like communal dining options, fitness, barber/salon, cinema and activities areas. None of these services would be available to the public or non-residents.

Although a good case could be made that conventional, residential market rate housing in this prime downtown location may be a better use for the City and Downtown, the issue is that the City’s regulations, including both the General Plan 2020 and San Rafael Municipal Code Title 14 (the “Zoning Ordinance”), allow for both market rate housing and assisted living facility uses in the High Density Residential General plan land use designation and the High Density Residential Zoning District. This assisted living facility is considered a residential care facility (large) under the Zoning Ordinance. Residential Care Facilities (large) for non-disabled persons are a conditionally permitted use in the Zoning District. Therefore, the use is allowable, and the use permit allows the city to screen for potential impact and apply conditions. Denial of the use solely based on the type of use is not legally permissible. The Commission grappled with this consideration in their deliberations. Ultimately, they did find that although they would rather see market rate housing at this site, the City does not have the authority to deny the use based on the use itself. There is also a need for senior housing throughout the community to allow seniors in need of care to move out of larger single-family homes into smaller units or care facilities, thereby freeing up larger market rate dwellings for families

On July 10, 2018, the Planning Commission reviewed and conditionally approved the Use Permit, and the Environmental and Design Review Permit, subject to adding three new conditions, two of which were intended to further mitigate unforeseeable impacts of this commercially-operated residential use. One of these new conditions (Condition 3; UP17-030) requires the applicant to submit a Transportation Demand Management Plan (TDMP), prepared by a licensed traffic engineer, for identifying strategies and recommendations for reducing employee/staff vehicle trips and minimizing parking and traffic impacts. This TDMP is subject to review and approval by the Department of Public Works and Community Development Department, who reserve the right to require modifications to the TDMP. The applicant also agrees to incorporate all recommendations outlined in the TDMP, including modifications required by the City, during the occupancy of the site by the approved use. In another of these new conditions (Condition 92; ED17-090), the Department of Public Works/City Engineer reserves the right to further review traffic conditions, both on- and off-site circulation patterns generated by the use, and require improvements, such as pavement striping and signage. The applicant also agrees to incorporate these recommended on- and off-site improvements.

Appeal Point #3 - The parking proposed by the project is inadequate.

Response: The Zoning Ordinance identifies parking requirements for residential care facilities. The adopted parking standards for 'large' residential care facilities, like this project, require the following parking:

- One (1) parking space for each five (5) clients; plus
- One (1) parking space for each staff person or employee on a maximum staffed shift.

Of the 88 beds proposed by the project, 63 beds are proposed in the assisted living portion and 25 beds are proposed in the memory care portion. These 63 beds of assisted living would require 13 on-site parking spaces for the residents. The 25 beds of memory care would create no parking demand since memory care residents are prohibited from vehicle ownership due to cognitive difficulties. In addition, 29 on-site parking spaces would be also required for the maximum anticipated staffed shift of 29 employees. The total required parking for the project is 42 on-site parking spaces. The project proposes to provide 40 on-site parking spaces.

Therefore, the project includes a request for a *Parking Modification*, through the Use Permit application submittal, to reduce the parking requirement by two (2) parking spaces, from 42 to 40 on-site parking spaces, based on the historic operational needs from other Aegis assisted living facilities similar in size of the project. The project supported this request with a traffic and parking study prepared by Transpogroup, dated May 30, 2018 ([Exhibit 6 of 7/10/18 Planning Commission Packet](#)), which anticipates peak parking demand of 31 parking spaces for residents, guest and staff, based on a proposed 88-bed assisted living facility. All requests for *Parking Modification* require the review and recommendation of both the Community Development Director and the City Engineer, and the approval of the Planning Commission. The Community Development Director, through Planning staff, and the City Engineer support this request for *Parking Modification*, concurring with the analysis and findings in the submitted traffic and parking study, and determining that parking demand would be further reduced by the site's close proximity to the adjacent SMART Downtown station and the Bettini Transit Center which is located approximately 1,000' southeast of the site.

On July 10, 2018, the Planning Commission reviewed and conditionally approved the project, including the *Parking Modification* request, subject to adding three new conditions that included the requirement that the applicant submit a TDMP, as prepared by a licensed traffic engineer, identifying strategies and recommendations for reducing employee/staff vehicle trips and minimizing parking and traffic impacts and the applicant agrees to incorporate these TDMP recommendations (Condition 3, UP17-030).

Appeal Point #4 - The process for determining the affordable housing requirement during the Planning Commission hearing was flawed and the affordable housing requirement itself is inadequate.

Response: The Zoning Ordinance ([Section 14.16.030](#)) requires that all residential and non-residential development projects comply with the City's adopted inclusionary (affordable) housing requirement. For residential projects, a certain percentage of the total units as affordable are required to be set aside as affordable, with the amount of required affordability ranging from 10%-20%, depending on the size of the development. Section 14.16.030 also requires affordable housing for non-residential project based on the affordable housing need that would be generated by the employment from the new non-residential use. For non-residential developments, the requirement can be satisfied through the creation of on-site units or more commonly, through the payment of an in-lieu fee.

Historically, it has been difficult to administer the affordable housing requirement for assisted living facility types of projects, given that the aside from the rent/housing component to the use, there is also a service component (medical, food, care, etc.) of the use which would not be subject to the affordable housing ordinance. For example, if the affordable housing requirement was imposed on a care facility such as this, the rent/housing portion of the unit would be set at affordable rates, but the non-housing services (care/services/medical) would not. That would put residents who qualify for affordable unit in a care facility in a difficult position of having the discounted rent for which they qualify, but not being able to afford the care/medical/service costs.

The General Plan includes a policy goal (Housing Policy H-12c) which encourages staff to explore the feasibility of requiring affordable housing units in assisted living facilities as, for example, reduced housing costs uncoupled from and access to market-rate services costs. Since the adoption of the current General Plan, the City has approved a total of two (2) assisted living facilities, both within the past eight (8) months. Until recently, staff has not seen the urgent need to review the affordable housing requirement for assisted living facilities.

This project proposes an assisted living facility with memory care services, which is subject to the non-residential inclusionary housing requirement. The Zoning Ordinance includes a table (SRMC [Table 14.16.030-3](#)) with the number of affordable units required by development type. There are only five development categories listed in the table: 1) office/R&D, 2) retail/restaurant/personal services, 3) manufacturing/light industrial, 4) warehouse or 5) hotel uses. For other uses, the Community Development Director is tasked to determine the number of units based on comparable factors to the uses that are listed in the development categories.

The proposed facility would provide rooms or suites without individual kitchens and offer ancillary services to the residents like communal dining options (both indoor and outdoor), fitness, barber/salon, cinema and activities areas, in which some of these services would not be typically found in a hotel. Therefore, it was determined to be appropriate to apply a hybrid rate for determining the affordable housing requirement linkage fee. The proposed facility is 64,054 square feet in size and would employ 73 service employees within a 24-hour period (3 work shifts). Applying both the hotel (0.0075 affordable units per 1,000 gross sq. ft.) and personal service rates (0.0225 affordable units per 1,000 gross sq. ft.) identified in Table 14.16.030 – 3, the Community Development Director has determined an average non-residential affordable housing rate of 0.015 affordable units per 1,000 gross sq. ft., which translates to 0.96 low income units or an affordable housing in-lieu fee of approximately \$318,095.36 for the project, using the current affordable housing in-lieu fee of \$331,070.00 per unit. This was consistent with the rationale and formula used recently for the only other assisted living facility processed since the adoption of this Ordinance in 2005 (Oakmont Senior Living at 3773 Redwood Hwy.).

The Commission grappled with this issue during their hearing and struggled with whether assisted living uses should be subject to the residential or non-residential inclusionary housing requirement. They also believed that need for affordable housing units that would be generated by this sort of use should be greater than the 0.96 unit. During the Planning Commission hearing on the project, the property owner voluntarily offered to increase the affordable housing in-lieu fee payment, from \$318,095.36 to \$500,000. At the hearing, staff presented the Planning Commission the option to continue their review of the project so that this offer, and the project's proposed affordable housing, could be studied further. Instead, using its independent review authority, the Planning Commission approved the project and accepting the property owner's voluntary offer to increase the affordable housing in-lieu fee payment (Condition 20, ED17-090).

BE IT FURTHER RESOLVED, that the City Council upholds the Planning Commission's conditional approval of the Use Permit (UP17-030) and the Environmental and Design Review Permit (ED17-090), which allows the construction of a new 88-bed, assisted living facility with garage parking and associated site improvements, including minor grading, drainage and landscaping, on two vacant Downtown parcels located at 800 Mission Ave., based on the following findings:

**Use Permit (UP17-030)
Findings**

A. The proposed use is in accord with the General Plan, the objectives of the Zoning Ordinance, and the purposes of the Multifamily Residential-High Density (HR1) District in which the project site is located in, given that:

1. As documented in the General Plan 2020 Consistency Table (Exhibit 4; 7/10/18 Planning Commission Packet), the project will be consistent with all pertinent General Plan policies with the exception of Housing Policy H-9 (*Special Needs*), which is intended to encourage providing mix of housing options for San Rafael's most vulnerable residents:

Housing Policy H-9 (Special Needs). Encourage a mix of housing unit types throughout San Rafael, including very low- and low-income housing for families with children, single parents, students, young families, lower income seniors, homeless and the disabled. Accessible units shall be provided in multi-family developments, consistent with State and Federal law.

In 2006, the City Council approved a project on the site to allow construction of a 36-unit multifamily residential condominium building on the site with six (6) BMR (Below Market Rate) units (4 units at the low-income household level and 2 units at the moderate-income household level). The project was never constructed, and the Planning entitlements have expired. The new property owner of the site proposed a new project. The project now proposes to provide residential housing for seniors, though at market-rate rather than low-income household levels. **Neighborhoods Policy NH-17 (Competing Concerns)** states that, in reviewing and making decisions on projects, competing economic, housing, environmental and design concerns must be balanced. No one factor should dominate, though economic and housing development are high priorities to the health of Downtown. Through multiple Housing Policies, such as **H-13 (Senior Housing)**, the City supports the development of housing to help meet the needs of all San Rafael residents, including seniors. The proposed project assists in the City's goal of providing options for older residents who wish to "age-in-place".

Overall, while the project has the potential to conflict with one or more General Plan policies, it would be consistent with most of the applicable San Rafael General Plan 2020 policies. The project site is a choice housing site due to its close proximity to the Downtown and the project proposes residential development, where residents, guests and staff would re-activate a portion of Lincoln and Mission Avenues and help contribute to the City's long-term goal of creating 'Alive after 5' activity in the Downtown and provide economic opportunities to Downtown businesses, particularly restaurants. The City supports the development of housing, at all levels, to help meet the needs of all San Rafael residents. This includes our older population.

2. As documented in the Zoning Ordinance Consistency Table (Exhibit 5; 7/10/18 Planning Commission Packet), the proposed project will be consistent with the objectives of the Zoning Ordinance, which is to promote and protect the public health safety, peace, comfort and general welfare, given that;

- a. The project will implement and promote the goals and policies of the San Rafael General Plan 2020, as identified in Finding A1 above;
- b. The project will reduce or remove negative impacts caused by inappropriate location, use or design of building and improvements, given that; 1) The project design includes aesthetic elements to improve the pedestrian environment, including new street trees, landscaping within the 10-15' building setback and uncovered ground-floor patio terraces along both the Lincoln and Mission Ave. frontages; 2) The project design also includes safety features to improve the pedestrian environment, including a 85'-long dedicated fire lane pull-out/deceleration turn pocket lane along Mission Ave. with directional controls allowing right turns only in and out of the primary driveway to the project; 3) The Board is recommending approval of the project subject to follow-up review of final details on landscape, exterior lighting and outdoor terrace finishes; and 4) The proposed project changes have been reviewed with the requirements of the California Environmental Quality Act (CEQA) and found; since the historic motor court was demolished in 2007, the proposed project is now eligible for a category exemption to CEQA review (*Class 32; In-Fill Development Projects*) with the mitigation measures from the original EIR requiring documentation of the prior historic motor court on the project site as a condition to allow the CEQA exemption;
- c. The project will ensure the adequate provision of light, air space, fire safety and privacy between buildings, given that; 1) the proposed site development will be consistent with the allowable Public/Quasi-Public (P/QP) District development standards; and 2) construction of the project is conditioned to be designed and built in accordance with the most current building, fire and seismic codes;
- d. The project will provide for adequate, safe and effective off-street parking and loading facilities, given that; 1) The project requests a *Parking Modification* to reduce the required on-site parking for the project, from 42 to 40 parking spaces; 2) The project proposes Transportation Demand Management (TDM) programming into the operation of the assisted living facility. Staffing projections include three (3) separate shifts (6 am- 2 pm; 2 pm – 10 pm; 10 pm – 6 am) which would be all off-peak trip hours; 3) The location of the project site itself has TDM influences since it is located in close proximity to public transit options (less than 1,000' feet north of both the Downtown SMART station and Bettini transit center; 4) The project supports their requested *Parking Modification* with a traffic analysis which anticipates that 31 parking spaces are required for similar sized assisted living facilities operated by Aegis Living; 5) On June 5, 2018, the Design Review Board (Board) reviewed the proposed project design and unanimously recommended approval, including the requested *Parking Modification*, conditioned on the project return to the Board for final review of details on landscaping, exterior lighting and outdoor terrace finishes, prior to building permit issuance; and 6) On July 10, 2018, the Planning Commission (Commission) reviewed and conditionally approved the Use Permit (UP17-030) with the requested *Parking Modification* and the Environmental and Design Review Permit (ED17-090), subject to the following additional conditions: 1) Accept the property owner's voluntary offer to increase the affordable housing in-lieu fee payment, from \$318,095.36 to \$500,000; 2) Require the applicant submit a Transportation Demand Management Plan (TDMP), as prepared by a licensed traffic engineer, identifying strategies and recommendations for reducing employee/staff vehicle trips and minimizing parking and traffic impacts; and 3) Reserve the right to require additional traffic measures, such as pavement markings and signs, both on-site and off-site, to improve vehicle circulation; and

- e. The proposed project will promote a safe, effective traffic circulation system, and maintain acceptable local circulation system operating condition, given that; 1) The City Engineer has determined the proposed project would not adversely affect the LOS for the nearby intersections, based on the eight (8) new AM and PM peak hour vehicle trips that would be generated by the project, and conditioned on the payment of traffic mitigation fees to fund the project's fair share of local circulation improvement projects by the City; and 2) The proposed project has been conditioned to require all "off-haul" of excavation during off-peak traffic trip hours – between 9:00 a.m. and 4:00 p.m. – only;
 - f. The proposed project will provide for effective citizen participation in decision-making, given that; the City has provided opportunities for public involvement in the review of the project through the referral of the project to the appropriate neighborhood group (Lincoln-San Rafael Hill Neighborhood Association), and the notice of both the Commission hearing and the Board meeting and this City Council hearing in compliance with Chapter 29 of the Zoning Ordinance (*Public Notice*). Notice of both the Board meeting and this hearing were mailed to all property owners and occupants within a 300-foot radius of the site, and the appropriate neighborhood groups, a minimum of 15 calendar days prior to the meeting or hearing, and notice was posted on the project site at the northwest corner of the Lincoln and Mission Avenue intersection. Prior to the Commission hearing on the project, 25 public comments were received in support of the project and one (1) verbal comment which is neither in support or opposition of the project but, rather, concerned the proposed on-site parking (40 parking spaces) is inadequate, particularly for visiting family and friends of future residents. After the Commission's approval of the project, four (4) additional public comments were received; two (2) comments in support; one (1) comment opposed to the affordable housing in-lieu fee; and one (1) comment in support of the proposed use (assisted living facility) though opposed to the proposed operator (Aegis)
 - g. The project has been reviewed by Community Development Department, other appropriate City Departments and non-City agencies and conditions have been created to minimize potential impacts to the public health, safety and welfare;
3. As documented in the Zoning Ordinance Consistency Table (Exhibit 5; 7/10/18 Planning Commission Packet), the proposed project would be consistent with the purposes of the HR1 District, given that:
- a) The project will help meet the City's goal of providing a wide variety of housing opportunities in terms of housing types, and neighborhoods with varying densities, lot sizes, and development standards, given that; the project will provide housing options for our older residents who wish to "age-in-place".
 - b) The project will protect and enhance existing residential neighborhoods through retention of existing land development patterns and retention of their varied design character, given that; 1) The scale and mass of the proposed project would be similar to the project that is approved for the site, which was previously determined to be compatible with the adjacent, four-story residential condominium building immediately to the west of the project site, at 820 Mission Ave. (The two blue-tiled dome towers are proposed to exceed the height allowance as architectural features, which is permitted with an Environmental and Design Review Permit; 2) The proposed project is consistent with the height limits for this site; and 3) The project proposes a Mission Revival-like architecture with predominant design features including large arched windows, whitewashed stucco walls, red clay roof tiles, blue-tiled dome towers, decorative heavy-timber rafter 'tails' under the eaves, and decorative wrought iron

balconies, railings, fencing and gates. This proposed new design is similar to that of the Mission San Rafael Archangel, which is located approximately 1,000' west of the project site, though unique for the immediate neighborhood. The Board has reviewed the proposed project design and unanimously recommended approval conditioned on the project return to the Board for final review of details on landscaping, exterior lighting and outdoor terrace finishes, prior to building permit issuance.

- c) The project will provide opportunities for churches, day care facilities, residential care facilities and other uses which are considered to be compatible and desirable land uses within residential neighborhood;
 - d) The project will provide outdoor recreational amenities for residents and guests, given that; common outdoor areas are proposed on the ground-floor and on the roof deck for the assisted living residents (The project also proposes private outdoor terrace deck area for many of the assisted living residential rooms on the fourth floor). The project also proposes a large common outdoor terrace on the second floor for the memory care residents. If these were residential units with individual kitchens, 7,700 sf of private or common outdoor area would be required (77 residential units x 100 sf outdoor area per unit). Since this is a commercial project proposing 77 residential 'suites' with common food service, the 6,032 sf of private or common outdoor area is voluntary; and
 - e) The project will ensure the provision of public services and facilities needed to accommodate planned residential densities, given that; all service providers, including PG&E, Marin Sanitary Service, Marin Municipal Water District, San Rafael Sanitation District, Central Marin Sanitation Agency, and the City's Traffic Engineer, have review the project and indicated that adequate infrastructure capacity exists for the project.
- B. The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, given that: 1) The project has been reviewed by appropriate City departments, non-City agencies, the appropriate surrounding neighborhood group (Lincoln-San Rafael Hill Neighborhood Association) and the Board; and 2) Conditions of approval have been included to mitigate any potential negative impacts anticipated to be generated by the proposed use and construction to the proposed use; 3) The project would not significantly change the type of use (residential development) or the scale and mass of the approved design on the project site; and
- C. The proposed use complies with each of the applicable provisions of the Zoning Ordinance as documented in the Zoning Ordinance Consistency Table (Exhibit 5; 7/10/18 Planning Commission Packet).

Environmental and Design Review Permit (ED17-090) Findings

- A. The project design is in accord with the General Plan, the objectives of the Zoning Ordinance, and the purposes of Chapter 14.25 of the Zoning Ordinance; in that:
- 1. As documented in the General Plan 2020 Consistency Table (Exhibit 4; 7/10/18 Planning Commission Packet), the proposed project will implement and promote the goals and policies of the San Rafael General Plan 2020, as identified in Finding A1 (Use Permit UP17-030) above;

2. As documented in the Zoning Ordinance Consistency Table (Exhibit 5; 7/10/18 Planning Commission Packet), the proposed project will be consistent with the objectives of the Zoning Ordinance, which is to promote and protect the public health safety, peace, comfort and general welfare, as identified in Finding A2 (Use Permit UP17-030) above;
 3. As documented in the Zoning Ordinance Consistency Table (Exhibit 5; 7/10/18 Planning Commission Packet), the proposed project will be consistent with the purposes of Environmental and Design Review Permits, given that; the project will maintain and improve the quality of, and relationship between, development and the surrounding area to contribute to the attractiveness of the City, as determined during the review of the project by the Board. On June 5, 2018, the Board reviewed the proposed project design and unanimously recommended approval, conditioned on the project return to the Board for final review of details on landscaping, exterior lighting and outdoor terrace finishes, prior to building permit issuance. Staff subsequently formalized the Board's request to review these final details as a condition (Condition #15; ED17-090) of approval.
- B. The project design is consistent with all applicable site, architecture and landscaping design criteria and guidelines for the HR1 District in which the project site is located, given that;
1. The project design will be consistent with the maximum allowable density for the site, which is 29 units based on 29,885 sq. ft. of total lot area. The project proposes no density, since assisted living facilities are not subject to density standards since they are not considered as units. The project proposes an assisted living facility with memory care services which is comparable to a hotel use. The proposed facility would provide rooms or suites without individual kitchens but, rather, individual 'wet bar' amenities and offer ancillary services to the residents like communal food service opportunities;
 2. The project will be consistent with the minimum required yard setbacks (15' front, 10' street side, 5' interior side and rear) for the project site;
 3. The project will be consistent with the maximum 36' height allowed for the project site;
 4. The project will be consistent with the maximum 60% lot coverage for the project site;
 5. The project will be consistent with the minimum 50% landscaping requirement for the front and street side yard setbacks for the project site;
 6. The project will be consistent with the parking requirement, subject to the approval of the requested *Parking Modification*, by reducing the required parking from 42 to 40 parking spaces;
 7. The provisions of Marin Municipal Water District's (MMWD) most recent water conservation and new 'graywater' requirements apply to the project, where MMWD approval is required prior to the issuance of any building or grading permit (see Condition 79; ED17-090);
 8. The proposed project will be consistent with review criteria for Environmental and Design Review Permits (*Chapter 14.25 of the Zoning Ordinance*), given that; on June 5, 2018, the Board reviewed the proposed project design and unanimously recommended approval, including the requested *Parking Modification*, conditioned on the project return to the Board for final review of details on landscaping, exterior lighting and outdoor terrace finishes, prior to building permit issuance (see Condition 15; ED17-090).

C. The project design minimizes adverse environmental impacts, given that;

1. The 2007 building permit resulted in the demolition of all structures and vegetation on the project site. The project now proposes to remove five (5) exist street trees and replace with three (3) new street trees. The proposed landscape design includes new trees shrubs, grasses and vines, within the 10-15' building setback. In their review of the project, the Board requested further refinements to the proposed landscape design, including more landscaping generally throughout the project site. Board reviewed the proposed project and unanimously recommended approval, including the preliminary landscape design, conditioned on the project return to the Board for final review of details on the landscaping, exterior lighting and outdoor terrace finishes, prior to building permit issuance.
2. The project design includes storm water retention areas or 'bioswales' which will have the effect of creating a 'no net change' in the rate of storm water drainage on the project site, as determined by the drainage report submitted on the project and the review and recommendation by the City Engineer;
3. The project site neither contains, nor is immediately contiguous to, recognizable wetlands, creeks or similarly sensitive environmental features, and it has not been identified in the San Rafael General Plan 2020 (*Exhibit 38 – Threatened and Endangered Species*) as a general location were threatened and endangered species have been previously observed or maintain a suitable habitat for their likely presence to be found.
4. In 2006, the City Council certified an EIR, adopted a Statement of Overriding Considerations, and conditionally approved an Environmental and Design Review Permit, Use Permit and Vesting Tentative Subdivision Map to allow construction of a 36-unit multifamily residential condominium building on the site, with landscaping and drainage improvements. The EIR was required, essentially, in response to the prior motor court on the project site which was determined to be historic. In 2007, a building permit was issued for the demolition of the historic motor court at 1203 Lincoln Ave. and the single-family residence on the adjacent parcel, at 1211 Lincoln Ave. and all improvements on these parcels were subsequently demolished and removed. While the proposed project is now eligible for a category exemption to CEQA review (*Class 32; In-Fill Development Projects*), mitigation measures from the original EIR requiring documentation of the prior historic motor court on the project site, is required to allow the CEQA exemption (see Condition 19; ED17-090).

D. The project design, together with the conditions applicable thereto, will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the City, as identified in Finding B2 (Use Permit UP17-030) above.

California Environmental Quality Act (CEQA) Finding

The proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Sections 15305(a) (*Class 5; Minor Alterations to Land Use Limitations*) and 15332 (*Class 32; In-Fill Development Project*) of the CEQA Guidelines which exempts: 1) Minor lot line adjustments on lots with an average slope of less than 20%; and 2) In-fill development meeting the following conditions: (a) The project is consistent with the applicable General Plan land use designation and all applicable General Plan policies and all applicable Zoning Ordinance standards and regulations; b) The proposed development occurs within the San Rafael city limits on a project site of no more than five acres substantially surrounded by urban uses; c) The project site has no value as habitat for endangered , rare or threatened species; d) Approval of the project would not result in any

significant effects relating to traffic, noise, air quality or water quality; and e) The site can be adequately served by all required utilities and public services.

The project will require the consolidation of two separate legal lots, with an average cross-slope of approximately 10%, so that all of the proposed new construction is located within a single parcel. Additionally, the project qualifies for Class 32 In-Fill exemption based on the following: a) The project is consistent with the applicable General Plan policies and the Zoning Ordinance land use designation for the project site and all applicable Zoning Ordinance standards and regulations, as identified in the attached *Zoning Ordinance Consistency Table* (see Exhibit 5 - 7/10/18 Planning Commission Packet); b) The project site is comprised of two adjacent vacant legal lots with a combined area of 29,885 sf (0.69 acre) and is located in an urban area that is immediately surrounded by development (i.e., multifamily residential development immediately to the north and west, Mission Ave. to the south and Lincoln Ave. to the east); c) The project site has no creeks, drainageways, seasonal freshwater wetlands, tidal wetlands, or riparian areas that are valued resources as wildlife or plant habitat for endangered, rare or threatened species, and it is not identified as a general location for threatened and endangered species based on past observations or the presence of suitable habitat per the General Plan 2020 (see Exhibit 38; Conservation Element); d) The additional traffic generated by the project has been deemed insignificant by the City's Traffic Engineer conditioned on the payment of the appropriate traffic mitigation fee (8 total peak hour trips), any additional noise or impacts to air and water quality created by the project will be temporary and limited to the period of construction period, the new residential uses for the site would generate noise levels that are similar to the other multi-family residential uses in the surrounding neighborhood, and e) All utility agencies have indicated that they have adequate capacity to provide services to the new development on the site.

BE IT FURTHER RESOLVED, that the City Council upholds the Planning Commission's conditional approval of the Use Permit (UP17-030) and the Environmental and Design Review Permit (ED17-090), which allows the construction of a new 88-bed, assisted living facility with garage parking and associated site improvements, including minor grading, drainage and landscaping, on two vacant Downtown parcels located at 800 Mission Ave., subject to the following conditions of approval:

**Use Permit (UP17-030)
Conditions of Approval**

Community Development Department, Planning Division

1. This Use Permit approves an assisted living facility, with memory care services, to operate on the project site with up to 77 residential 'suites' and 88-beds of capacity.
2. This Use Permit includes a "Parking Modification" reducing the number of required on-site parking spaces, from 42 to 40 'standard' dimensional garage parking spaces, which has been reviewed and is supported by both the Community Development Director and the Public Works Director.
3. Prior to issuance of the building permit, the applicant shall submit a Transportation Demand Management Plan (TDMP), prepared by a licensed traffic engineer, identifying strategies and recommendations to reduce employee/staff trips and minimize parking and/or traffic impacts. The TDMP shall be subject to review and approval of the Department of Public Works and Community Development Department, who reserves the right to require modifications to the TDMP. The applicant agrees to incorporate all recommendations outlined in the TDMP, including modifications required by the City, during the occupancy of the site by the approved use.
4. This Use Permit shall run with the land and shall remain valid regardless of any change of ownership of the project site, subject to these conditions, provided that a grading permit or building

permit is issued by the City and work commenced or a time extension request is submitted to the City's Community Development Department, Planning Division, **within two (2) years** of this approval, or until **September 4, 2020**. Failure to obtain a grading permit or building permit or submit a time extension request by the specified date will result in the expiration of this Use Permit.

**Environmental and Design Review Permit (ED17-090)
Conditions of Approval**

General and On-Going

Community Development Department, Planning Division

1. The building techniques, colors, materials, elevations and appearance of the project, as presented to the Planning Commission at their July 10, 2018 hearing, labeled *Aegis San Rafael; 800 Mission Avenue; San Rafael, CA 94901*, stamped "approved" and on file with the Community Development Department, Planning Division, shall be the same as required for issuance of all building and grading permits, subject to these conditions. Minor modifications or revisions to the project shall be subject to review and approval of the Community Development Department, Planning Division. Further modifications deemed not minor by the Community Development Director shall require review and approval by the original decision-making body, the Planning Commission, and may require review and recommendation by the City's Design Review Board on design-related changes.
2. The approved colors for the project are on file with the Community Development Department, Planning Division. Any future modification to the color palette shall be subject to review and approval by the Planning Division and those modifications not deemed minor shall be referred to the Design Review Board for review and recommendation prior to approval by the Planning Division.
3. This Environmental and Design Review Permit approves development of an 88-bed, 77-residential 'suites' assisted living facility, with memory care services, on the project site with 40 garage parking spaces and miscellaneous site improvements, including new landscaping, grading and drainage.
4. This Environmental and Design Review Permit approves a 'wet bar' in each residential 'suite' rather than full kitchens since the project proposes to include common dining areas with the other service amenities for residents and guests.
5. All 'off-haul' of excavation and delivery/pick-up of construction equipment shall occur during off-peak weekday hours, between 9:00 a.m. and 4:00 p.m., Monday through Friday only.
6. All grading and construction activities shall comply with the City's adopted noise limits at all times. All grading and construction activities shall occur Mondays – Fridays, 7 a.m. – 6 p.m. Low-noise construction, occurring entirely within the interior of the building, may be permissible beyond the allowable construction hours of operation with prior approval by the Planning Division and only after the building is completely enclosed (walls, roof, doors and windows). If requested and approved, Saturday work shall be limited to 9 a.m. to 6 p.m. Any work on Sundays and federally-recognized holidays is strictly prohibited.
7. All new landscaping shall be irrigated with an automatic drip system and maintained in a healthy and thriving condition, free of weeds and debris, at all times. Any dying or dead landscaping shall be replaced in a timely fashion.

8. All public streets and sidewalks and on-site streets which are privately owned that are impacted by the grading and construction operation for the project shall be kept clean and free of debris at all times. The general contractor shall sweep the nearest street and sidewalk adjacent to the site on a daily basis unless conditions require greater frequency of sweeping.
9. All submitted building permit plan sets shall include a plan sheet incorporating these conditions of approval.
10. If archaeological or cultural resources are accidentally discovered during excavation/grading activities, all work will stop within 100 feet of the resource and the qualified archaeologist will be notified immediately. The qualified archaeologist will contact Federated Indians of Graton Rancheria (FIGR) and the Planning Division and coordinate the appropriate evaluation of the find and implement any additional treatment or protection, if required. No work shall occur in the vicinity until approved by the qualified archaeologist, FIGR and Planning staff. Prehistoric resources that may be identified include, but shall not be limited to, concentrations of stone tools and manufacturing debris made of obsidian, basalt and other stone materials, milling equipment such as bedrock mortars, portable mortars and pestles and locally darkened soils (midden) that may contain dietary remains such as shell and bone, as well as human remains. Historic resources that may be identified include, but are not limited to, small cemeteries or burial plots, structural foundations, cabin pads, cans with soldered seams or tops, or bottles or fragments or clear and colored glass
11. If human remains are encountered (or suspended) during any project-related activity, all work will halt within 100 feet of the project and the County Coroner will be contacted to evaluate the situation. If the County Coroner determines that the human remains are of Native American origin, the County Coroner shall notify FIGR within 24-hours of such identification who will work with Planning staff to determine the proper treatment of the remains. No work shall occur in the vicinity without approval from Planning staff.
12. This Environmental and Design Review Permit shall run with the land and shall remain valid regardless of any change of ownership of the project site, subject to these conditions, provided that a building or grading permit is issued and construction commenced or a time extension request is submitted to the City's Community Development Department, Planning Division, **within two (2) years** of approval, or **September 4, 2020**. Failure to obtain a building permit or grading permit and construction or grading activities commenced, or failure to obtain a time extension within the two-year period will result in the expiration of this Environmental and Design Review Permit
13. This Environmental and Design Review Permit shall run concurrently with the Use Permit (UP17-030) approval. If the Environmental and Design Review Permit expires, Use Permit approval shall also expire and become invalid.

Prior to Issuance of Grading/Building Permits

Community Development Department, Planning Division

14. The project sponsor, or its successor, shall pay all outstanding balances of fees due the City in the review, approval and/or issuance of Planning and/or Building Permits for entitlements on the project site.
15. Details of the proposed site landscaping, the exterior lighting and outdoor terrace finishes, on both the 2nd floor podium and the 4th floor roof level, shall require final review and approval by the Design Review Board prior to building permit issuance.

16. Final landscape and irrigation plans for the project shall comply with the provisions of Marin Municipal Water District's (MMWD) most recent water conservation ordinance (District Code Title 13). Construction plans submitted for issuance of building/grading permit shall be pre-approved by MMWD and stamped as approved by MMWD or include a letter from MMWD approving the final landscape and irrigation plans. Modifications to the final landscape and irrigation plans, as required by MMWD, shall be subject to review and approval of the Community Development Department, Planning Division prior to building permit issuance
17. An acoustical analysis is required indicating the internal noise level of the residential rooms or suites and common outdoor terrace areas are consistent with the applicable City's noise standards.
18. A Construction Management Plan (CMP) shall be prepared and submitted to the Planning Division for review and approval. The CMP shall include, but is not limited to, a projected schedule of work, projected daily construction truck trips, proposed construction truck route, location of material staging areas, location of construction trailers, location of construction worker parking, dust control plan or program, air quality best management practices recommended by project's air quality analysis (see Illingworth & Rodkin, dated November 30, 2017), a statement that the project shall conform to the City's Noise Ordinance (Chapter 8.13 of the San Rafael Municipal Code), a statement that no construction truck traffic shall encroach into any of the surrounding residential neighborhood streets at any time, and a statement that the existing roadway conditions on both Lincoln and Mission Avenues shall be memorialized on digital recording format prior to the start of construction and that the project sponsor shall be required to repair any roadway damage created by the additional construction truck traffic. In the event that the CMP is conflicting with any conditions imposed by the grading permit for the project, the more restrictive language or conditions shall prevail.
19. Per Condition #7 of City Council Resolution #12018, the project sponsor, or its successors, shall document the prior buildings at 1203 Lincoln Avenue to Historic American Buildings Survey (HABS) Level 3 standards, according to the Outline Format described in the *Historic American Buildings Survey Guidelines for Preparing Written Historical Descriptive Data*, or equivalent action as determined by a licensed historic architect or architectural historian. Photographic documentation shall follow the *Photographic Specifications – Historic American Building Survey*, including 15 to 20 archival quality large-format photographs of the exterior and interior of the building and its architectural elements. Construction techniques and architectural details shall be documented, especially noting the measurements of structural members, hardware, and other features that tie the architectural elements to a specific date. A copy of the documentation, with original photo negatives and prints, shall be placed in a historical archive or history collection accessible to the general public. Additionally, the developer shall fund an exhibit of the historical survey at the Marin Historical Society, the Anne T. Kent California Room at the Marin County Library Civic Center Branch. Five copies of the documentation with archival photographs shall be produced for distribution to local and regional repositories. One copy shall be provided to the Northwest Information Center of the California Historical Resources Information System, Sonoma State University, Rohnert Park, California.
20. The project shall comply with the City's affordable housing requirement, using a hybrid rate that includes both the hotel rate (0.0075 affordable units per 1,000 gross sq. ft.) and the personal service rate (0.0225 affordable units per 1,000 gross sq. ft.) as adopted in Table 14.16.030 – 3 of the San Rafael Zoning Ordinance. The Community Development Director has determined an average nonresidential affordable housing rate of 0.015 affordable units per 1,000 gross sq. ft. shall be required of the project, which translates to 0.96 low income units or an affordable housing in-lieu fee of approximately \$318,095.36 for the project, using the current affordable housing in-lieu fee of

\$331,070.00 per unit. However, the applicant has voluntarily offered to increase the affordable housing in-lieu fee to \$500,000, which was accepted by the Planning Commission as a condition of project approval and shall be required to be submitted prior to issuance of a building permit.

Department of Public Works

21. A grading permit is required for the project from the Department of Public Works Department (111 Morphew St.).
22. Final details, including directional controls (i.e., signage and striping for right turns in and out of the garage) on the driveways, pull outs and turn pockets shall be reviewed by the Department of Public Work prior to building permit issuance.
23. The project proposes over 5,000 sq. ft. of impervious surface and is a regulated project under MCSTOPPP requirements. Provide a stormwater control plan, which includes a written narrative. A stormwater facility maintenance agreement shall be required. More specific information is available from MCSTOPPP, on the Marin County website. See tools and guidance, and post construction requirements at <http://marincounty.org/depts/pw/divisions/mcstoppp/development/new-and-redevelopment-projects>
24. While the preliminary design of the proposed stormwater control plan is acceptable, limited use of pumping and piping through the interior building is recommended.
25. The proposed project results in 15 AM and 19 PM peak hour trips. After crediting the project for the peak hour trips generated by the prior development on the site (13 AM and 13 PM peak hour trips from 24 residential apartments and one single-family residence). The traffic mitigation fee for the resulting increase of eight (8) peak hour trips is \$33,968 (8 x \$4,246) shall be paid prior to building permit issuance.
26. An encroachment permit is required for any work within the public Right-of-Way (ROW) from the Department of Public Works. Please note that Mission Ave. and a portion of Lincoln Ave., fourth of Mission Ave., are currently moratorium streets.
27. A construction vehicle impact fee shall be required at the time of building permit issuance, which is calculated at 1% of the valuation with the first \$10,000 of valuation exmpt.

Community Development Department, Building Division

28. The proposed project contains several different occupancy types. The existing occupancy types appear to be S-2 whereas the proposed adult day care is an I-2.1, and the senior housing on the upper floors is R-2. Individual occupancies are categorized with different levels of hazard and typically need to be separated from other occupancy types for safety reasons. These separations are required to be a minimum 1- or 2-hour fire resistive construction. Under mixed-occupancy conditions the project architect has available several design methodologies (accessory occupancies, nonseparated occupancies, and separated occupancies) to address the mixed-occupancy concerns.

This concern is raised during the Planning Division's review because these fire separations increase costs. During the Planning Division process, the project architect's forethought will hopefully prevent issues during the building permit process because a definitive answer will not be available until the Building Permit application's plan review process occurs.

29. School fees will be required for the project. Calculations are done by the San Rafael City Schools, and those fees are paid directly to them and proof of payment shall be submitted to the Building Division prior to issuance of the building permit.
30. The design and construction of all site alterations shall comply with the current editions of the California Building Code, Plumbing Code, Electrical Code, California Mechanical Code, California Fire Code, California Energy Code, Title 24 California Energy Efficiency Standards, California Green Building Standards Code and City of San Rafael Ordinances and Amendments
31. A building permit is required for the proposed work. Applications shall be accompanied by four (4) complete sets of construction drawings to include:
- a) Architectural plans
 - b) Structural plans
 - c) Electrical plans
 - d) Plumbing plans
 - e) Mechanical plans
 - f) Site/civil plans (clearly identifying grade plan and height of the building)
 - g) Structural Calculations
 - h) Truss Calculations
 - i) Soils reports
 - j) CalGreen documentation
 - k) Title-24 energy documentation
32. The occupancy classification (in mixed occupancies-each portion of the building shall be individually classified), construction type and square footage of each use within the building shall be specified on the plans.
33. The building height shall comply with CBC Section 504 and Table 503. On the plan justify the proposed building height.
34. Building areas are limited by CBC Table 503. On the plan justify the proposed building area. For this mixed use, the maximum allowable area will be a "sums of ratios". Please verify that your building size and construction type are within allowable maximums.
35. The maximum area of unprotected and protected openings permitted in the exterior wall in any story of a building shall not exceed the percentages specified in CBC Table 705.8 "Maximum Area of Exterior Wall Openings Based on Fire Separation Distance and Degree of Opening Protection." In order to calculate the maximum area of exterior wall openings you must provide the building setback distance from the property lines and then justify the percentage of proposed wall openings and include whether the opening is unprotected or protected. The elevations appear to indicate openings in the areas where rated walls are required.
36. Multiple exit pathways on several floors are thru "lounge" areas. In addition, a kitchen is located in the exit pathway on the first floor. This is problematic, as these areas often have moveable furniture, are often occupied with large numbers of tenants for group activities. Further, based on the nature of the tenants, there are often wheelchairs and walkers strewn about which cause additional obstruction to the path of egress. Please consider a redesign of the exit way.
37. Areas of refuge will be required at stairway vestibules. It appears that they may be adequately sized, but ensure that code required clearances area met.

38. The elevator will require separation from the corridor/lobby except at the ground floor.
39. All sleeping rooms shall have an egressable window, and a related pathway to the public way. Ensure that all gates, walkways, etc. around the building perimeter meet this requirement.
40. Due to ambient noise from the two arterial roadways that front on the property, sound attenuation will likely be required for those units that face Mission and Lincoln Avenues. An acoustical analysis will be required as part of the building permit submittal.
41. Requirements for the memory care unit are somewhat unique, and will require both approval from the Building and Fire Prevention Divisions for such things as delayed egress, lack of access to egressable windows/balconies, minimum staffing levels to provide assisted egress in the event of a fire or other catastrophic event, and so forth.
42. The address for structures is determined by the Chief Building Official. The tentative address for the proposed project is 800 Mission Avenue. This address will be legalized as we approach completion of the project construction. A written request from the property owner should be sent to the Chief Building Official. Each page of the plan's title block and all permit application documents must show the proposed building's address identification information.
43. If proposed fencing/gates exceed 7' in height, a building permit is required.
44. A grading permit is required for any grading or site remediation, soils export, import and placement. Provide a detailed soils report prepared by a qualified engineer to address these procedures. In particular, the report should address the import and placement and compaction of soils at future building pad locations and should be based on an assumed foundation design. This information should be provided to Building Division and Department of Public Works for review and comments prior to any such activities taking place.
45. Prior to building permit issuance for the construction of each building, geotechnical and civil pad certifications are to be submitted. Property lines must be staked for inspection of foundations.
46. Property lines shown through proposed buildings must be eliminated by consolidation or buildings must be relocated or redesigned to fall within property line boundaries. Parcels 011-184-09 & 011-184-08 must be consolidated, and new map recorded prior to issuance of a building permit.
47. Based on the distance to the property line (and/or adjacent buildings on the same parcel), the building elements shall have a fire resistive rating not less than that specified in CBC Table 601 and exterior walls shall have a fire resistive rating not less than that specified in CBC Table 602.
48. Cornices, eaves overhangs, exterior balconies and similar projections extending beyond the floor area shall conform to the requirements of CBC 705.2. Projections shall not extend beyond the distance determined by the following two methods, whichever results in the lesser projection:
 - a. A point one-third the distance from the exterior face of the wall to the lot line where protected openings or a combination of protected openings and unprotected openings are required in the exterior wall.
 - b. A point one-half the distance from the exterior face of the wall to the lot line where all openings in the exterior wall are permitted to be unprotected or the building is equipped throughout with an automatic sprinkler system.

- c. More than 12 inches into areas where openings are prohibited.
49. Walls separating sleeping rooms from each other and other occupancies contiguous must be a minimum of 1-hour construction.
 50. All site signage as well as wall signs require a separate permit and application (excluding address numbering).
 51. Any monument sign(s) shall have address numbers posted prominently on the monument sign.
 52. It appears that at least the lower level of parking in the parking garage will require mechanical ventilation capable of exhausting a minimum of .75 cubic feet per minute per square foot of gross floor area CMC Table 403.7.
 53. In the parking garage, in areas where motor vehicles are stored, floor surfaces shall be of noncombustible, nonabsorbent materials. Floors shall drain to an approved oil separator or trap discharging to sewers in accordance with the Plumbing Code and SWIPP.
 54. The parking garage ceiling height shall have a minimum vertical clearance of 8' 2" where required for accessible parking.
 55. Minimum elevator car size shall meet CBC 11A and 11B for accessibility.
 56. This project shall provide not less than one medical emergency service elevator. The medical emergency service elevator shall accommodate the loading and transport of an ambulance gurney or stretcher.
 57. In the service areas, mechanical ventilation will be required capable of exhausting a minimum of 1.5 cubic feet per minute per square foot of gross floor area. Connecting offices, waiting rooms, restrooms, and retail areas shall be supplied with conditioned air under positive pressure.
 58. The proposed facility shall be designed to provide access to the physically disabled in accordance with the requirements of Title-24, California Code of Regulations. For existing buildings and facilities when alterations, structural repairs or additions are made, accessibility improvements for persons with disabilities may be required. Improvements shall be made, but are not limited to, the following accessible features:
 - a. Path of travel from public transportation point of arrival
 - b. Routes of travel between buildings
 - c. Accessible parking
 - d. Ramps
 - e. Primary entrances
 - f. Sanitary facilities (restrooms)
 - g. Drinking fountains & Public telephones (when provided)
 - h. Accessible features per specific occupancy requirements
 59. The site development of items such as common sidewalks, parking areas, stairs, ramps, common facilities, etc. are subject to compliance with the accessibility standards contained in Title-24, California Code of Regulations. Pedestrian access provisions should provide a minimum 48" wide unobstructed paved surface to and along all accessible routes. Items such as signs, meter pedestals, light standards, trash receptacles, etc., shall not encroach on this 4' minimum width.

Also, note that sidewalk slopes and side slopes shall not exceed published minimums per California Title 24, Part 2. The civil, grading and landscape plans shall address these requirements to the extent possible.

- 60. Multifamily dwelling and apartment accessible parking spaces shall be provided at a minimum rate of 2 percent (2%) of the covered multifamily dwelling units. At least one space of each type of parking facility shall be made accessible even if the total number exceeds 2 percent (2%).
- 61. When parking is provided for multifamily dwellings and is not assigned to a resident or a group of residents, at least 5 percent (5%) of the parking spaces shall be accessible and provide access to grade-level entrances of multifamily dwellings and facilities (e.g. swimming pools, club houses, recreation areas and laundry rooms) that serve the dwellings. Accessible parking spaces shall be located on the shortest accessible route to an accessible building, or dwelling unit entrance.
- 62. Public accommodation disabled parking spaces must be provided according the following table and must be uniformly distributed throughout the site:

Total Number of Parking Spaces Provided	Minimum Required Number of H/C Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	Two percent of total
1,001 and over	Twenty, plus one for each 100 or fraction thereof over 1,001

- 63. At least one disabled parking space must be van accessible; 9 feet wide parking space and 8 feet wide off- load area, or 17' wide overall. Additionally, one in every eight required handicap spaces must be van accessible.
- 64. This project will need to meet CalGreen building standards for new construction and in addition, will be subject to Tier 1 requirements.

San Rafael Sanitation District

- 65. The building permit plans shall include Civil/Utility drawings which shows the sewer lateral design in compliance with the San Rafael Sanitation District Standard Specifications, including pipe information (pipe type, pipe size, inverts and slope) and a backflow preventer near the building.
- 66. Please add the following note to the Utility Plans: Notify the San Rafael Sanitation District Inspector, Rolando Calvo (415.485.3194 or Rolando.calvo@cityofsanrafael.org), 72 hours prior to start of sanitary sewer construction.

San Rafael Fire Department, Fire Prevention Bureau

67. The design and construction of all site alterations shall comply with the current editions of the California Fire Code and City of San Rafael Ordinances and Amendments.

68. Deferred submittals for the following fire protection systems shall be submitted to the Fire Prevention Bureau for approval and permitting prior to installation of the systems:

- a) Fire sprinkler plans (Deferred submittal to the Fire Prevention Bureau)
- b) Fire standpipe system plans (Deferred submittal to the Fire Prevention Bureau)
- c) Fire Alarm system plans (Deferred submittal to the Fire Prevention Bureau)
- d) Fire Underground plan (Deferred submittal to the Fire Prevention Bureau)
- e) Kitchen Hood Automatic Fire-Extinguishing System plans (Deferred submittal to the Fire Prevention Bureau).

69. A Fire apparatus access plan shall be prepared for this project. The fire apparatus plans shall show the location of the following:

- a) Designated fire apparatus access roads.
- b) Red curbs and no parking fire lane signs.
- c) Onsite fire hydrants.
- d) Fire Department Connection (FDC).
- e) Double detector check valve.
- f) Street address sign.
- g) Recessed Knox Box
- h) Fire Alarm annunciator panel.
- i) NFPA 704 placards
- j) Note the designated fire apparatus access roads and fire hydrant shall be installed and approved by the Fire Prevention Bureau prior construction of the building.

70. A Knox Box is required at the primary point of first response to the building. A recessed mounted Knox Box #3275 Series is required for this project. The Knox Box shall be clearly visible upon approach to the main entrance from the fire lane. Note that the Knox Box must be installed between 72-78" above finished grade. Please show the location of the Knox Box on the plans.

71. If the garages will be gate controlled, the project must provide a Knox key gate control. Please show the location of the key gate control on the plans.

72. When a building is fully sprinklered all portions of the exterior building perimeter must be located within 250-feet of an approved fire apparatus access road:

- a) The minimum width of the fire apparatus access road is 20-feet.
- b) The minimum inside turning radius for a fire apparatus access road is 28-feet.
- c) The fire apparatus access road serving this building is more than 150-feet in length so an approved turn-around is required.

73. As the building is over 30 feet in height, an aerial fire apparatus access roadway is required parallel to one entire side of the building:

- a) The Aerial apparatus access roadway shall be located within a minimum 15 feet and a maximum of 30 feet from the building.
- b) The minimum unobstructed width for an aerial fire apparatus access road is 26-feet..

- c) Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway, or between the roadway and the building.

74. Fire lanes must be designated with curbs painted red and contrasting white lettering stating “No Parking Fire Lane” and signs shall be posted in accordance CFC 503.3.

75. Hazardous Materials Placards shall be installed in accordance with NFPA 704.

76. Provide a Hazardous Materials Management Plan to be submitted to the Marin County Department of Public Works, CUPA.

77. Ensure that elevators are gurney accessible.

78. Fire extinguishers are required as per CFC provisions.

79. Contact the Marin Municipal Water District (MMWD) to make arrangements for MMWD to provide adequate water supply service for the required fire protection system.

During Construction

Marin Municipal Water District

80. District records indicate that the property's current annual water entitlement is insufficient to meet the water demand for the project and the purchase of additional water entitlement will be required. Additional water entitlement will be available upon request and fulfillment of the following requirements:

- a) Pay the appropriate fees and charges.
- b) Comply with all indoor and outdoor requirements of District Code Title 13 – Water Conservation. Indoor plumbing fixtures shall meet specific efficiency requirements. Landscape, irrigation, grading and fixture plans shall be submitted to the District for review and approval. Any questions regarding District Code Title 13 – Water Conservation should be directed to the District's Water Conservation Department at (415) 945-1497. You may also find information on the District's water conservation requirements online at www.marinwater.org.
- c) Comply with the backflow prevention requirements, if upon the District's review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at (415) 945-1558.
- d) Use of recycled water is required, where available, for all approved uses, including irrigation and the flushing of toilets and urinals. Questions regarding the use of recycled water should be directed to (415) 945-1558.
- e) Installation of gray water recycling systems is required when practicable.

Pacific Gas & Electric

81. Electric and gas service to the project site will be provided in accordance with the applicable extension rules, which are available on PG&E's website at <http://www.pge.com/myhome/customerservice/other/newconstruction> or contact (800) PGE-5000. It is highly recommended that PG&E be contacted as soon as possible so that there is adequate time to engineer all required improvements and to schedule any site work.

82. The cost of relocating any existing PG&E facilities or conversion of existing overhead facilities to underground shall be the sole responsibility of the applicant or property owner.

83. Prior to the start excavation or construction, the general contractor shall call Underground Service Alert (USA) at (800) 227-2600 to have the location of any existing underground facilities marked in the field.

Community Development Department, Planning Division

84. The project shall minimize the potential air quality impacts to adjacent residences during all grading and construction activities by implementing best management practices (BMPs), as identified the air quality analysis submitted with the project application (Illingworth & Rodkin, dated November 30, 2017, Page 3).

Prior to Occupancy

Community Development Department, Planning Division

85. The project sponsor, or its successor, shall submit a lighting plan with photometric study, showing compliance with the City's adopted lighting standards.

86. Final inspection of the project by the Community Development Department, Planning Division, is required. The applicant shall contact the Planning Division to request a final inspection upon completion of the project. The final inspection shall require a minimum of 48-hour advance notice.

87. All landscaping and irrigation shall be installed prior to occupancy.

88. The landscape architect for the project shall submit a letter to the Planning Division, confirming the landscaping has been installed in compliance with the approved project plans and the irrigation is fully functioning.

89. All ground- and rooftop-mounted mechanical equipment shall be fully screened from public view.

90. All trash enclosures shall be fully screened from public view.

After Occupancy

Community Development Department, Planning Division

91. Following the issuance of a Certificate of Occupancy, all new exterior lighting shall be subject to a 90-day lighting level review period by the City to ensure that all lighting sources provide safety for the building occupants while not creating a glare or hazard on adjacent streets or be annoying to adjacent residents. During this lighting review period, the City may require adjustments in the direction or intensity of the lighting, if necessary. All exterior lighting shall include a master photoelectric cell with an automatic timer system, where the intensity of illumination shall be turned off during daylight.

92. Following the issuance of a Certificate of Occupancy, the City reserves the right to review traffic conditions, both on-site and off-site circulation patterns generated by this use and any conflicts that arise with existing traffic patterns on city streets, and the applicant agrees to incorporate all recommended improvements, including, but not limited to, pavement striping and signage, both on and off site, as determined by the Department of Public Works/City Engineer.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Tuesday, the 4th day of September 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

July 16, 2018

City of San Rafael, Attn.:

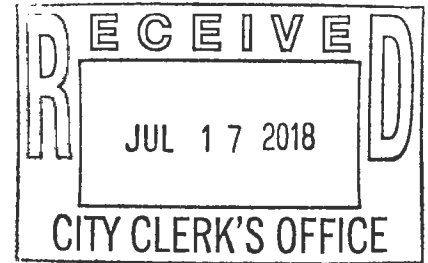
Mayor Gary O. Phillips

Vice Mayor John Gamblin

City Councilmembers: Kate Colin, Maribeth Bushey, and Andrew McCullough

1400 Fifth Avenue

San Rafael, CA 94901



RE: Appeal of Planning Commission decision for 800 Mission Avenue

Dear City Council,

This letter is to serve as a formal request to appeal the decision of the Planning Commission on July 10, 2018 that voted 4-2 to approve the conditional use permit for an 88-bed Residential Care Facility Project ("Project") at 800 Mission Avenue. As per the City Code, the purpose of a conditional use review is to allow (14.22.010), "special consideration in their design, operation or layout to ensure compatibility with surrounding uses." This appeal is based on city code 14.22.080 (excerpt below) and the fact that the Commission did not consider and ensure:

- I. That the proposed use is in accord with the general plan, the objectives of the zoning ordinance, and the purposes of the district in which the site is located;*
- II. That the proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the city;*
- III. That the proposed use complies with each of the applicable provisions of the zoning ordinance.*

- I. The Project is not in accordance with the City's General Plan 2020, the objectives of the zoning ordinance and the purpose of the district in which it is located.
 - a. The City's General Plan calls for High Density Residential on this development. Any such project would also include the appropriate affordable housing units. The General Plan 2020 (NH-17) states "economic and housing development are high priorities to the health of Downtown", focusing on "designing units that take advantage of Downtown's views, proximity to shopping and services, and transit" (NH-22c). In the City Staff Report "the Project is comparable to a hotel by proposing to provide rooms or suites for residents without individual kitchens and with communal dining and entertainment and personal services." The operator, Aegis, acknowledged that residents are unlikely to leave the building and therefore would not take advantage of this site's proximity to shopping, services, or transit. Additionally, the General Plan (H-13) calls to "encourage housing that meets the needs of San Rafael's older population, particularly affordable units and affordable care facilities that foster aging within the community." The Project does not include affordable units or, as the Commissioners acknowledged, pay a sufficient in-lieu-of fee.

- b. The zoning of the two parcels is HR-1, which reiterates the call for housing to be put in this location. The City Staff Report to the Planning Commission varied on the categorization of the Project. In various places in the City Staff Report it was termed either residential, nonresidential, a hotel, or a personal service business. If the Project maintained the label of residential, it would be subject to the 20% density of Affordable Units and therefore include 15 units with that designation.
 - c. The Project is located in the Fifth/Mission District, a critical component to the fabric of Downtown. The Project offers no contribution to the “Alive after Five” goal of Downtown as conceded by the operator, Aegis.
- II. Proposed Project is detrimental to the general welfare of the city.
- a. Impact on City Affordable Housing. As noted by the Commission at the July 10, 2018 meeting as well as the Planning Commission Meeting held on January 23, 2018, to consider the Oakmont Senior Living at 3773 Redwood Highway Project (“Oakmont”), in-lieu-of fees were calculated based on a blended rate for hotels and personal service businesses. These fees are intended to compensate the City for the affordable housing element needed to accommodate the employees of such an operation. The in-lieu-of fee for the Project does not sufficiently compensate the City, nor does it include the dual purpose of the Project by also including the senior residents. The assumption and acceptance of such an in-lieu-of fee further cements the fact that this is an operating commercial business. It should not, therefore, be considered residential and in turn should not be allowed at this zoned location.
 - b. Impact on tax revenue. San Rafael’s opportunity cost of moving forward with the Project is staggering and unquantifiable from an economic perspective. Loss of consumption from residents that could be living on that site is a loss of revenue to businesses, property taxes, decreased public transit usage, and increased carbon footprint. This Project and Oakmont use an in-lieu-of fee intended for commercial businesses that also contribute other tax revenue back to the City. For example, the applicant argues the Project operates like a hotel; as such a 12% hotel tax should be imposed and would yield the City an estimated \$760,320 per year in tax revenue.
- III. *The proposed use does not comply with each of the applicable provisions of the zoning ordinance.*
- a. Parking. The project is subject to the Downtown Parking Code of requiring guest parking for multifamily residential within 200 feet of its residential neighbors. However, the Project evades the requirement by relying on the Parking Code for a hotel. While it makes sense that hotels do not require visitor parking, this Project is expected to have visitors, such as family, friends and medical staff; thus, the adequacy of the parking provision is questioned. Furthermore, the Project states that “parking demand would be further reduced by the site’s close proximity to the adjacent SMART Downtown Station and the Bettini Transit Center.” However, the Operator cited that few employees would use such transit options. Additionally, the shift schedule submitted by the operator states that staff changes would occur at “non-peak commute hours”. A simple review of the public transportation timetables will show that the timing and frequency of these transitions will not allow for the use of public transportation for the employees. For example, the shift change at 10pm provides no tenable options for departing or arriving employees.
 - b. Commercial Uses. Building proposes an onsite juice bar, pub, bistro, fitness gym, a barber/salon, and cinema—all commercial uses and noncompliant with the zoning ordinance for HR-1. The commercial traffic generated by food service delivery trucks to service these components of the Project is a sensitivity that should be properly considered when adding a commercial business to a residential neighborhood.

Furthermore, the Planning Commission based their approval on the established precedent of the similar Oakmont project approved in January 2018. However, there is a stark difference: 3773 Redwood Highway is zoned General Commercial for both zoning and the General Plan. Oakmont complied with the nonresidential in-lieu-of fee as it was calculated. As a commercial zoned lot and a commercial project, the in-lieu-of fee is more in the spirit of the proposed guidelines because it was never expected that housing units would be built in a commercially zoned location. However, even in this situation the Commission recognized the calculation multiplier as being inadequate. Commissioner Paul stated, "there is something wrong with these numbers," but downplayed the urgency to escalate the issue because "assisted living don't come down the pipe very often." Accepting inadequate in-lieu-of fees on both projects compounds financial losses for the City. In the case of the Project affordable housing units are also lost.

On July 10th, at the Planning Commission meeting, an ad-hoc financial judgement of affordability housing requirements was made by the Commissioners because they accepted an on-the-spot amendment to the submitted plan potentially setting another precedent of an on-the-spot negotiation to obtain an approval for other projects. A Commissioner called for "a short continuance on this to allow the applicant to come up with a proposal." However, the Developer continued to press for a vote and voluntarily offered to increase the fee to \$500,000. Then the negotiation continued as the Operator offered to "do the three (affordable) units on site if that's what it would take to get the approval this evening." Effectively declining the offer for affordable units, the Commission accepted the increased in-lieu-of fee and set a policy exceeding its authority. This Commission should have called for a continuance or referred the Project to the Council.

In lieu of proper assessment by the Planning Commission we therefore appeal the approval granted on July 10, 2018.

Respectfully, .


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(415) 314-3152


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ML Seven Capital Partners, LLC

1101 Fifth Avenue #300

San Rafael, CA 94901

August 24, 2018

Hon. Gary O. Phillips, Mayor
and City Council Members
City of San Rafael
1400 Fifth Ave.
San Rafael, CA 94901

RE: Appeal of Planning Commission's July 10, 2018 Approval of Conditional Use Permit/Resolution #18-04 for 800 Mission Avenue (Vacant site at Northwest Corner of Mission & Lincoln Avenues).

Dear Mayor Phillips and Council Members,

This letter is in response to the appeal of the 77-unit senior assisted living project ("Project") that was approved by the Planning Commission on July 10, 2018. As the Project Owner and Applicant, we believe the approved Project provides substantial benefits to San Rafael by creating much-needed housing, and bringing services to Downtown. The Project minimizes impacts to the surrounding neighborhood while stimulating economic activity in the Downtown area.

In response to the appeal, we submit that the Project is a conditionally permitted use according to the City's zoning ordinance, and compliant with the General Plan goals, policies, and objectives. Furthermore, the Project complies with all development standards, and, in the opinion of the Design Review Board, is beautifully designed to enhance the character of the community. The Project will pay all fees as required by City Code, as set forth by the Planning Commission as a condition of approval. The Project is a tremendous source of revenue for the City, and in fact, has been endorsed by the San Rafael Chamber of Commerce. Accordingly, we respectfully request that the Council deny the appeal and uphold the Project as originally approved.

Project Approvals

On June 5, 2018, the Design Review Board unanimously approved the Project. On July 10, 2018, the Planning Commission approved the Project. The Commission made all of the necessary findings, including: (1) the Project conforms to the General Plan; and, (2) the Project is appropriate for a use permit in satisfying the Zoning Ordinance and purpose of the Zoning District, and these findings are supported by substantial evidence in the record. The Commission approved the Project as detailed in Resolution 18-04, which is attached for reference (Exhibit #7). The Project does not require any height or density bonuses and conforms to the City's land use and planning standards.

The Planning Commission further found, "the project is in close proximity to Downtown, where the residents, guests and staff would re-activate a portion of Lincoln and Mission Avenues, aid in the 'Live after 5' initiative, and provide economic benefit to Downtown businesses." The Project achieves many of the City's General Plan Goals including allowing seniors to "age-in-place," as there are no residential care

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San Rafael, CA 94901

facilities operating in Downtown San Rafael. Senior Housing accommodations in other neighborhoods and surrounding jurisdictions are full, many with waiting lists, and none are of new construction.

Project Summary:

The Project satisfies numerous General Plan policies in which to provide housing to a demographic in need, and reactive Downtown San Rafael. The Project provides a significant economic stimulus to San Rafael. The housing supply made available annually within the City provides housing for younger generations, and is a reoccurring supply of newly available housing in the community. The Project also pays an in-lieu fee of \$500k to further address affordable housing in the City of San Rafael. The Project redevelops a long-vacant iconic site with a gorgeous building of exceptional architectural design and detail.

Project Benefits

1. Jobs:

The Project creates over 75 jobs in close proximity to public transportation. Aegis Living will operate the property, and is recognized by Glassdoor as one of the top 50 best places to work by vote of employees.

2. Economic Stimulus:

Dr. Robert Eyler of the Marin Economic Forum analyzed the positive economic impact to the Downtown and concluded that the Project generates 6 times the economic benefit compared to a conventional multi-family housing project over a five-year period. The Project creates a significant economic engine that will fuel a substantial amount of local businesses, vendors, and services. This study is attached as Exhibit #1. In addition, the San Rafael Chamber of Commerce Board of Directors has voted to endorse the project based on its merits, and economic impact on the City.

3. Provides Housing:

As noted in the July 10 Planning Commission Staff Report, the Project provides housing for a population in need of proper care and accommodation. Both the City's Housing Element and 2017-2018 Marin County Civil Grand Jury report, *Marin is Aging: Are we Ready?* (April 27, 2018) identify the senior population as drastically underserved regarding available housing.

4. Satisfies General Plan Goals and Objectives:

The Project provides housing for an identified Senior population-in-need, who will also re-activate a portion of Downtown, and makes a significant contribution to San Rafael's affordable housing efforts.

5. "Unlocks" Housing Units:

As noted by Dr. Eyler, upon commencement of operations, senior residents will leave their current residences and move into the newly constructed Project. Many of the Project's new residents are expected to come from homes located within 3 miles of the Project site. This will allow the Seniors'

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current home to be re-introduced into the City's available housing supply and allows other families to move into the vacated residences. This housing supply is recurring in perpetuity and the Project is expected to "unlock" approximately 400 residential units in the first ten years of operation. In addition, it is reasonably anticipated that up to 25% of these unlocked homes will apply for Accessory Dwelling Units (ADU's); thereby creating approximately 100 new dwelling units within the first ten year period. See both the report by Dr. Eyler (Exhibit #1), and Exhibit #2.

6. Affordable Housing:

In addition to unlocking new homes for the market and generating an anticipated 100 new ADUs, which are designed as more affordable housing due to size constraints, the Project, as conditionally approved, contributes \$500,000 to the Affordable Housing In-Lieu Fee Fund (Fund 243). This fee imposed on the Project is 57% greater than the fee as structured under the Municipal Code.

Similar approved projects have used a similar Affordable Housing In-Lieu Fee. Both the Staff Report, and previously approved projects, calculated the Affordable Housing In-Lieu Fee to be .015 units/1,000 GSF x Building GSF x \$331,700/unit. Most recently, the Oakmont Project (UP17-012, January 23, 2018) was approved using this methodology for the In-Lieu Fee.

Pursuant to General Plan Policy H-6a, monies in Fund 243 shall be paired with debt, and utilized for the purchase and rehabilitation of existing housing supply and the creation of new units to provide affordable housing within the community. The project's contribution of \$500,000, along with the current fund balance of \$1.3M, will bring the current balance to \$1.8M. These monies, and contributions from other San Rafael projects, will be paired with debt, and aid the City in the creation of affordable housing units.

7. 'Open Campus':

Residents, visitors and staff frequently go out, and utilize the services and opportunities offered in the Downtown area, and greater community. The Operator provides transportation to residents and encourages outings, field trips and excursions to the local community.

The Operator regularly offers its common spaces to the greater community to host local group meetings such as local charities, educational gatherings, support groups, election centers, Lions Club, among others.

Residents interact with local entertainment, educational speakers, youth theater plays, and intergenerational programs such as school reading and art events. A summary of these programs is attached from the Operator in Exhibit #3.

8. Redevelopment of a Vacant Lot:

The Property has been vacant for twelve years and contains numerous police records of homeless encampments, trespassing, graffiti and vandalism.

The previously-approved 36 unit project is not financially feasible, as noted by both Noah Reischmann of CBRE (Exhibit #4), and by Dr. Robert Eyler. At the July 10 hearing, Commissioner Jack Robertson also noted his firm had previously analyzed the project, and it "did not go anywhere," eluding to the multi-family project being infeasible.

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Minimal Impacts

1. Traffic:

The Project's off-peak shift changes result in lowering traffic impacts since staff is not arriving or departing during peak commute hours. A traffic impacts analysis was approved by DPW, which notes the Project has fewer impacts than a conventional 36-unit multifamily project. The addition of a below-grade parking level further improves traffic circulation at the site.

2. Public Transportation:

As noted by Linda Jackson of the *Aging Action Initiative*, the Project's location in close proximity to multi-modal public transportation is optimal for staff, residents and visitors. The Operator has benefits in place to encourage public transportation use. This utilization of public transportation further reduces the traffic impacts in and around Downtown. A review of public transportation routes notes that routes are available for all shifts, from numerous points of origin in the Bay Area. Attached in Exhibit #5 is a sample of these applicable transit routes.

3. Parking:

The Project contains a parking quantity 48.3% in excess of the Operator, Architect and Traffic Engineer's calculated demand. This parking supply accounts for all staff, residents and visitors demand. The inventory of parking will not negatively impact the neighborhood.

Gateway Location

The Project proposes to turn a prominent gateway location in San Rafael from a currently vacant site into an iconic building. The design pays homage to San Rafael's heritage, and is appropriately located at the entrance of Mission Avenue. The Project's use, design and location perfectly complements the high-density core of Downtown to the South, to the residential neighborhoods to the North.

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The Appeal is inaccurate and discriminatory.

The filed appeal inaccurately represents the Project, incorrectly argues numerous points, and is discriminatory in nature against seniors.

1. Use

The appeal argues that the Project is not in accordance with the General Plan, does not take advantage of the Downtown, and that Seniors do not contribute to Downtown. The suggestions are incorrect.

As identified by Planning Staff, and described under section 14.04.020 of the Municipal Code, this is an allowed use within the HR1 zoning district with the issuance of a Conditional Use Permit. Staff noted, and the Planning Commission found, that the Project complied with the General Plan, and conformed to all development standards for the zoning district. As noted on July 10, it is legally impermissible to deny an application for a permitted use due to a desire or preference for a different use.

2. 'Closed Campus'

The appeal incorrectly states that this facility is a 'closed-campus' and therefore the residents do not bring any benefit to Downtown San Rafael, and should be housed in a less-desirable area of the City. The statements are incorrect.

- As noted by both Linda Jackson of the *Aging Action Initiative*, and by the Operator, this is truly an 'open-campus.' The residents in these facilities utilize Downtown for dining, shopping, and intergenerational interaction. It is typical for visiting family members to take the residents out for meals, shopping, to Farmers' Markets, San Rafael Film Center, etc.
- Additionally, the facility offers community rooms for use by local groups. The Project also employs numerous local professional service providers who visit the building, who will also utilize the Downtown for shopping, dining and events. The Project's walkable Downtown location lends itself well for direct engagement with the Downtown area for staff, residents and visitors. Due to the Downtown location, many local residents and employees will be able to visit their loved ones more frequently.
- As noted by Dr. Robert Eyler, The Project results in an economic benefit to San Rafael **6 times** greater than that of a conventional multi-family project due to the spending generated, jobs created, and tax revenue.

3. The Appeal is Discriminatory

The appeal unfairly seeks to exclude older members of the community from the Downtown Area.

Contrary to statements and inferences made in the appeal, we believe seniors, like any other segment of our local population, should have equal access to Downtown and should not be discriminated against.

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4. Affordable Housing

The appeal argues that this Project does not address affordable housing in the City of San Rafael. The statements are incorrect.

The Affordable Housing In-Lieu Fee is calculated for Assisted Living Facilities using an average between two land uses within the City's Code (Municipal Code 14.16.030): Hotel (.0075 units per 1,000 GSF) and Personal Services (.0225 units per 1,000 GSF) rates. As identified in the July 10 Planning Commission staff report, previously-approved Assisted Living Facilities have utilized this methodology. Accordingly, the 64,054 square foot Project would require an affordable housing in-lieu fee of 0.96 units, or \$318,095.

During the July 10 Planning Commission Hearing, we offered, in good faith, to contribute an additional amount to the City's Affordable Housing In-Lieu Fee Fund. We calculated and offered an in-lieu fee of \$476,740 based on the higher 'personal services' rate. For ease of discussion during the Commission hearing, we presented the in-lieu fee of \$500,000, which was adopted by the Commission as a condition of approval for the Project.

It is noted that the appeal views this condition of approval for the additional fee as a bribe. Although we respectfully request that the Council uphold the Commission's decision and deny the appeal, if the Council prefers consistency in application of this fee for like categories of use, then we welcome the opportunity for the Council to amend the condition of approval regarding the fee as originally noted in the Planning Commission's Staff Report (\$318,095).

The appeal requests high-density housing get built at this site. As the Council may be aware, residential projects in Downtown San Rafael are requesting upwards of 200% density bonuses in which to be financially feasible. A comparable 200% density bonus residential project would result in a significantly less attractive building at this iconic corner, and would result in substantially more traffic, parking and noise impacts on the surrounding neighborhood. We are advocates for high density transit-oriented housing, but hold the strong opinion that such uses are better suited for the Downtown Core of San Rafael, rather than on the corner of Mission and Lincoln Avenues.

In addition, we have reached out to affordable housing developers. Their response was that the 36-unit project is infeasible, that it contains too few units, and that they do not have interest in pursuing the project.

5. Compliance with Zoning Ordinance:

The appeal argue that the Project does not supply sufficient parking, that it will contain onsite amenities which are not allowed in the zoning district.

a) Parking

As noted by the Operator who manages nearly thirty urban and suburban communities, the Architect, and the Traffic Engineer, this Project requires a peak demand of 31 parking spaces.

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The Municipal Code calculates a parking requirement of 42 parking spaces. The Project has 46 parking spaces; 6 of which are operated as tandems to be utilized by staff. See attached parking information (Exhibit#6).

b) On-Site Amenities:

The appeal has misinterpreted the presence of amenities within the facility as evidence that residents will not utilize Downtown amenities. As noted above, this is not the case.

The cited objectionable Project amenities include amenity space that also could be found in a typical multi-family residential common area. Staff has noted these amenities are acceptable. The July 10th Staff Report contained nearly forty letters of support from Downtown merchants, professional services, businesses and restaurants endorsing the use and expressing their excitement for inclusion of a senior population Downtown.

Conclusion

We respectfully request that the City Council deny this appeal and uphold the decision of the Planning Commission for the reasons noted above. We are excited for this project to come to life so that this much needed housing for seniors in our community can be enjoyed, and the benefits realized by Downtown San Rafael.

Sincerely,



Geoff Forner
ML Seven Capital Partners, LLC
415-456-1558

Exhibit List:

1. Economic Analysis, Dr. Robert Eyler, Marin Economic Forum
2. Analysis of Unlocked Housing Units
3. 'Open Campus,' John Carpentier, Aegis Living
4. Availability of Financing, Noah Reischmann, CBRE San Francisco
5. Available Public Transportation Services
6. Parking Analysis
7. Planning Commission Resolution 18-04.



**800 Mission Avenue in San Rafael, California: Senior Living Facility
An Economic Brief for Aegis Living**

August 2018

About Marin Economic Forum

The Marin Economic forum provides information and opportunities to collaborate for improving Marin County's economic vitality, while seeking to increase social equity and protect the environment.

Please see www.marineconomicforum.org for more information.

Mission Statement

The Marin Economic forum enables Marin's economic stakeholders* to collaborate on improving the County's economic vitality, focusing on Marin's targeted industries** while enhancing social equity and protecting the environment.

Marin Economic Forum is...

- Connecting Businesses to partners and solutions;
- Educating on the importance of business for Marin County's future;
- Providing data and information to help businesses and local governments; and
- Supporting economic development efforts for sustainable growth of local businesses.

Strategic Objectives

- Attract, retain, and grow businesses and jobs to continually strengthen Marin County's economy;
- Establish periodic forums for the stakeholders to share their visions and goals, to exchange mutually beneficial information and leverage limited resources;
- Collect, analyze and disseminate economic data and trends;
- Educate Marin County about its economic successes, challenges, and progress;
- Improve "economic sustainability" by prescribing economic development that integrates social equity and environmental balance with economic growth; and
- Encourage governmental bureaucracy reduction and judicious economic policies to support the local economy and a thriving workforce.

The lead author on this work was Robert Eyler, PhD. Robert acts as MEF's chief economist. Dr. Eyler earned a Ph.D. Economics from UC Davis and holds a BA in economics from CSU, Chico. He has been a visiting scholar at both the University of Bologna and Stanford University.

Executive Summary

800 Mission Avenue is a 77-unit, 88-bed Senior Housing Project (ALF) recently approved by the San Rafael Planning Commission. The ALF proposes to have 75 daily employees, daily visitors of the residents, and daily professional visitors. This report clarifies the positive difference in potential economic impacts to San Rafael as a result of this ALF being built and operated versus a 36-unit, multi-family complex (example used here is 20 one-bedroom apartments and 16 two-bedroom apartments).

Comparing construction impacts:

- The ALF is 1.25 times the multi-family impacts on business revenues; and
- 1.4 times on jobs supported and state and local taxes.

Once the residents arrive and the ALF business operations begin:

- **The ALF is 3.5 times the business revenues in year one; by year 5 the ALF is 6 times;**
- **5 times the jobs supported initially and through year 5; and**
- **3 times the state and local taxes than the multi-family land-use option, by year 5 the ALF is 6 times.**

The ALF's business revenue, employment and tax benefits for the City of San Rafael are all larger as land-use choice than the 36-unit multi-family complex option. Also, comparing the financial feasibility of the two projects suggests taking the ALF option over the multi-family option based on projected return on capital. The economic impacts come in five ways:

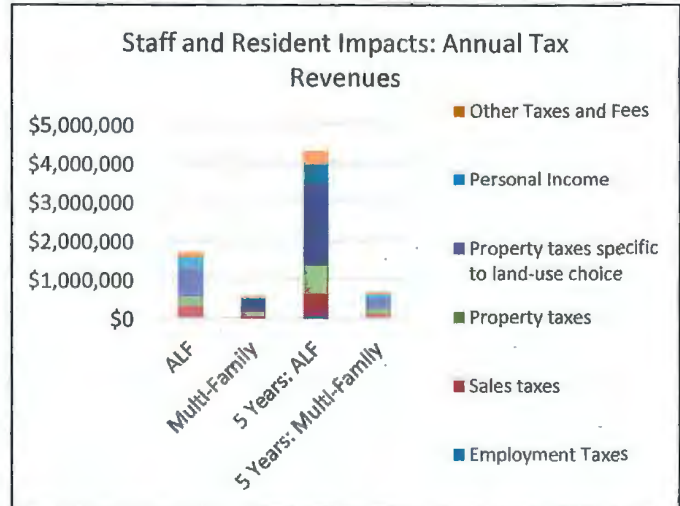
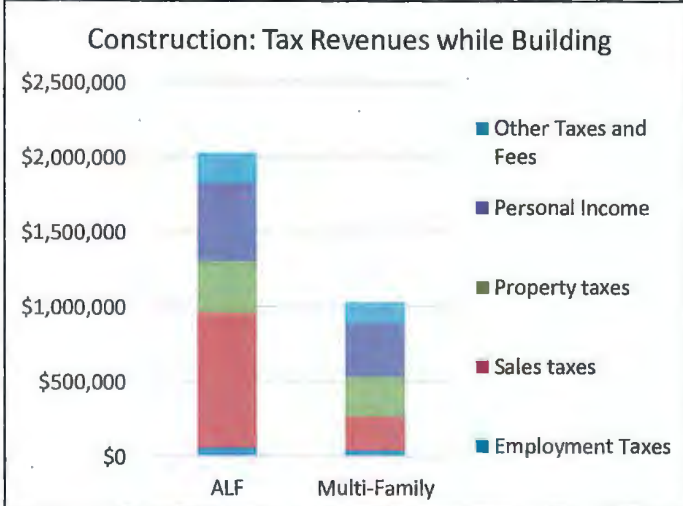
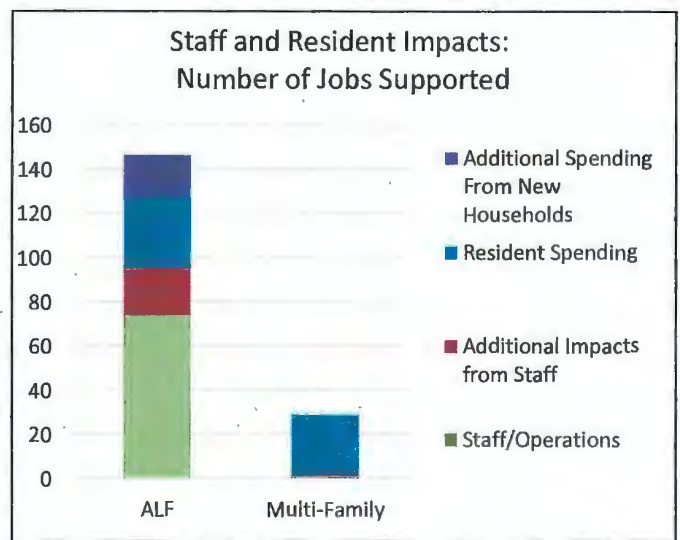
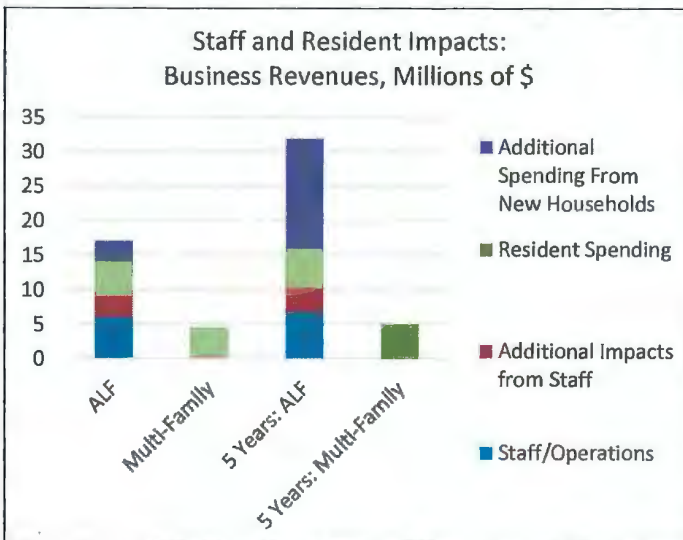
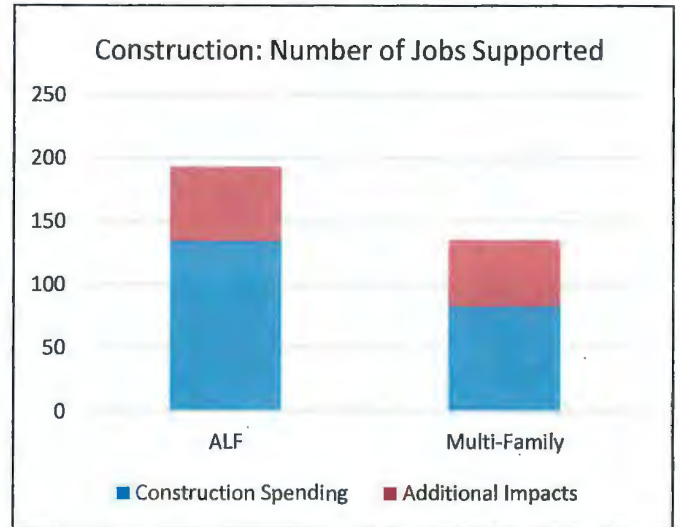
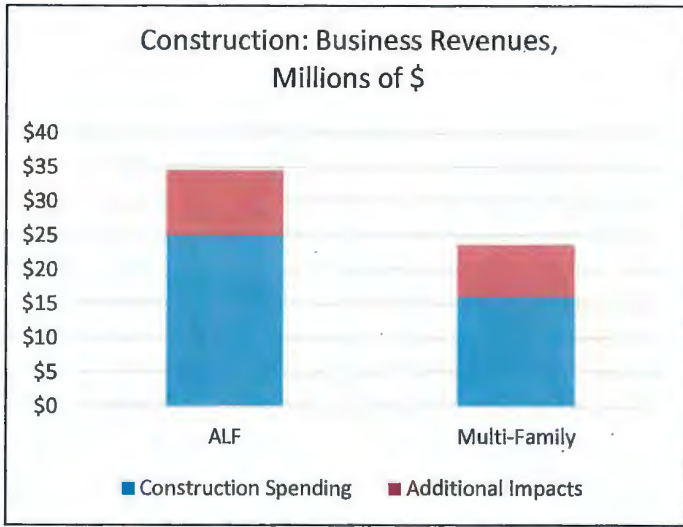
1. Construction Spending: \$25M vs 16M;
2. Operating revenues become worker salaries at the ALF: 75 FTE workers averaging \$65,000 per year for \$4.8M vs 1 FTE worker at the multi-family complex at \$40,000 per year;
3. Impacts on San Rafael: new resident, staff and visitor spending, as well as more housing units from alternative dwelling units (ADUs);
4. Revenue to city: fees and tax revenues from operations; and
5. Property Tax increase from transfer to new owners annually.

Below is a summary of the economic impacts by category shown in the report.

Summary Economic Impacts

- **Construction Spending**
 - **ALF:** \$25 million of spending supports another \$9.6 million in business revenues, 193 jobs during construction and \$2.03 million in state and local taxes during construction.
 - **Multi-Family:** \$16 million of spending supports another \$7.7 million in business revenues, 136 jobs during construction and \$1.03 million in state and local taxes during construction.
- **Economic Benefits**
 - ALF
 - Spending by the 88 residents and 75 staff spending and working in San Rafael supports \$17.2 million in new, annual spending throughout San Rafael, which supports approximately 147 workers and \$1.7 million annually in new state and local tax revenues (including business and family visitor spending); and
 - These figures include new households coming into sold home by ALF residents in San Rafael, bringing larger incomes and tax bases to the city, increasing the economic impacts from the ALF residents and staff alone.
 - Multi-Family
 - Spending by 62 residents support \$4.28 million in spending in San Rafael (including the residents' spending), supporting approximately 28 workers and \$322,000 annually in new state and local tax revenues; and
 - One FTE workers support another 0.6 workers, \$287,000 and \$271,000 in annual, new business and state/local tax revenue respectively for the multi-family units.

The following figures provide a detailed comparison of each phase and set of impacts.



Note: "Additional Spending from New Households" is the economic effect of new households due to ALF residents selling a home to move into the ALF with a new household purchasing that home.

Introduction

This report examines the economic impacts of a proposed, assisted living facility (ALF) for seniors at 800 Mission Avenue in San Rafael, California. This study was commissioned by Aegis Living. This project was recently approved by the city's planning commission and an appeal was filed on July 17, 2018. This report clarifies the potential economic impacts to San Rafael from this ALF being built and operating versus a 36-unit, multi-family complex (with 20 one-bedroom apartments and 16 two bedroom apartments). The economic impacts come in two stages with three sources:

- Stage 1, Construction: the ALF has a cost of \$25 million, while the 36-unit complex has an estimated cost of \$16 million in comparison;
- Stage 2, Operations and New Residents: the ALF is estimated to have 88 residents based on specific planning when at full capacity; based on the current people per household in San Rafael of 2.53 (2018 estimates from [California Department of Finance](#)) for all city households, we assume here there would be 62 residents at full capacity of the 36 units (1.5 people per one-bedroom unit and 2.0 people per two-bedroom unit); and
 - Workers: both projects are commercial real estate operations
 - The ALF has both living units and a workplace on-site with approximately 75 daily (seven days a week), full-time equivalent (FTE) workers; while
 - The multi-family complex has one (1) FTE worker.
 - Approximately 45 percent of ALF residents turn over annually; 90 percent are estimated to come from San Rafael, and sell a home to make the move to the ALF.
 - This brings new households into San Rafael that purchase the sold home
 - Increases in city business revenues, tax revenues and supported jobs come with these new households annually and compound over time due to ALF turnover.

We will see that the new residents and staff spending differences result in the ALF producing much higher economic activity than the multi-family, land-use option. In addition, visitors and their spending would likely be much higher from the ALF due to the ALF's residents predominately receiving visitors rather than traveling away from San Rafael.

Basic Ideas: Economic Impacts

There are broader effects of building and operating the ALF on San Rafael's economy concerning supported jobs, annual business revenues and new tax receipts. Economic impacts come in three "flavors" starting with the same way ripples come from throwing a rock into a still pond; the rock illustrates the ALF's operations, rippling out into the broader economy as additional economic impacts. Direct effects come from the ALF's daily operations. Indirect effects come from vendor relationships becoming broader spending. For example, the ALF may purchase cleaning services from a company. This vendor spending supports some portion of the cleaning company and its employees. This indirect spending becomes induced effects, including the cleaning company's employees spending their wages on groceries, medical visits, restaurant meals, and various other industries that have nothing to do with the ALF. Figure 1 shows the multiplier effect of these rounds of new spending in theory.

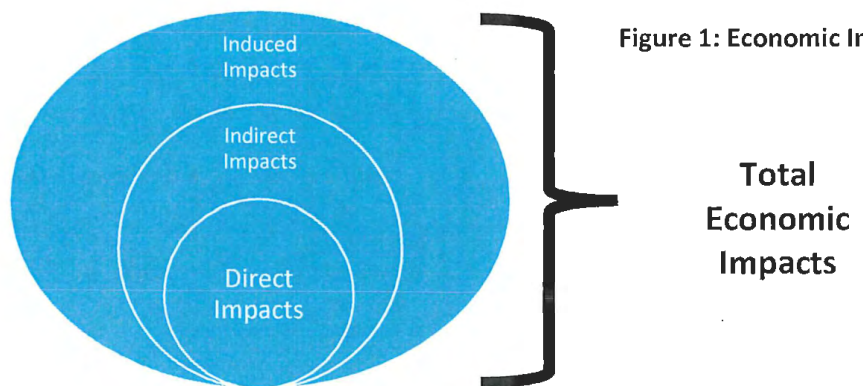


Figure 1: Economic Impacts

**Total
Economic
Impacts**

Direct Economic Impacts: Construction Spending

Commercial real estate construction has a period of time where the economic impacts are from building each facility before daily operations begin. The two project's estimated budgets are:

- ALF = \$25 million construction cost for 77 units;
- Multi-family units = \$16 million for 36 units.

Assuming these total construction costs are correct, the ALF has more land improvements and thus a larger assessed property value after construction. The IMPLAN® model has estimates of full-time equivalent employment levels on site for both types of projects and also the taxes and business revenues supported by the construction spending. The tables below provide the broader economic effects comparing the ALF to the multi-family unit complex. A glossary in the Appendix provides more explanations of some of the major industries affected below.

Figure 2: Employment Impacts, ALF and 36 Multi-Family Units, Full-Time Equivalents Supported

Industry	Direct	Indirect	Induced	Total	Multi-Family
Construction	134.7	-	-	134.7	83.1
Wholesale trade	-	5.1	1.2	6.2	3.3
Architectural, engineering, and related services	-	2.3	0.2	2.6	1.7
Real estate	-	0.9	1.3	2.3	1.8
Full-service restaurants	-	0.3	1.9	2.2	1.5
Limited-service restaurants	-	0.1	1.7	1.9	1.3
Truck transportation	-	1.3	0.2	1.5	1.1
Individual and family services	-	-	1.4	1.4	1.0
Landscape and horticultural services	-	1.1	0.3	1.4	0.8
Offices of physicians	-	-	1.3	1.3	0.9
All Others	-	11.2	26.8	38.0	39.5
Totals	134.7	22.3	36.3	193.5	136.0

Figure 3: Business Revenue Effects Annually, ALF and 36 Multi-Family Units Compared, 2018 Dollars

Industry	Direct	Indirect	Induced	Total	Multi-Family
Construction	\$25,000,000	\$0	\$0	\$25,000,000	\$16,000,000
Wholesale trade	\$0	\$1,324,400	\$300,900	\$1,625,300	\$855,300
Owner-occupied dwellings	\$0	\$0	\$909,100	\$909,100	\$619,500
Real estate	\$0	\$217,600	\$306,300	\$523,900	\$409,700
Architectural and related services	\$0	\$387,500	\$28,700	\$416,200	\$279,700
Truck transportation	\$0	\$224,300	\$44,100	\$268,400	\$192,200
Limited-service restaurants	\$0	\$13,200	\$195,100	\$208,300	\$140,200
Offices of physicians	\$0	\$0	\$208,100	\$208,100	\$141,600
Insurance carriers	\$0	\$31,600	\$167,200	\$198,800	\$138,000
Legal services	\$0	\$88,600	\$87,600	\$176,200	\$114,300
All Others	\$0	\$1,834,800	\$3,270,300	\$5,105,100	\$4,871,700
Totals	\$25,000,000	\$4,122,000	\$5,517,400	\$34,639,400	\$23,762,200

Figure 4: State and Local Tax Receipts Annually, ALF and 36 Multi-Family Units Compared, 2018 Dollars

Tax	ALF	Multi-Family
Employment Taxes	\$60,700	\$40,300
Sales taxes (resident, staff, visitor spending)	\$900,000	\$226,700
Property taxes	\$346,200	\$264,800
Personal Income	\$523,600	\$355,800
Other Taxes and Fees	\$196,100	\$143,000
Total State and Local taxes	\$2,026,600	\$1,030,600

Direct Economic Impacts: Spending Profiles Comparison

For the ALF, there are an estimated 88 residents with 62 residents in the multi-family complex as a comparison. The key parameter for spending profiles is annual income levels. Given the ALF residents are seniors, we assume these residents are 65 years or older. For the multi-family project, the ages could range from 0 to 100, most likely under 65 years of age. The American Community Survey (ACS) provides data on the median income levels for different age ranges in Marin County (see <http://factfinder.census.gov> for more information). For the five-year average between 2012 and 2016 (these are the latest data with the largest sample size), the following data exist for median income by age and then aggregate spending based on the number of living in each example from above:

- For ages 65 and older, the median income is \$71,604, becoming **\$6,301,152** annually; and
- For all households, the median income in Marin County is \$97,098, becoming **\$6,796,860** annually.

Comparing the economic impacts from construction and resident spending once the units are occupied, two differences are apparent. First, household spending only has an “induced” impact, as there are no ripple effects otherwise. Household spending is not employment or investment, thus the only effects are spending and what that spending supports in the local economy, the end of the ripple effects discussed above. Second, there are no data on how many of these new households and residents are going to originate in San Rafael. This analysis, comparing the ALF to the multi-family land-use option, assumes that new residents come from outside San Rafael for the multi-family project (i.e., the spending is new spending for San Rafael), where 55 percent of ALF residents come from outside San Rafael. As a result, new families come to San Rafael as local seniors move from their current homes in San Rafael to the ALF. From this activity, additional economic impacts come to the city economy.

- There is a reassessment of properties sold by new ALF residents to be, increasing property tax assessment values and tax revenue collected;
- These new households have relatively large incomes to afford the median price of approximately \$1,022,000 (Zillow Research median home prices) in San Rafael.
 - Assuming a 10% down payment on the home purchase and 25 percent of their gross income being spent on mortgage principal, interest, property taxes, and insurance, the household income of new owners would be approximately \$251,800.

Housing Turnover

It is estimated that 45 percent of the 88 ALF beds will turnover annually, and 90 percent of new ALF residents in units that turn over come from local homeowners who sell a home to move on to a facility such as this ALF. Annually, 36 homes in San Rafael are sold as ALF residents make this change, adding 36 new households to the city economy for an initial spending increase of $36 \times \$251,800 = \$9,064,800$ annually. There is a net effect for the seniors moving from their current home in San Rafael to the ALF, as their local spending remains local and does not come from the outside.

Alternative Dwelling Units (ADUs) are permanent homes established alongside of a main dwelling on a residentially-zoned parcel. Accessory dwelling units may be attached to or detached from the main home. It is estimated that 25 percent of newly-occupied homes will have ADUs on their property. These ADUs provide additional housing supply, and also contribute to the City of San Rafael’s regional housing needs assessment (RHNA) numbers.

Additional, annual property tax revenue increases also through rising, assessed property values due to these transfers; assuming the average property had a property tax roll basis of 50 percent of its sales price, the average increase to city property tax revenues generated would be just under \$200,000 annually over a 10-year period (\$182,000 in year 1 at 2018 median home prices and then escalating 2 percent per year as well as more home sales and assessment value augmentation). Over time, there are positive and compounding effects and change in the age and incomes of San Rafael residents.

Those that live in the new units may not be the only people that come to downtown San Rafael and spend money. Visitors to the ALF are likely to be coming on a daily basis and taking their relatives or friends to downtown for meals or outings where spending money is part of that travel. Hotel stays may also be increased; in the case of the multi-family units, visitors are also going to come. Because there is not a basis in the data or literature to compare visitor spending to each complex, this study does not estimate that amount specifically; if we think that visitors come on a per-resident basis, the ALF is likely to have more visitors than the multi-family units. The amount of spending depends on the frequency of visitors and also the visitor income levels. According to Aegis Living, assisted living facilities have an average stay of 2 years which provides some stability and some turnover for seniors in San Rafael. Using the IMPLAN® model, certain income levels have typical spending patterns in Marin County. The annual income levels do not include additional spending that may come from episodic changes in wealth. Figures 5 through 7 compare spending and jobs supported by these income levels.

Figure 5: Employment Impacts, ALF and 36 Multi-Family Units, Full-Time Equivalents Supported

Industry	ALF	Multi-Family
Full-service restaurants	2.8	1.6
Limited-service restaurants	2.5	1.4
Individual and family services	2.1	1.1
Real estate	2.1	1.1
Offices of physicians	2.0	1.1
Wholesale trade	1.7	0.9
Retail - Food and beverage stores	1.6	0.9
Retail - General merchandise stores	1.3	0.7
Retail - Internet retailers	1.3	0.7
Home health care services	1.1	0.7
All Others	34.2	17.9
Totals	52.7	28.1

Figure 6: Business Revenue Effects Annually, ALF and 36 Multi-Family Units Compared, 2018 Dollars

Industry	Total	Multi-Family
Owner-occupied dwellings	\$1,312,900	\$1,275,500
Real estate	\$456,800	\$531,700
Wholesale trade	\$436,900	\$473,800
Offices of physicians	\$315,000	\$361,300
Limited-service restaurants	\$288,400	\$315,700
Insurance carriers	\$247,200	\$267,500
Other financial investment activities	\$184,500	\$239,800
Full-service restaurants	\$175,200	\$191,700
Local government	\$165,800	\$194,600
Hospitals	\$165,100	\$212,200
All Others	\$4,293,200	\$221,400
Totals	\$8,041,000	\$4,285,200

Figure 7: State and Local Tax Receipts Annually, ALF and 36 Multi-Family Units Compared, 2018 Dollars

Tax	ALF	Multi-Family
Employment Taxes	\$13,800	\$7,400
Sales taxes	\$181,500	\$95,600
Property taxes	\$409,300	\$110,500
Personal Income	\$119,000	\$63,200
Other Taxes and Fees	\$85,800	\$45,300
Total State and Local taxes	\$809,400	\$322,000

The turnover of residents and assumed transfer of real estate to larger income households and larger property tax levels accelerates the ALF's positive effects on the city economy. What also differentiates the annual economic impacts of the ALF from a multi-family housing unit project is the number of daily workers. When adding the staffing levels necessary to operate the ALF, its economic

impacts are over 3 times the business revenues and state and local taxes of the multi-family option and over 4 times the jobs supported.

Direct Economic Impacts: ALF Staff Levels

The ALF acts like a multi-family complex and a business on the same property augmenting the economic impacts. With an average of 75 workers on-site seven days a week, the ALF's economic effects from daily operations far exceeds the multi-family land-use option. Further, the skill sets and wage levels are larger at the ALF, which include professional health-care providers as well as administrative staff. Like the spending profiles above, IMPLAN® estimates the economic impacts on additional business revenues, jobs supported and state and local taxes based on this difference; the totals are summarized in Figures 8 to 10. The multi-family maintenance job does not have any revenue associated (rent is paid under resident spending above).

Figure 8: Employment Impacts, ALF and 36 Multi-Family Units, Full-Time Equivalents Supported

Industry	Direct	Indirect	Induced	Total ALF	Multi-Family
ALF Operations/Multi-family Complex Operations	75.0	-	0.2	75.2	1
Real estate	-	1.9	0.5	2.4	0
Full-service restaurants	-	0.2	0.6	0.9	0
Limited-service restaurants	-	0.1	0.6	0.7	0
Wholesale trade	-	0.3	0.4	0.7	0.05
Management consulting services	-	0.6	0.1	0.7	0
Individual and family services	-	-	0.5	0.5	0
All other food and drinking places	-	0.2	0.3	0.5	0
Accounting, bookkeeping, and payroll services	-	0.4	0.1	0.5	0
Offices of physicians	-	-	0.4	0.4	0
All Others	-	4.6	8.7	13.3	0.55
Totals	75.0	8.3	12.4	95.8	1.6

Figure 9: Business Revenue Effects Annually, ALF and 36 Multi-Family Units Compared, 2018 Dollars

Industry	Direct	Indirect	Induced	Total ALF	Multi-Family
ALF Operations/Multi-family Complex Operations	\$5,970,600	\$0	\$17,700	\$5,988,200	\$0
Real estate	\$0	\$430,400	\$106,600	\$537,000	\$5,220
Owner-occupied dwellings	\$0	\$0	\$308,300	\$308,300	\$7,420
Wholesale trade	\$0	\$75,600	\$103,600	\$179,200	\$10,300
Insurance carriers	\$0	\$56,000	\$57,400	\$113,500	\$1,660
Management consulting services	\$0	\$76,500	\$9,300	\$85,800	\$840
Limited-service restaurants	\$0	\$11,300	\$67,100	\$78,300	\$1,700
Management of companies and enterprises	\$0	\$53,000	\$19,400	\$72,400	\$1,060
Offices of physicians	\$0	\$0	\$72,000	\$72,000	\$1,700
Local government	\$0	\$29,300	\$40,100	\$69,400	\$1,240
All Others	\$0	\$645,500	\$1,092,100	\$1,737,700	\$256,160
Totals	\$5,970,600	\$1,377,600	\$1,893,600	\$9,241,800	\$287,300

Figure 10: State and Local Tax Receipts Annually, ALF and 36 Multi-Family Units, 2018 Dollars

Tax	ALF	Multi-Family
Employment Taxes	\$26,000	\$480
Sales taxes	103,900	2,720
Property taxes*	540,400	262,180
Personal Income	162,300	4,260
Other Taxes and Fees	66,600	1,720
Total State and Local taxes	\$899,200	\$271,360

* Property taxes include the ongoing amount paid by the property owner under each land-use scenario. The estimated assessed value of the ALF is \$41.9 million once completed and the 36-unit multi-family complex is estimated to have an assessed value of \$25.9 million.

Feasibility of Construction

In simple terms, developers want a property's value after construction ends and operations begin to be larger than the construction costs. The post-construction value depends on the cash flows from the property's use to either provide a rate of return to the developer/owner, help pay debt off used to build the structure and perhaps purchase the land, or both. Net operating income helps summarize that value to the operator.

In the comparison data below provided by Aegis Living, the ALF is projected to have a value above its construction costs. Notice the line item called "Return on Capital" for each land-use option as the key item; the valuation figure is the ratio of net operating income to a capitalization rate, in this case 5 percent. The multi-family option has negative return, where the ALF is positive; for a developer, the ALF is the obvious choice here.

Multi-Family

TOTAL COST	\$24,436,750
Valuation, 5.0% Cap rate	\$21,541,274
Return on Capital %	-12%

ALF

TOTAL COST	\$34,226,900
Valuation, 5.0% Cap rate	\$38,050,320
Return on Capital %	+11%

Notice that the valuations are based on the same "cap rate" or capitalization rate. The ALF's net operating income at a 5 percent ratio to market value provides a 11 percent return to the developer (signaling the developer has an incentive to build), versus the 12 percent loss of capital in the multi-family land-use scenario at the same ratio versus the construction cost (disincentive to pursue the multi-family option).

Conclusions

The construction spending and day-to-day operations after construction and occupancy for the assisted living facility (ALF) in San Rafael, California far exceed the economic impacts of a 36-unit, multi-family complex. **The ALF economic impacts exceed the multi-family use option by 3 times in year one and over 6 times by year 5.** This makes intuitive sense for three reasons:

1. The ALF is an ongoing business, with daily operations and 75 workers versus 1 worker at a multi-family complex of 36 units;
2. New households purchase homes sold by local residents that become ALF residents, increasing economic activity and also increasing assessed property values compounding annually through ALF resident turnover; and
3. The facility is larger and has more needs that has the ALF construction budget at \$25 million versus \$16 million;
 - a. This difference also means the property tax that are ongoing from the operations are greater for the ALF than the multi-family facility because the assessed value is larger.

The spending profile of the 88 ALF residents also slightly exceeds that of the multi-family complex residents; the ALF residents have slightly lower per household income levels, but there are more residents. Below is a summary of the economic impacts by category shown in the report; in short, the ALF has larger economic impacts on San Rafael's economy during both construction and operations.

Summary Economic Impacts

- **Construction Spending**
 - ALF: \$25 million of spending supports another \$9.6 million in business revenues, 193 jobs during construction and \$2.03 million in state and local taxes during construction.
 - Multi-Family: \$16 million of spending supports another \$7.7 million in business revenues, 136 jobs during construction and \$1.03 million in state and local taxes during construction.
- **Economic Benefits**
 - ALF
 - Spending by the 88 residents and 75 staff spending and working in San Rafael supports \$17.2 million in new, annual spending throughout San Rafael, which supports approximately 147 workers and \$1.7 million annually in new state and local tax revenues (including business and family visitor spending); and
 - These figures include new households coming into sold home by ALF residents in San Rafael, bringing larger incomes and tax bases to the city, increasing the economic impacts from the ALF residents and staff alone and compounding annually through turnover at the ALF.
 - Multi-Family
 - Spending by 62 residents support \$4.28 million in spending in San Rafael (including the residents' spending), supporting approximately 28 workers and \$322,000 annually in new state and local tax revenues; and
 - One FTE workers support another 0.6 workers, \$287,000 and \$271,000 in annual, new business and state/local tax revenue respectively for the multi-family units.

The ALF's tax benefits for the City of San Rafael are larger also due to larger construction, resident spending and ALF staffing levels as a land-use choice. The sale of homes to new households as current residents move to the ALF provides even more economic benefits to San Rafael and the city government not there with the multi-family land-use choice. The compounding effect is another reason why the ALF's economic effects are much larger than the multi-family project. Comparing the two projects' financial feasibility points to a developer taking the ALF option over the multi-family option based on projected return on capital.

References and Glossary

Data on the ALF construction budget, resident and employment levels were provided by Aegis Living; the estimates for the multi-family units' construction budget was also provided by Aegis Living.

Aegis Living also provided estimates of resident turnover, ADU volume after home sales, local home sales that result from new residents coming to the ALF, and the pro forma data for feasibility of construction and subsequent valuations of each example use of land.

Zillow Research provides median home prices data for San Rafael, please see <https://www.zillow.com/research/data/> for more.

Data on people per household is from the California Department of Finance's estimates on housing and population as of January 1, 2018 (the latest data available as of August 5, 2018). For the data, see http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/documents/E-5_2018InternetVersion.xls

Median household income data come from the American Community Survey (ACS) through 2016. See <http://factfinder.census.gov> for more information.

The following definitions pertain to line items referenced here. Many of these definitions come from the US Bureau of Labor Statistics. Please see www.bls.gov for further details.

- **All other food and drinking places:** All additional restaurants not captured in limited- or full-service restaurants, including food trucks.
- **Full-service restaurants:** Establishments primarily engaged in providing food service to patrons who order and are served while seated, and pay after eating. These establishments may sell alcoholic beverages, provide take-out services, operate a bar or present live entertainment, in addition to serving food and beverages.
- **Individual and family services:** Establishments primarily engaged in providing one or more of a wide variety of individual and family social, counseling, welfare, or referral services, including refugee, disaster, and temporary relief services. This industry includes offices of specialists providing counseling, referral, and other social services.
- **Insurance carriers:** insurance agents and businesses
- **Limited-service restaurants:** any establishments whose patrons generally order or select items and pay before eating. Food and drink may be consumed on premises, taken out, or delivered to customers' locations.
- **Management consulting services:** businesses hired as consultants to help with company operations, decisions, and other aspects of running a business.
- **Management of companies and enterprises:** This sector comprises establishments primarily engaged in managing companies and enterprises and/or holding the securities or financial assets of companies and enterprises, for the purpose of owning a controlling interest in them and/or influencing their management decisions.
- **Medical offices:** health care outside hospitals, based on outpatient general care outside of rehabilitation or skilled nursing and residential health facilities.
- **Owner-Occupied Dwellings:** The income made by owners of homes they occupy, through rent payments or other savings due to home ownership.
- **Other financial investment activities:** This industry comprises establishments, not classified to any other industry, primarily engaged in providing, on a contract or fee basis, miscellaneous financial investment services, such as trust, fiduciary and custody services, and other investment services.
- **Retail – Internet Retailers;** These retail businesses do not have a storefront, but are locally headquartered and sell their goods and services through the internet or catalogs.
- **Wholesale Trade:** Businesses that connect goods producers to retailers, classic distribution and wholesale businesses, including Costco.

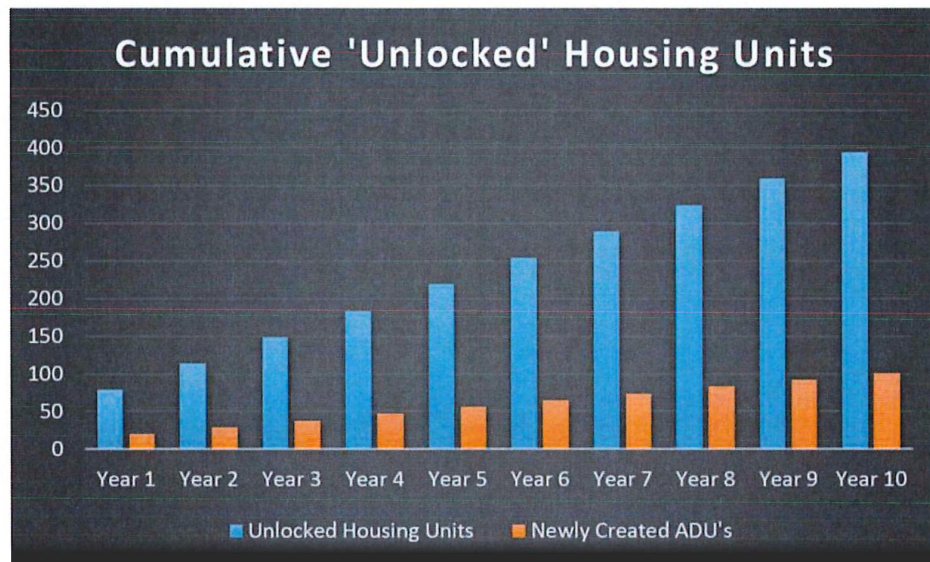
EXHIBIT #2

Senior Housing “Unlocks” Existing Housing Supply

- As residents move into the new project, existing inventory is opened up for new residents, “unlocking inventory.”
- 40% of San Rafael homes are occupied by residents 65 and older
- 40% of these households are single occupant
- 90% of these residents own the home and have low (Prop. 13) property tax basis and considerable locked up equity
- Average San Rafael Home values are over \$1,000,000
- New home owners purchase the vacated home establishing a liquidity event for Seniors and increasing property tax base at new market value. (This increases the City’s property tax base.)
- New residents make improvements to home employing various trades. Redecorating and upgrades are made with local merchants and suppliers.
- Approximately 40% to 45% of resident at Aegis Communities will turnover each year.
- It is estimated 25% of newly transacted homes will offer ADU’s as additional housing units.

In 10 Years, an estimated:

- **394 Homes will be ‘unlocked.’**
- **101 new ADU’s will be created**



On average, 45% of the 88 residents turnover annually. Approximately 90% own their home.

25% of newly transacted homes will create ADU's



August 20, 2018

San Rafael City Council
City Hall
1400 Fifth Avenue
San Rafael, CA 94901

Re: Aegis Living in San Rafael – appeal hearing

Members of the San Rafael City Council,

My name is John Carpentier, Executive VP of Operations for Aegis. I was previously the General Manager of Aegis Corte Madera, and am familiar with the aging population of Marin County. I've been asked to provide some data as to how the residents, families, staff and visiting professionals contribute to the vitality of the neighborhoods where Aegis Senior Living communities are located.

- **Residents' involvement with the community**
 - This building is an 'open campus,' in which residents frequently visit, utilize and interact with the community.
 - Residents frequently interact with, and visit, schools and other events in which to share their life experiences.
 - As part of our standard operation, we provide multiple group outings (shuttle) each week. We regularly go on local shopping trips, dining at local restaurants, attending local events, engaging with the community, visiting local tourist attractions, and group walks in the local area.
 - We offer our residents private transportation services for supporting our residents to medical appointments, private outing for shopping, dining, entertainment, visiting friends, etc.
 - When families come to visit our residents they very often take them shopping and out to have a nice local meal. Further, we find that some of our family members come from outside the local area and stay at local hotels.
 - This Project's Downtown location lends itself well to numerous Downtown residents and employees visiting their loved ones more frequently. For example, Downtown employees can walk over to the facility and take their loved one out for lunch, students can walk to visit their loved ones, etc.
- **Community Rooms:**
 - We provide key amenities inside the community, such as a theater-like movie room, activity room, dining room and salon. This is a convenience for residents, but most still enjoy visiting nearby services, eateries and shops with their visiting families and friends.
 - However our door is not just for exiting, it's also an entrance. Our communities are designed as places where family and friends will want to visit. In addition to residents

and family members enjoying these spaces, we regularly offer these spaces to the greater Community to host local group meeting (realtor groups, Lions Club, kid's reading club, local charities, educational gatherings, support groups, hosting as an election center, Condominium Association, etc.). We are a meaningful part of the community's vitality and diversity.

- We have scores of events open to the greater public that involve the local Community ranging from entertainment and educators to hosting local groups that want to support our residents (concerts by local groups (high school, Girl Scouts), plays, school art intergenerational programs, reading programs, etc.). Recently we had a group of school children visit our Issaquah community for a family reading program. The topic was courage, and there were three WWII vets who had much wisdom to share with the children about the complexities of courage.
- **Staff:**
 - We are recognized as a top 50 best place to work as voted by our employees in Glassdoor and are the only people in our industry to attain such a milestone.
 - Staff often use their workplace as a focal point for shopping for their personal needs. They regularly go out to eat in local restaurants or cafes.
 - In addition to the staff, we have a lot of professional services in the Community that bring in professionals to work with our residents. In any given weekday, it is not uncommon to see numerous local professionals visit our Community throughout each day. This professionals range from Massage Therapist, Medical Doctors, Home Health Agencies, hair stylist, hospice agencies, etc. These individuals typically have meals at local restaurants, etc.
 - Employee first – Our company is an “employee first” company. We believe happy employees will result in an enjoyable culture and excellent care for residents. Our most recent initiative is to provide financial contribution for employee transportation. This will be companywide, and will be rolled out soon (well before San Rafael opens). Details are being hammered out, but it will be meaningful as this is a recognized need for many Aegis employees.

Many have ideas of assisted living communities that belong in the 19th and 20th centuries. Our clientele demands and deserves better, and that starts with providing them with a location that serves their desire to remain engaged in the communities they helped build. It also serves the community better, which will benefit from the diversity and civic energy inherent to a community brimming with individuals dedicated to living fully. One's pace of walking does not equate to one's contribution to community.

I trust you'll agree that the downtown can be a place for many uses and people, including a great place for seniors. We at Aegis look forward to operating the Aegis of San Rafael in the beautiful new community designed specifically for your community on the outside, and for quality life experiences to occur on the inside.

Warmly and respectfully,

John Carpentier
Executive VP of Operations
Aegis Senior Communities

EXHIBIT 4

COMMERCIAL REAL ESTATE SERVICES



Noah M. Reischmann
Vice President

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August 24, 2018

Steve Stafford
City of San Rafael - Planning Department
1400 Fifth Avenue
San Rafael, 94091

Re: Proposed Aegis Senior Housing Development – Financing Availability Letter
Mission Avenue & Lincoln Avenue, San Rafael, CA

Dear Mr. Stafford:

CBRE Capital markets specializes in senior housing finance, and we are providing this letter as confirmation that construction financing and permanent financing are indeed available for the proposed senior housing development located at the corner of Mission avenue and Lincoln avenue, in downtown San Rafael.

CBRE finances many senior projects nationwide which mirror the proposed development scope. The Aegis Senior Community has been well designed for the market in San Rafael. There is considerable demand and the senior market is expanding rapidly.

Currently in San Rafael, there is inadequate supply of senior housing while the population is aging and in need of professional health services. Financing for the Aegis development is readily available from institutional lenders.

We understand the development site was originally slated for 36 multifamily units. Due to the inefficient design, and high development costs in the region, we do not believe the multifamily project is economically feasible and the cost to build the project greatly exceeds the market value. The typical lending criteria and limitations on construction financing would prevent developers from moving forward with this project. Based on all considerations above we would not recommend a 36-unit multifamily project at this development site.

Best Regards

Noah M. Reischmann
Vice President
CBRE HMF, INC.

EXHIBIT #5

Public Transportation Schedule- 800 Mission Avenue San Rafael

The anticipated employee shift schedule was provided to Planning Staff. A simple review of the public transportation time tables show that timing and frequency of these shift schedules are accommodated by numerous modes and routes of public transportation, departing and arriving within a few blocks of the project:

SMART Train:

First Southbound Train arrives in San Rafael at 5:26AM
Last Northbound Train departs San Rafael at 8:35PM

Golden Gate Transit: *Highway 101 Corridor*

First GGT bus from Santa Rosa arrives in San Rafael at 5:10AM
Last northbound bus departs San Rafael at 1:15AM

Golden Gate Transit: *East Bay Corridor (Route 40)*

First GGT bus from El Cerrito arrives in San Rafael at 6:25AM
Last Route 40 bus departs San Rafael at 10:00PM

These off-peak shift changes reduce traffic volumes, and can be serviced by numerous modes of public transportation.

EXHIBIT 6

PARKING DEMAND- 800 Mission Avenue

The Project does not use the hotel parking code as noted in the appeal letter.

Both The Operator, who operates nearly thirty urban and suburban communities, and the Traffic Engineer, noted that this project only requires a peak demand of 31 parking spaces. The submitted parking study surveyed parking demand of similar assisted facilities, and resulted in a parking demand of 31 parking spaces based on this project's unit count.

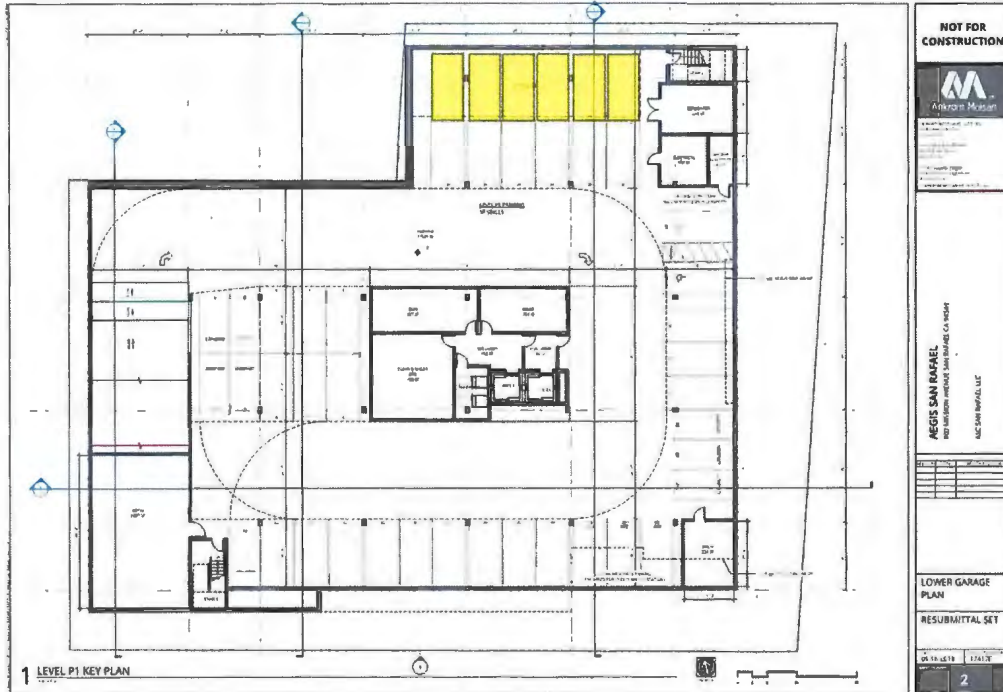
The demand for 31 parking spaces includes all user groups: residents, staff, visitors, and visiting doctors, etc. The qualitative analysis of the parking demand for this project results in an even lower parking demand due to the prevalent amount of public transportation in close proximity to the site.

Planning Staff misspoke at the July 10th hearing, noting that the project generates a demand for 31 parking spaces, and that the 9 net spaces would be for visitors. As noted above the demand of 31 spaces includes all user groups.

The Municipal Code calculates a parking requirement of 42 parking spaces. The building has 46 parking spaces; 6 of which are operated as tandems to be utilized by staff. Current City Code does not allow for tandems, therefore the shown parking of 40 spaces required a parking modification to be requested (See attached Parking Graphic). Recent discussions with the Community Development Director and Planning Staff, note the parking code is expected to change in the near future, and will allow for tandem parking spaces to be permitted by Municipal Code. Thus, the project will have 46 parking spaces, well in excess of the building's demand and the City's requirement.

LOWER LEVEL PLAN

6 Additional Parking Spaces highlighted in yellow



Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
Three Embarcadero Center, 12th Floor | San Francisco, CA 94111-4074
Telephone: 415.837.1515 | Facsimile: 415.837.1516
www.allenmatkins.com

David H. Blackwell
E-mail: dblackwell@allenmatkins.com
Direct Dial: 415.273.7463 File Number: 235898-00048/SF1088081.01

August 29, 2018

Hon. Gary O. Phillips, Mayor
and City Council Members
City of San Rafael
1400 Fifth Avenue, Room 203
San Rafael, CA 94901

**Re: Appeal of Planning Commission's July 10 Approval
800 Mission Avenue
September 4, 2018 City Council Meeting**

Dear Mayor Phillips and Council Members:

This firm represents project applicant ML Seven Capital Partners, LLC, and submits this correspondence on its behalf with regard to the above-referenced appeal. The appeal challenges the Planning Commission's approval of a Use Permit and an Environmental and Design Review Permit to allow the construction of a 77-unit senior facility with a garage parking on a vacant site in downtown San Rafael (Project). Rather than addressing the deficiencies in the legal and factual arguments raised by appellants, which should be addressed in the Staff Report, this correspondence addresses two statutes that this Council should carefully consider when hearing the appeal.

I. Housing Accountability Act

The state Housing Accountability Act (HAA) (Gov. Code § 65589.5), which is frequently referred to as the "Anti-NIMBY Law," is intended to limit the ability of local governments to reject or make infeasible housing developments without a thorough analysis of the economic, social, and environmental effects of the action. Gov. Code § 65589.5(b).

Under the HAA, in order for a local agency to disapprove a housing development project, it must base its decision upon written findings supported by a preponderance of the evidence on the record, none of which apply here. Gov. Code § 65589.5(j)(1). The phrase "disapprove a housing development project" includes disapproving a project application, including any required land use approvals or entitlements necessary for the issuance of a building permit. Gov. Code § 65589.5(h)(5).

The Project constitutes a housing development project within the meaning of Section 65589.5(h) of the HAA, thus the City Council has a mandatory duty to comply with the HAA in reviewing and taking action on the Project. Subdivision (j) of the HAA severely restricts the ability of a local agency to deny a qualified housing project:

When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

- (1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- (2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

Gov. Code § 65589.5(j).

Clearly, none of these findings can be made with regard to the Project, nor is there any evidence in the record demonstrating a specific adverse impact on the public health or safety that would meet the criteria of Section 65589.5(j)(1).

If a court determines that the local agency violated subdivision (j), the court: may direct the local agency to comply with the HAA; may direct it to approve the project if it determines the agency acted in bad faith; shall award attorneys' fees and costs; and may impose fines and multiply those fines under certain circumstances. Gov. Code § 65589.5(k)(1)(A).

II. Fair Employment and Housing Act

The state Fair Employment and Housing Act (FEHA) (Gov. Code §§12900 et seq.) makes it unlawful to "otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, source of income, disability, genetic information, or national origin." Gov. Code §12955(k). Government Code section 12955(l) provides that it shall be unlawful:

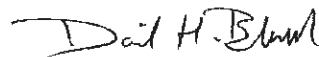
To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Although appellants refer to various development standards and fees, the crux of their appeal is that the property should not be made available to seniors because they would not promote the downtown as well as younger persons. Therefore, granting the appeal would constitute discrimination against seniors and would "make housing opportunities unavailable" to seniors, in violation of Section 12955(1).

The judicial remedies for housing discrimination may include actual and punitive damages, injunctive relief, and attorneys' fees. Gov. Code § 12980 et seq.

In sum, should this Council ignore City Staff and the Planning Commission and grant the appeal, thereby preventing the development of a long-vacant lot into an important facility for the City's senior population, such an action would contravene state law and expose the City to legal challenges and consequences.

Very truly yours,



David H. Blackwell

cc: Rob Epstein, City Attorney

Marin Independent Journal

4000 Civic Center Drive, Suite 301
San Rafael, CA 94903
415-382-7335
legals@marinij.com

2070419

CITY OF SAN RAFAEL
CITY OF SAN RAFAEL
CITY CLERK, ROOM 209
1400 FIFTH AVENUE, SAN RAFAEL, CA 94901
SAN RAFAEL, CA 94915-1560

PROOF OF PUBLICATION (2015.5 C.C.P.)

STATE OF CALIFORNIA County of Marin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25566; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

08/17/2018

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated this 17th day of August, 2018.



Signature

PROOF OF PUBLICATION

Legal No. **0006206305**

CITY OF SAN RAFAEL

NOTICE OF PUBLIC HEARING

You are invited to attend the City Council hearing on the following project:

DATE/TIME/PLACE:

Tuesday, September 4, 2018 at 7:00 P.M.
City Hall Council Chambers, 1400 Fifth Avenue,
San Rafael, CA 94901

PROJECT:

800 Mission Ave. (formerly 1203 and 1211 Lincoln Ave.) - Appeal of the Planning Commission's July 10, 2018 Conditional Approval of a Use Permit (UP17-030) and an Environmental and Design Review Permit (ED17-090) allowing the construction of a new, 88-bed, assisted living facility with garage parking and associated site improvements on two vacant Downtown parcels; APN: 011-184-08 & -09; Multifamily Residential - High Density (HR1) District; ML Seven Capital Partners, LLC, owner; Geoff Forner, applicant, Brandy Wilson, Kay Law and Susan Adler, appellants; File No.: AP18-002.

State law (California Environmental Quality Act) requires that this project be reviewed to determine if a study of potential environmental effects is required. It has been determined that this project will not have a significant effect on the environment and no environmental review will be completed. This project qualifies for a Categorical Exemption from the provisions of the California Environmental Quality Act Guidelines under 14 CRR Section 15305 (a) (Class 5; Minor Alterations to Land Use Limitations), 15332 (Class 32; In-Fill Development Project). If the City Council determines that this project is in an environmentally-sensitive area, further study may be required.

WHAT WILL HAPPEN:

You may comment on the project. The City Council will consider all public testimony and decide whether to grant or deny the appeal of the project approvals.

IF YOU CANNOT ATTEND:

You may send a letter to Lindsay Lara, City Clerk, City of San Rafael, P.O. Box 151560, San Rafael, CA 94915-1560. You may also hand deliver a letter to the City Clerk prior to the meeting.

FOR MORE INFORMATION:

Contact **Steve Stafford**, Project Planner at **(415) 458-5048** or **steve.stafford@cityofsanrafael.org**. You may also come to the Planning Division office, located in City Hall, 1400 Fifth Avenue, to look at the file for the proposed project. The office is open from 8:30 a.m. to 4:30 p.m. on Monday, Tuesday and Thursday and 8:30 a.m. to 1:30 p.m. on Wednesday and Friday. You can also view the staff report after 5:00 p.m. on the Friday before the meeting at <http://www.cityofsanrafael.org/meetings>

SAN RAFAEL CITY COUNCIL

/s/ Lindsay Lara
Lindsay Lara
CITY CLERK

NO. 1090 AUGUST 17, 2018

NOTICE OF PUBLIC HEARING – CITY COUNCIL

You are invited to attend the City Council hearing on the following proposed project:

PROJECT: 800 Mission Ave. (formerly 1203 and 1211 Lincoln Ave.) - Appeal of the Planning Commission's July 10, 2018 Conditional Approval of a Use Permit (UP17-030) and an Environmental and Design Review Permit (ED17-090) allowing the construction of a new, 88-bed, assisted living facility with garage parking and associated site improvements on two vacant Downtown parcels; APN: 011-184-08 & -09; Multifamily Residential – High Density (HR1) District; ML Seven Capital Partners, LLC, owner; Geoff Forner, applicant; Brandy Wilson, Kay Law and Susan Adler, appellants; File No.: AP18-002.

State law (California Environmental Quality Act) requires that this project be reviewed to determine if a study of potential environmental effects is required. It has been determined that this project will not have a significant effect on the environment and no environmental review will be completed. This project qualifies for a Categorical Exemption from the provisions of the California Environmental Quality Act Guidelines under 14 CRR Section 15305 (a) (Class 5; Minor Alterations to Land Use Limitations), 15332; (Class 32; In-Fill Development Project). If the City Council determines that this project is in an environmentally-sensitive area, further study may be required.

MEETING DATE/TIME/LOCATION: Tuesday, September 4, 2018, 7:00 p.m. City Council Chambers, 1400 Fifth Ave at D St, San Rafael, CA

FOR MORE INFORMATION: Contact **Steve Stafford**, Project Planner at (415) **458-5048** or steve.stafford@cityofsanrafael.org. You may also come to the Planning Division office, located in City Hall, 1400 Fifth Avenue, San Rafael, CA 94901 to look at the file for the proposed project. The office is open from 8:30 a.m. to 4:30 p.m. on Monday, Tuesday and Thursday and 8:30 a.m. to 1:30 p.m. on Wednesday and Friday. You may also view the staff report after 5:00 p.m. on the Friday before the meeting at <http://www.cityofsanrafael.org/meetings>

WHAT WILL HAPPEN: You may comment on the project. The City Council will consider all public testimony and decide whether to grant or deny the appeal of the project approvals.

IF YOU WANT TO COMMENT: You may send written correspondence Lindsay Lara, City Clerk, City of San Rafael, P.O. Box 151560, San Rafael, CA 94915-1560. You may also hand deliver a letter to the City Clerk prior to the meeting.

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

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

Sign Language and interpretation and assistive listening devices may be requested by calling (415) 485-3085 (voice) or (415) 485-3198 (TDD) at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

Public transportation to City Hall is available through Golden Gate Transit, Line 22 or 23. Para-transit is available by calling Whistlestop Wheels at (415) 454-0964.

Steve Stafford

From: Lindsay Lara
Sent: Wednesday, August 29, 2018 11:20 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Wednesday, August 29, 2018 11:19 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Kathryn Gaviglio Kenney

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Wednesday, August 29, 2018 11:34 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Wednesday, August 29, 2018 11:24 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Stephen Kenney

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via 800 Mission Avenue)

Steve Stafford

From: Lindsay Lara
Sent: Wednesday, August 29, 2018 10:34 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Wednesday, August 29, 2018 10:03 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Leslie Ruhland

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Wednesday, August 29, 2018 10:34 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Wednesday, August 29, 2018 10:33 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Paula Beritzhoff

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Paula B. [REDACTED]
Sent: Wednesday, August 29, 2018 10:50 AM
To: Lindsay Lara; Steve Stafford
Cc: [REDACTED]
Subject: 800 Mission Avenue

Greetings –

I am writing to indicate my support for the proposed senior housing project at 800 Mission Avenue in San Rafael. My office is just up the street (1368 Lincoln Avenue), so I have been driving by the empty (and unattractive) lot almost every day for years – and I think it would be a terrific location for senior housing. The proposed project is beautiful and would add a much-needed upgrade to the appearance of that area, while providing much-needed additional senior housing for our aging Marin population. In fact, if the project is approved, I hope to have my mother live there one day! How nice for seniors to be able to walk to downtown San Rafael to enjoy restaurants, shopping, Thursday farmers markets, SMART train access, and all that San Rafael has to offer.

Thanks for listening, and please know that you have my support and that of my family.

Paula Beritzhoff

Paula Beritzhoff | nitespecs® & chefspecs®
[REDACTED]
[REDACTED]
[REDACTED]

Steve Stafford

From: Lindsay Lara
Sent: Wednesday, August 29, 2018 10:51 AM
To: Steve Stafford
Subject: FW: 800 Mission Avenue

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Paula B. [REDACTED]
Sent: Wednesday, August 29, 2018 10:50 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>; Steve Stafford <Steve.Stafford@cityofsanrafael.org>
Cc: [REDACTED]
Subject: 800 Mission Avenue

Greetings –

I am writing to indicate my support for the proposed senior housing project at 800 Mission Avenue in San Rafael. My office is just up the street (1368 Lincoln Avenue), so I have been driving by the empty (and unattractive) lot almost every day for years – and I think it would be a terrific location for senior housing. The proposed project is beautiful and would add a much-needed upgrade to the appearance of that area, while providing much-needed additional senior housing for our aging Marin population. In fact, if the project is approved, I hope to have my mother live there one day! How nice for seniors to be able to walk to downtown San Rafael to enjoy restaurants, shopping, Thursday farmers markets, SMART train access, and all that San Rafael has to offer.

Thanks for listening, and please know that you have my support and that of my family.

Paula Beritzhoff

Paula Beritzhoff | nitespecs® & chefspecs®
[REDACTED]
[REDACTED]
[REDACTED]

Steve Stafford

From: Lindsay Lara
Sent: Wednesday, August 29, 2018 9:24 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Wednesday, August 29, 2018 9:23 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Lori Byer

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 3:54 PM
To: Steve Stafford
Subject: FW: Downtown Senior Housing

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: John R Gaulding [REDACTED]
Sent: Tuesday, August 28, 2018 3:50 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Downtown Senior Housing

To the members of the San Rafael City Council:

As a relatively recent resident of Aegis Living in Corte Madera, I can speak with some authority to the issue of organized seniors embedded in downtown environments.

The first reaction of the newly transferred senior is isolation. Most seniors at the early part of the age curve have led active and contributing lives with families, friends, and increasingly colleagues as our elders experience the need or the pleasure of working into their 70's and even 80's. For these individuals, there is not only experience but desire and genuine expertise and mentorship that is freely given and received with gratitude by their new "extended family."

For those who doubt or discredit such contributions, I can only speculate that they have never had the experience of sudden dislocation, loss of close friends and family relationships, and the pure joy of doing something valuable and appreciated by the senior and extended communities.

I strongly urge the City Council to spend some time on the ground of senior communities in the area and try to extrapolate to the point of empathy before bringing their collective judgement to bear on this important issue.

As an aside, I have spent over 25 years in service to Dominican University as a trustee and now as Chairman Emeritus. We have an embedded community with our Nuns who tend to be senior in their demographics. The contributions they make throughout the County and with thousands of young people is immeasurable. Their spiritual leadership makes us all better members of society, and their mentorship in the area of productive and valuable senior living is without peer. A meaningful model I would think for those of us who seek new ways to contribute from the vantage point of our new assisted living perch.

Please take care as you make choices that affect so many of us.

John R. Gaulding

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 5:05 PM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Tuesday, August 28, 2018 4:58 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Lawrence Higgins

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))



Dear City Council,

I am writing in regards to the 800 Mission Avenue Project. As I am the most impacted neighbor; owning the large house just north of the project (1215 Lincoln), I wanted to reach out to state my strong support of the project being appealed.

This is a gorgeous building at an iconic corner within the City. It is not suitable for the high-density housing being requested by the appeal. Please deny this appeal and direct the appellants to focus their efforts to advocate for 6-story multi-family housing in the Downtown Core. NOT ON MISSION AVENUE!

Thank you,

David Grabham

Digitally signed by David Grabham
DN: C=US, E=dgrabm@gfamilyconstruction.com,
O=G Family Construction, CN=David Grabham
Date: 2018.08.28 14:16:54 -07'00'

David Grabham
CEO G Family Construction

Mary Higgins | MaryHiggins webdesign

San Rafael, CA 94903

August 28, 2018

Dear San Rafael City Council,

I am a resident of San Rafael and a San Rafael business owner. I am writing to note my support of the proposed Assisted Senior Housing project.

I was raised in Lucas Valley and then I raised my own family here too. My parents have lived here for over 60 years and they recently moved into assisted living. This opened my eyes to the serious shortage and issue of waitlists for senior care in the area. It is SO important for seniors, especially those who have lived here for most of their lives, to have a place to grow old and be taken care of in their own neighborhood.

Seniors would be a great benefit to local business. When we spend time with my parents we go shopping, out to lunch, get our nails done, and I am confident that these seniors would do this in the downtown area.

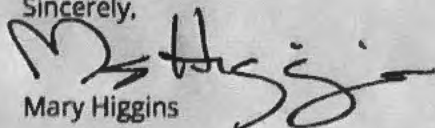
I feel the proposed Assisted Senior Housing Project is needed in Downtown, and this site would be an ideal location. This building design is beautiful and supports San Rafael's Mission Culture. It also provides a nice gateway to Downtown on Mission Ave.

Senior housing communities minimizes traffic, noise and parking-issues, so it is an ideal use. Downtown San Rafael businesses, restaurants, and other local services will provide great amenities to the senior residents and their families.

Please deny the appeal and support this project. Senior Housing is a great benefit to our community and we need it now!

Sincerely,

Mary Higgins



Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 2:30 PM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Tuesday, August 28, 2018 2:29 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Schyler Ruhland

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 1:41 PM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Tuesday, August 28, 2018 12:57 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Remi Zimmerman

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 10:02 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Monday, August 27, 2018 3:44 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Steve Montz

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 10:02 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Monday, August 27, 2018 7:07 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Michael Hicks

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

{Sent via [800 Mission Avenue](#)}

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 10:01 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Monday, August 27, 2018 10:04 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Kavita Bester

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via 800 Mission Avenue)

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 10:02 AM
To: Steve Stafford
Subject: FW: 800 Mission Avenue Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: DAVID JAMES [REDACTED]
Sent: Tuesday, August 28, 2018 9:30 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: 800 Mission Avenue Support

Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

As the owner of DAVID JAMES. we are already beyond busy with clients, so this has no bearing of potential financial gain, and all to do with the fact that we have a serious lack of senior housing, and I believe that Aegis is a quality company that runs a great program.

Thanks for your time,
David Karvasales

DAVID JAMES.

600 Fillmore Street | San Francisco | CA 94117
[REDACTED]
[REDACTED]
[REDACTED]

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 11:16 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Tuesday, August 28, 2018 11:12 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Eva Wilson

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 11:16 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Tuesday, August 28, 2018 10:21 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Phil Kranenburg

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via 800 Mission Avenue)

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 11:23 AM
To: Steve Stafford
Subject: FW: Senior Housing Proposal - 800 Mission Av.

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Michael Miller [REDACTED]
Sent: Tuesday, August 28, 2018 6:19 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Senior Housing Proposal - 800 Mission Av.

Hi, My office has been situated at the corner of Mission Av & Lincoln since 1991. Over the last 25+ years the property at 800 Mission has been a dilapidated low-income apartment complex then a vacant lot for our many homeless to enjoy.

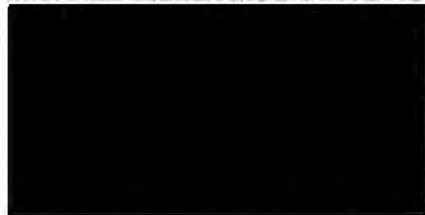
The new senior housing community proposal would be the best possible land use for this gateway corner into our city. This facility would provide much needed senior care in Marin county. I am very supportive for the council's approval for this neighboring properties' development.

Please take care of our Seniors!

Sincerely,

R. Michael Miller

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www.michaelmillerinsurance.com

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 11:52 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Tuesday, August 28, 2018 11:32 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Naia Vermuelen

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 11:52 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara

Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Tuesday, August 28, 2018 11:35 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Lauren Alvarado

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Tuesday, August 28, 2018 11:52 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara

Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Tuesday, August 28, 2018 11:42 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Matthew Ranaudo

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Sunday, August 26, 2018 9:36 PM
To: Steve Stafford
Subject: Fwd: Form Submission - Support

Lindsay Lara's iPhone

Begin forwarded message:

From: Squarespace <no-reply@squarespace.info>
Date: August 26, 2018 at 9:34:42 PM PDT
To: lindsay.lara@cityofsanrafael.org
Subject: Form Submission - Support
Reply-To: [REDACTED]

Name: David Berkompas

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Sunday, August 26, 2018 9:36 PM
To: Steve Stafford
Subject: Fwd: Form Submission - Support

Lindsay Lara's iPhone

Begin forwarded message:

From: Squarespace <no-reply@squarespace.info>
Date: August 26, 2018 at 12:32:20 PM PDT
To: lindsay.lara@cityofsanrafael.org
Subject: Form Submission - Support
Reply-To: [REDACTED]

Name: Rob Terheyden

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [*800 Mission Avenue*](#))

Steve Stafford

From: Lindsay Lara
Sent: Sunday, August 26, 2018 9:36 PM
To: Steve Stafford
Subject: Fwd: Form Submission - Support

Lindsay Lara's iPhone

Begin forwarded message:

From: Squarespace <no-reply@squarespace.info>
Date: August 26, 2018 at 12:31:07 PM PDT
To: lindsay.lara@cityofsanrafael.org
Subject: Form Submission - Support
Reply-To: [REDACTED]

Name: Ryan Ewert

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Sunday, August 26, 2018 9:36 PM
To: Steve Stafford
Subject: Fwd: Form Submission - Support

Lindsay Lara's iPhone

Begin forwarded message:

From: Squarespace <no-reply@squarespace.info>
Date: August 26, 2018 at 12:27:57 PM PDT
To: lindsay.lara@cityofsanrafael.org
Subject: Form Submission - Support
Reply-To: [REDACTED]

Name: Alex Salai

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))

Steve Stafford

From: Lindsay Lara
Sent: Monday, August 27, 2018 9:01 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Monday, August 27, 2018 8:44 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Leo Castro

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via 800 Mission Avenue)

Steve Stafford

From: Lindsay Lara
Sent: Monday, August 27, 2018 9:01 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Monday, August 27, 2018 8:49 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Seima Moloji

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via 800 Mission Avenue)

Steve Stafford

From: Lindsay Lara
Sent: Monday, August 27, 2018 3:28 PM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Monday, August 27, 2018 3:18 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Susan Miller

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

{Sent via 800 Mission Avenue}

Steve Stafford

From: Lindsay Lara
Sent: Monday, August 27, 2018 3:29 PM
To: Steve Stafford
Subject: FW: New Senior housing project 800 Mission in San Rafael

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

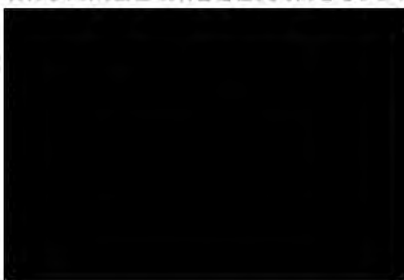
From: Sue Miller [REDACTED]
Sent: Monday, August 27, 2018 3:29 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Cc: [REDACTED]
Subject: New Senior housing project 800 Mission in San Rafael

Dear Lindsay,

I wanted to send my support for the proposed senior housing facility at 800 Mission in San Rafael. Our office is across the street at 817 Mission Avenue, which we have been at for 28 years. This lot has been an eyesore for too many years. This project is perfect for San Rafael by providing for our seniors. So many people talk about "affordable housing" and seniors are the forgotten victims. Aegis living is a leader in the senior living industry. This is a big win for San Rafael. We are looking forward to our new "senior neighbors"!

Sue Miller
Customer Service Representative

MICHAEL MILLER INSURANCE AGENCY



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www.michaelmillerinsurance.com

Steve Stafford

From: Lindsay Lara
Sent: Monday, August 27, 2018 4:46 PM
To: Steve Stafford
Subject: FW: Senior Housing Project, 800 Mission Avenue - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Patti Cook [REDACTED]
Sent: Monday, August 27, 2018 4:15 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Senior Housing Project, 800 Mission Avenue - Support

SENIOR HOUSING PROJECT 800 MISSION AVENUE

We are writing to advise the San Rafael City Council of our support of the proposed 800 Mission Avenue project for our Seniors. The majority of recent downtown projects seem to have met the current need for high-density, workforce housing. This Senior citizens project would be a great addition to the needs of the diverse demographics of our City.

I feel it would be an asset to downtown San Rafael, and would provide much needed housing for our Seniors.

Please approve this proposed Senior Housing Project.

Patti and Tom Cook

[REDACTED]

San Rafael, CA 94901

Steve Stafford

From: Lindsay Lara
Sent: Friday, August 24, 2018 12:57 PM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Friday, August 24, 2018 12:46 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Thomas Willis

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

{Sent via [800 Mission Avenue](#)}

Steve Stafford

From: Lindsay Lara
Sent: Friday, August 24, 2018 11:21 AM
To: Steve Stafford
Subject: FW: Support of 800 Mission Ave.

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Donna Cohen <[REDACTED]>
Sent: Friday, August 24, 2018 11:08 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Support of 800 Mission Ave.

Hello –

I wish to express my support for the development of senior housing at the lot on Mission/Lincoln Avenues.

Donna Cohen
Certified Public Accountant



Steve Stafford

From: Lindsay Lara
Sent: Friday, August 24, 2018 11:22 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Friday, August 24, 2018 11:15 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Emilie Weiss

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

{Sent via [800 Mission Avenue](#)}

Steve Stafford

From: Lindsay Lara
Sent: Friday, August 24, 2018 10:07 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Friday, August 24, 2018 9:05 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Anthony Pedersen

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via 800 Mission Avenue)

Steve Stafford

From: Lindsay Lara
Sent: Friday, August 24, 2018 10:13 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara

Office: (415) 485-3065
Mobile: (415) 847-8546

From: Squarespace <no-reply@squarespace.info>
Sent: Friday, August 24, 2018 10:13 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Abby McLaughlin

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via 800 Mission Avenue)

Steve Stafford

From: Lindsay Lara
Sent: Friday, August 24, 2018 10:14 AM
To: Steve Stafford
Subject: FW: Form Submission - Support

Lindsay Lara

Office: (415) 485-3065
Mobile: (415) 847-8546

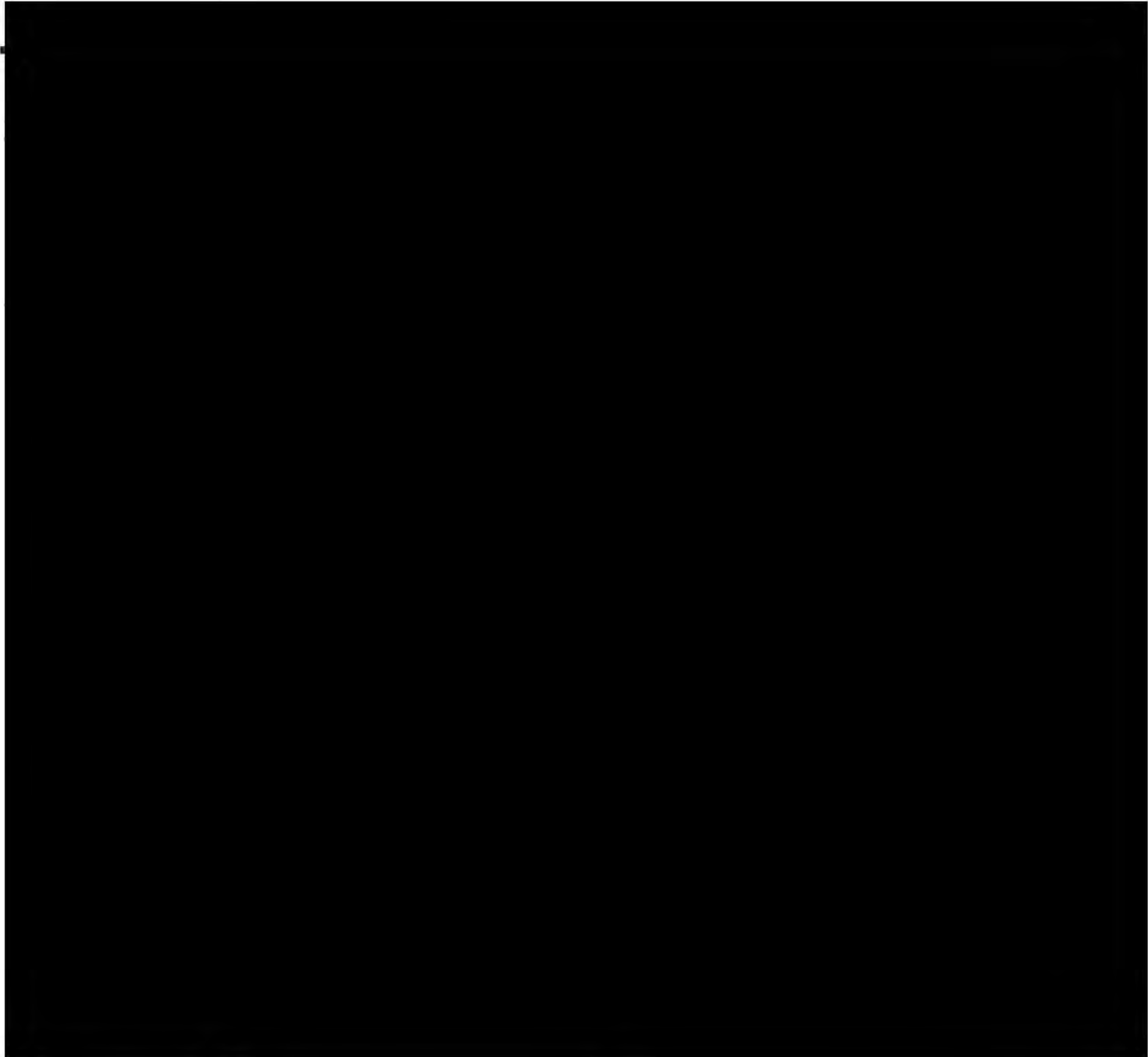
From: Squarespace <no-reply@squarespace.info>
Sent: Friday, August 24, 2018 10:14 AM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Subject: Form Submission - Support

Name: Annie Sullivan

Email Address: [REDACTED]

Support: Dear San Rafael City Council, I support the 800 Mission Avenue Senior Housing Project. Please deny the appeal and uphold approval of The Project. Senior Housing is much needed in our aging community and is a great addition to our Downtown.

(Sent via [800 Mission Avenue](#))



From: Kraemer Winslow [REDACTED]
Sent: Thursday, August 23, 2018 11:34 AM
To: Kate Colin
Subject: 800 Mission

Hi Kate,

I can't make it to the September 4 meeting so wanted to write my thoughts about the proposed development at 800 Mission. While I'm thrilled that finally something is going in there, I don't like the idea of the facility that is planned.

I live on Laurel Place – two blocks from the location. I have a house with a garage so **parking** isn't an issue for me. But, I hesitate to invite guests because street parking is so difficult. Also, for workers, it's difficult for them to find parking in this neighborhood so they often double park and even worse, leave their engines idling. With all the workers (3 different shifts, I understand) it will be even worse. (We already have many people who work downtown, parking on our street – I see it all

the time!) I doubt the building will provide parking for all workers? If they will, I'm not as concerned but I doubt that they can do that.

Also, I am concerned about our flailing **downtown**. Already the merchants and shopkeepers are challenged. Unlike condos at that location, where people could walk to town to eat and shop and help make it more vibrant, plus walk to public transportation, this will be all self-contained. What's the point of having a great downtown location when nobody leaves it?

Finally, I understand the builder gave San Rafael a **\$500K incentive** to be able to build here. Given how much money this place will be bringing in, it seems the city should get *at least* double that. Of course, I don't know all the circumstances but these are my thoughts for the moment.

Thanks for considering these ideas. I appreciate your amplifying our voices!

Warmest regards,
Kraemer

Kraemer Winslow

Make Your Point - Achieve Your Goals
Make Your Point Communications, Inc.



Steve Stafford

From: Steve Stafford
Sent: Thursday, August 23, 2018 4:04 PM
To: Steve Stafford
Subject: FW: 800 Mission Ave

From: Jeff Prose <[REDACTED]>
Sent: Thursday, August 23, 2018 3:28 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Cc: Tom Monahan <[REDACTED]> Geoff Forner <[REDACTED]>; Jeff Prose <[REDACTED]>
Subject: 800 Mission Ave

Lindsay,

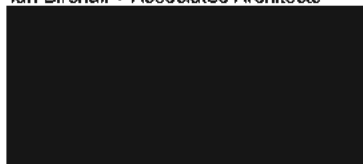
I am writing in support of 800 Mission Avenue. As a multifamily architect and property owner in San Rafael, this project is needed for the community. Senior citizens are a key element of the urban fabric, and will be welcome neighbors and patrons to downtown businesses. The project is well designed will be a welcome addition to the city's richness.

Housing opportunities are becoming increasingly dire, for all ages and income brackets in the bay area. Delays and procrastinations on this long-empty site should come to an end with an approval for this project.

I strongly encourage the City Council to approve this project without hesitation.

Regards,
Jeff Prose

Jeff Prose AIA LEED GA
Managing Principal
Ian Birchall + Associates Architects



Steve Stafford

From: Paul Jensen
Sent: Monday, August 06, 2018 6:33 PM
To: Steve Stafford; Raffi Boloyan
Subject: FW: Elder Care Residence article

See comments below and please add Tisha Shaw to the noticing list.

Thanks,
Paul

From: Jim Schutz
Sent: Monday, August 06, 2018 5:35 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>; Paul Jensen <Paul.Jensen@cityofsanrafael.org>
Subject: FW: Elder Care Residence article

This came in early on when I was on vacation. Not sure if she followed up subsequently with anyone else when she got my out of office message. We should add this person to our notification list for when the appeal comes forward to the Council.

Thanks,
Jim

From: Tisha Shaw [REDACTED]
Sent: Monday, July 23, 2018 10:53 AM
To: Jim Schutz <Jim.Schutz@cityofsanrafael.org>; Keri Brenner [REDACTED]
Subject: Re: Elder Care Residence article

Thank you Keri!

Jim Schultz - I was appalled to see that this Senior Home facility wasn't following the ordinance for that location, which you know is for AFFORDABLE housing. Having a Senior Home is a great project - now lets make it AFFORDABLE!!!! Let's not let the sway of GREED for more tax money to spend sway us as a community. I have owned MANY properties in Marin County, 3 in San Rafael. I currently live off Lincoln on Coleman Drive. I drive by this new project site multiple times a day. Let's support our community Jim, not the 1%. Isn't that part of your job description - to follow, protect and honor the ORDINANCES?? Do your job. Help the elderly Jim. And you don't have to really do anything. You just have to follow what's already in place. Right! How easy. Step up Jim. You got this. I'm here to support you. I will start informing my network of what's happening to our affordable housing projects and drum up more support.

Also, please put me on the mailer to be notified of the next city counsel.

- Thank you!

Tisha Shaw | Mortgage Broker
TAYLOR MADE FINANCIAL



[Redacted]

On Monday, July 23, 2018, 10:23:43 AM PDT, Keri Brenner <[Redacted]> wrote:

Hi Tisha:

Thanks for your nice note.

You could check at the city website at cityofsanrafael.org and get on their mailing list to be alerted of upcoming meetings. I've copied the city manager Jim Schutz who could advise you on how to get on the mailing list.

Hope that helps

Keri

Keri Brenner Reporter | Marin Independent Journal

[Redacted]

On Mon, Jul 23, 2018 at 10:13 AM, Tisha Shaw <tishashaw@ymail.com> wrote:

Hi Keri,

Thank you for your article! I own a home off of Lincoln and drive by the site throughout the day. I want to present at the next city hearing to support the Objectors. We are in desperate need for affordable housing for Seniors. How do I find out when that will be?

Thank you!

Tisha Shaw | Mortgage Broker

TAYLOR MADE FINANCIAL

[Redacted]

GROTJAHN CAPITAL MANAGEMENT CO.

A REAL ESTATE INVESTMENT, TAX AND FINANCIAL PLANNING FIRM


July 26, 2018

Dear Mr. Stafford,

I received notice about the senior assisted living facility proposed for the vacant site on the corner of Mission Avenue and Lincoln Avenue. I strongly support the senior housing project at this location.

The beautiful building will add to the neighborhood, and to Downtown. We need more Senior Housing Downtown. Assisted Living and Memory Care services are much needed in our aging community.

Very truly yours,


Tony Grotjahn, President
CFP, RFP, RFC, ATP, ATA, CRB, CRS



ID: SR-0079447
Title: Aegis comment
Description: Contact the City Council form submission
Form Submission:
Subject Aegis
Message Despite the fact that an Aegis center is located a block from my current home in Corte Madera, included in my will and trust is the request that Aegis not be considered as a resource for my care, should such care be warranted. The lack of attention to its residents from the staff at Aegis that I observed when visiting fairly regularly a former hiking partner suffering from Alzheimer's, not to mention its higher-than-average cost, may be a factor for the Council to consider as a site for the city. Having an assisted living center at that location is a promising addition to the city, even though the respected Aldersly facility is nearby, since our county senior population is increasing. For the sake of our county citizens, I ask your consideration. Also, I recall a few years ago seeing an ad requesting information from anyone who had had any adverse situation with Aegis. I did not respond to that ad, assuming it was from a legal entity, and that was negligent of me, I recognize. I hope this letter to you makes amends.
Location [REDACTED]
 Corte Madera, CA 94925
Attachment
Current Status: Request Received
Followers: Anne Derrick
Created At: July 25th, 2018 at 9:43 AM
Last Updated: July 25th, 2018 at 9:43 AM



A: LOCATION
 [REDACTED]
 Corte Madera CA 94925-2056

Associated Constituent

Dorsey McTaggart
 C-1043128, added on July 23rd, 2018 at 6:27 AM
Phone Numbers: [REDACTED]
Email Addresses: [REDACTED]
Locations: None

Conversation:

First Name: Dorsey

Last Name: McTaggart

Email Address: [REDACTED]

Phone Number: [REDACTED]

Subject: Aegis

Message: Despite the fact that an Aegis center is located a block from my current home in Corte Madera, included in my will and trust is the request that Aegis not be considered as a resource for my care, should such care be warranted. The lack of attention to its residents from the staff at Aegis that I observed when visiting fairly regularly a former hiking partner suffering from Alzheimer's, not to mention its higher-than-average cost, may be a factor for the Council to consider as a site for the city. Having an assisted living center at that location is a promising addition to the city, even though the respected Aldersly facility is nearby, since our county senior population is increasing. For the sake of our county citizens, I ask your consideration.

Also, I recall a few years ago seeing an ad requesting information from anyone who had had any adverse situation with Aegis. I did not respond to that ad, assuming it was from a legal entity, and that was negligent of me, I recognize. I hope this letter to you makes amends.

Inbound form submission from Dorsey McTaggart to Contact the City Council on July 23rd, 2018 at 6:27 AM

Thank you for your message. We value your input and strive to respond to any questions or concerns within 2 business days.

Thank you,

City of San Rafael

Automated message sent to Dorsey McTaggart via City Manager's Office on July 23rd, 2018 at 6:27 AM



City of San Rafael
Planning Department, Attn: Steve Stafford
1400 Fifth Avenue
San Rafael, California 94901

July 20, 2018

RE: Lincoln Avenue Proposed Assisted Living Facility

Dear Steve,

My name is Jeffrey Rich. I am a resident of San Rafael and live in The Peacock Gap Neighborhood. I am writing to note my support of the project.

I feel the proposed Assisted Senior Housing Project is needed in Downtown, and this site would be an ideal location. This building design is beautiful and supports San Rafael's Mission Culture. It also provides a nice gateway to Downtown on Mission Ave.

Senior housing communities minimizes traffic, noise, and parking issues, so it is an ideal use. Downtown San Rafael businesses, restaurants, and other local services will provide great amenities to the senior residents and their families.

Please approve the project and fast-track its construction. Senior Housing is a great benefit to Downtown.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Rich O.D." with a stylized flourish at the end.
Jeffrey Rich, O.D.

RECEIVED
JUL 23 2018
PLANNING



Steve Stafford

From: Lindsay Lara
Sent: Friday, August 24, 2018 2:46 PM
To: Steve Stafford
Subject: FW: 800 Lincoln Ave Aegis Living project

Importance: High

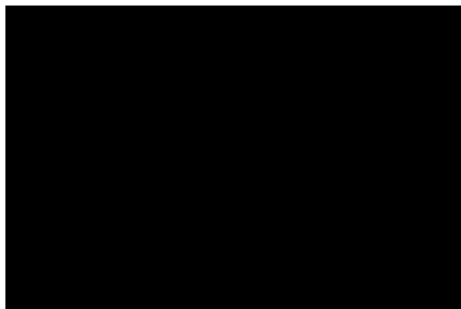
Lindsay Lara
Office: (415) 485-3065
Mobile: (415) 847-8546

From: Lila Friday [REDACTED]
Sent: Friday, August 24, 2018 2:38 PM
To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>
Cc: [REDACTED]
Subject: 800 Lincoln Ave Aegis Living project
Importance: High

Ms. Lindsay,

I am in full support of the proposed Senior Housing project in San Rafael. I feel the much needed facility for the aging population in San Rafael will benefit from this facility as well as merchants in the area. Seniors are vital citizens and many are very active...their families will use the resources in down town San Rafael . The building is attractive and will add to the neighborhood. Please vote yes on the passing of this needed facility.
Lila A. Friday
Friday and Associates

Lila Friday, ASID, CCID





SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Human Resources

Prepared by: Stacey Peterson, HR Director

City Manager Approval: 

TOPIC: APPROVAL OF THE NEW MEMORANDUM OF UNDERSTANDING WITH SAN RAFAEL POLICE ASSOCIATION (SRPA)

SUBJECT: RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING PERTAINING TO COMPENSATION AND WORKING CONDITIONS FOR SAN RAFAEL POLICE ASSOCIATION (SRPA) (JULY 1, 2018 THROUGH JUNE 30, 2020)

RECOMMENDATION: Adopt Resolution.

BACKGROUND:

The San Rafael Police Association (“SRPA”) represents 84 full-time equivalent positions in the San Rafael Police Department, including safety and non-safety classifications. The most recent Memorandum of Understanding (“MOU”) for SRPA expired on June 30, 2018. Over the past several months, representatives of the City and SRPA have met in good faith and worked diligently to negotiate the terms of a successor MOU. The City and SRPA reached a tentative agreement on August 9, 2018, for a two-year successor MOU and SRPA membership subsequently ratified the tentative agreement. The proposed new MOU was presented at the August 20 Council meeting for discussion and there were no public comments. Staff is returning with a resolution for approval of the MOU with SRPA.

ANALYSIS:

The following are the highlights that reflect the terms and significant economic items included in the proposed successor MOU between the City and SRPA. In addition to the economic items, some operational items were also addressed in the successor MOU.

1. **Term of the Agreement:** July 1, 2018 through June 30, 2020
2. **Salary Increase:** Job classes represented by this bargaining group will receive a 2.0% base wage increase effective the first full pay period following City Council ratification and a 2.0% base wage increase effective the first full pay period in July 2019.
3. **One-Time Payments:**
The following one-time, non-pensionable payments are limited to the two years cited in this agreement and are not scheduled to recur in the future.

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

Employees represented by the bargaining group will receive a one-time, non-pensionable payment of \$8,000 split as follows:

1. Effective the pay period including January 1, 2019, a one-time, non-pensionable payment of \$5,000 in exchange for the elimination of Revenue Sharing. This payment will not contribute to Classic or PEPRAs employees' pensions and is subject to normal payroll taxation; and
2. Effective the pay period including January 1, 2020, a one-time payment of \$3,000 in exchange for the elimination of Revenue Sharing. This payment will not contribute to Classic or PEPRAs employees' pensions and is subject to normal payroll taxation.

The one-time payments for part-time employees will be prorated based on the full-time equivalent (FTE) of the position. For example, an employee filling a half-time or 0.5 FTE position will receive a \$2,500 one-time, non-pensionable payment in the pay period including January 1, 2019, minus applicable taxes and a \$1,500 one-time, non-pensionable payment in the pay period including January 1, 2020. This payment will not contribute to Classic or PEPRAs employees' pensions.

4. **Eliminate Revenue Sharing:** The revenue sharing provision to be eliminated provides a formula upon which a percentage of excess general tax revenues must be shared with members where specific criteria are met to increase the salary of SRPA job classes.
5. **Uniform Allowance:** The uniform allowance for all sworn employees and the Police Services Specialist will be increased from \$750 per year to \$1,460 per year which is in line with other jurisdictions.
6. **Non-Economic Items:** In addition to items discussed above, agreement was reached on other proposals, which reflect minor changes to existing provisions with no additional cost. The attached MOU includes all of the changes agreed to by the parties. A brief overview of these negotiated MOU sections includes:
 - Fair Labor Standards Act (FLSA) Compliance (various sections):
 - Change references to "salary" (a term applicable to FLSA exempt staff paid on a salary) to "base hourly pay rate".
 - Added language to define the FLSA work period.
 - Association Orientation of New Employees & Employee Information (Sections 2.1.3 and 2.1.4): Pursuant to recent legislation (AB 119), the parties negotiated specific terms regarding SRPA access to new employees and communication to SRPA of employee information.
 - Pay Dates (Section 3.1.1): The City may move from twice per month 24 pay cycles per year to bi-weekly 26 pay cycles per year, providing the City gives the association six months' notice.
 - Full Flex Cafeteria Plan (Section 4.2.1): Clean up language to comply with the Affordable Care Act.
 - Retiree Health Insurance (Section 4.2.2): Clean up language to remove reference to a Retiree Healthcare Reimbursement Trust (Retiree HRA Trust) since payments are made directly to CalPERS.
 - Holiday Pay (Section 5.3): Employees will be paid during the pay period that the holiday occurs instead of the current practice of paying on a biannual basis. This would be more efficient for the City to administer in compliance with the FLSA.

- Length of Probationary Period (section 6.4.2): Updated to incorporate language from side letter previously agreed to with SRPA.

FISCAL IMPACT:

The current total annual salary and benefit cost to the City for the 84 FTE positions represented by SRPA is \$16,428,620. The additional ongoing incremental cost of the successor MOU beyond the FY 17/18 budget is:

	<u>Incremental FY 2018-19</u>	<u>Incremental FY 2019-20</u>
Wages:		
Base Salary (2%)	\$172,963	\$176,423
Annual % change	(2%)	(2%)
Uniform Allowance:	\$ 40,470	- 0 -
Other costs:		
Pension*	\$132,224	\$113,088
Taxes (Medicare, W/C)	<u>\$ 16,312</u>	<u>\$ 16,039</u>
Total Incremental Cost:	<u>\$361,969</u>	<u>\$305,550</u>

**This incremental pension cost results only from the negotiated wage increase and does not include the cost of associated MCERA rate changes. The terms and conditions of the pension benefit plan remain unchanged.*

While the incremental cost is \$361,969 for fiscal year 2018-2019 and \$305,550 for fiscal year 2019-2020, the increases are compounding and therefore the projected total salary and benefit cost increase for the items specified above is \$1,029,488 for the two-year term. In addition, there is a cost of \$672,000 in one-time payments. These one-time payments will not contribute to employee Classic or PEPRA pension costs. The increase in compensation included in this resolution is in line with the City's current budget projections and is within the current salary growth assumptions used by MCERA in the most recent actuarial valuation which is used to establish pension contribution rates and measure pension liabilities. Funding for these positions is provided for in the City's General Fund.

OPTIONS:

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

- Staff's recommendation to adopt the resolution.
- Adopt resolution with modifications.
- Direct staff to return with more information.
- Take no action.

RECOMMENDED ACTION:

Staff recommends that the City Council adopt the resolution to approve the Memorandum of Understanding between the City of San Rafael and San Rafael Police Association pertaining to compensation and working conditions (July 1, 2018 through June 30, 2020).

ATTACHMENTS:

- Resolution with attached MOU between City of San Rafael and San Rafael Police Association for July 1, 2018, to June 30, 2020 (and all attachments).

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ESTABLISHING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND SAN RAFAEL POLICE ASSOCIATION PERTAINING TO COMPENSATION AND WORKING CONDITIONS (JULY 1, 2018 THROUGH JUNE 30, 2020)

WHEREAS, the San Rafael Police Association (SRPA) labor agreement with the City expired on June 30, 2018, after a two-year term; and

WHEREAS, the City of San Rafael and representatives of SRPA have met and conferred in good faith with regard to wages, hours and working conditions in accordance with the provisions of the Meyers-Milias-Brown Act; and

WHEREAS, a Memorandum of Understanding (“MOU”) pertaining to the two-year period from July 1, 2108, through June 30, 2020, has been ratified by SRPA members.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1: From and after the date of adoption of this Resolution, the City of San Rafael and San Rafael Police Association (SRPA) shall utilize the MOU for the period beginning July 1, 2018, attached hereto, as the official document of reference respecting compensation and working conditions for employees represented by SRPA.

Section 2: The schedules describing classes of positions and salary ranges are attached to said MOU and, together with the MOU itself, are hereby adopted and shall be attached hereto and incorporated in full.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Tuesday, the 4th of September, 2018, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk

MEMORANDUM OF UNDERSTANDING

between

CITY OF SAN RAFAEL

and

SAN RAFAEL POLICE ASSOCIATION

JULY 1, 2018 - JUNE 30, 2020

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- Exhibit A Salary Schedule for July 1, 2018 – June 30, 2020
- Exhibit B Canine Program Side Letter

MEMORANDUM OF UNDERSTANDING
between
CITY OF SAN RAFAEL
and
SAN RAFAEL POLICE ASSOCIATION

The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment for the employees in said representative unit, have freely exchanged information, opinions and proposals, and have reached agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Memorandum of Understanding shall be presented to the City Council of the City of San Rafael as the joint recommendation of the undersigned parties for salary and employee benefit adjustments for the period commencing July 1, 2018 and ending June 30, 2020.

1 GENERAL PROVISIONS

1.1. INTRODUCTION

1.1.1. Scope of Agreement

The salaries, hours, fringe benefits, and working conditions set forth have been mutually agreed upon by the designated bargaining representatives of the City of San Rafael (herein-after called "CITY") and the San Rafael Police Association (herein-after called "ASSOCIATION") and shall apply to all employees of the City working in the classifications and bargaining unit set forth herein.

In accepting employment with the City of San Rafael, each employee agrees to be governed by and to comply with the Personnel Ordinance, Rules and Regulations, Administrative Procedures, and regulations and directives of the Police Department.

1.1.2. Term of MOU

This agreement shall be in effect from July 1, 2018 through June 30, 2020.

1.2. RECOGNITION

1.2.1. Bargaining Unit

The City hereby recognizes the Association as the bargaining representative for the purpose of establishing salaries, hours, fringe benefits and working conditions for all employees within the San Rafael Police Association Bargaining Unit (as referenced in Exhibit A attached).

New classifications developed by the City and determined to be appropriately included in the Bargaining Unit, shall be assigned a wage scale by the City. The City will forward to the Association the new classification and wage scale. The wage scale for the new classification shall then be subject to the meet and confer process.

1.3. NON-DISCRIMINATION

1.3.1. In General

The parties to this contract agree that they shall not, in any manner, discriminate against any person whatsoever because of race, color, age, religion, ancestry, national origin, sex, sexual preference, marital status, medical condition or disability.

Any employee who believes they are being discriminated against should refer to the City of San Rafael's Harassment Policy for the process of receiving an internal administrative review of their complaint. This administrative procedure shall be used as the internal complaint procedure in lieu of

the grievance procedure outlined in this MOU (Article 7.4). Nothing contained in this subsection shall limit an employee's rights under the Police Officer Bill of Rights and/or the disciplinary review and appeal procedure outlined in this MOU.

1.3.2. Bargaining Unit Discrimination

No member, official, or representative of the Association shall in any way suffer any type of discrimination in connection with continued employment, promotion, or otherwise by virtue of membership in or representation of Association.

1.4. INSPECTION OF MEMORANDUM OF UNDERSTANDING

Both the City and the Association agree to keep duplicate originals of this agreement on file in a readily accessible location available for inspection by any City employee, or member of the public, upon request.

1.5. EXISTING LAWS, REGULATIONS & POLICIES

This MOU is subject to all applicable laws.

The City agrees to meet and confer with the Association on proposed changes to policies or procedures that impact bargaining rights.

1.6. STRIKES & LOCKOUTS

During the term of this MOU, the City agrees that it will not lock out employees, and the Association agrees that it will not encourage or approve any strike or slowdown growing out of any dispute relating to the terms of this Agreement. The Association will take whatever lawful steps are necessary to prevent any interruption of work in violation of this Agreement, recognizing with the City that all matters of controversy within the scope of this Agreement shall be settled by established procedures set forth in the City's charter, ordinances, and regulations, as may be amended from time to time.

1.7. SEVERABILITY

If any article, paragraph or section of this MOU shall be held to be invalid by operation of law, or by any tribunal of competent jurisdiction, or if compliance with or any enforcement of any provision hereof be restrained by such tribunal, the remainder of this MOU shall not be affected thereby, and the parties shall enter into meet and confer sessions for the sole purpose of arriving at a mutually satisfactory replacement for such article, paragraph or section

1.8. PREVAILING RIGHTS

All matters within the scope of meeting and conferring which have previously been adopted through rules, regulations, ordinance or resolution, which are not specifically superseded by this MOU, shall remain in full force and effect throughout the term of this Agreement.

1.9. FULL UNDERSTANDING, MODIFICATION, WAIVER

1.9.1. Understanding

The parties jointly represent to the City Council that this MOU sets forth the full and entire understanding of the parties regarding the matters set forth herein.

1.9.2. Waiver & Modification

Except as specifically otherwise provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required, to meet and confer with respect to any subject or matter covered herein during the period of the term of this MOU. The foregoing shall not preclude the parties hereto from meeting and conferring at any time during the term of this Agreement with respect to any subject matter within the scope to meeting and conferring for a proposed MOU between the parties to be effective on or after July 1, 2020.

2 MMBA

2.1. BARGAINING UNIT RIGHTS

2.1.1. Bargaining Unit Stewards Designation

The Association shall, by written notice to the City Manager, designate certain of its members as Employee Representatives. Association representatives who are official representatives of the Association shall be given reasonable time off with pay to attend meetings with management representatives, or to be present at hearings where matters within the scope of representation, collective bargaining, or grievances are being considered. The use of official time for this purpose shall be reasonable and shall not interfere with the performance of City services. Such employee representatives shall submit through the Police Department chain of command a written request for excused absence to the Police Chief at least forty-eight (48) hours prior to the scheduled meeting whenever possible. Except by mutual agreement, the number of employees excused for such purposes shall not exceed three (3).

2.1.2. Release Time

Two hundred (200) hours per calendar year shall be provided for union release time, apart from MMB activity, with ten days advance notice and approval of the Police Chief. Any additional hours shall be granted only with ten days advance notice and approval of the Police Chief

2.1.3. Association Orientation of New Employees

Whenever the City hires an employee within any classification covered by this Memorandum of Understanding and represented by the Association, the City will provide the new employee with a copy of the current Memorandum of Understanding. The City shall make available two hours, at a mutually agreeable time, during the initial thirty (30) days of employment for new employee orientation by the Association. In addition, the City will also provide reasonable advance notice to the Association of all employee orientations conducted by the City.

2.1.4. Employee Information

The City shall provide the Association with the name, job title, department, work location, work, home and personal cell phone numbers, home address and personal email address on file with the City for all employees within the Association every 120 days. In addition, a report with similar information of each Association new hire will be provided to the Association within 30 days of the hire date.

2.2. DUES DEDUCTION

2.2.1. Collection of Dues

City agrees, upon written consent of the employee involved, to deduct dues, as established by the Association, from the salaries of its members. The sums so withheld shall be remitted by City along with a list of employees who have had said dues deducted.

2.2.2. Dues Collection during Separation from Employment

The provisions specified in this section shall not apply during periods of separation from the representative Unit by any such employee but shall reapply to such employee commencing with the next full pay period following the return of the employee to the representative Unit. The term separation includes transfer out of the Unit, layoff, and leave without pay absences with duration of more than 30 calendar days.

2.3. MANAGEMENT RIGHTS

The City reserves, retains, and is vested with, solely and exclusively, all rights of management which have not been expressly abridged by specific provision of this Memorandum of Understanding or by law to manage the City, as such rights existed prior to the execution of this Memorandum of Understanding. The sole and exclusive rights of management, as they are not abridged by this Agreement or by law, shall include, but not be limited to, the following rights:

1. To manage the City generally and to determine the issues of policy.
2. To determine the existence or non-existence of facts which are the basis of the management decision.
3. To determine the necessity of organization or any service or activity conducted by the City and expand or diminish services.
4. To determine the nature, manner, means technology, and extent of services to be provided to the public.
5. Methods of financing.
6. Types of equipment or technology to be used.
7. To determine and/or change the facilities, methods, technology, means and size of the work force by which the City operations are to be conducted.
8. To determine and change the number of locations, re-locations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operation of the City.
9. To assign work to and schedule employees in accordance with requirements as determined by the City, and to establish and change work schedules and assignments.
10. To relieve employees from duties for lack of work or similar non-disciplinary reasons.
11. To establish and modify productivity and performance programs and standards.
12. To discharge, suspend, demote or otherwise discipline employees for proper cause in accordance with the provisions and procedures set forth in City Personnel Rules and Regulations.
13. To determine job classifications and to reclassify employees.
14. To hire, transfer, promote and demote employees for non-disciplinary reasons in accordance with this Memorandum of Understanding and the City's Personnel Rules and Regulations.
15. To determine policies, procedures and standards for selection, training, and promotion of employees.
16. To establish employee performance standards including, but not limited to quality and quantity standards; and to require compliance therewith.
17. To maintain order and efficiency in it facilities and operations.
18. To establish and promulgate and/or modify rules and regulations to maintain order and safety in the City which are not in contravention with this Agreement.
19. To take any and all necessary action to carry out the mission of the City in emergencies.

The City and the Association agree and understand that if, in the exercise of rights set forth above, the effect of said exercise of rights by the City impacts an area within the scope of representation as set forth in the Myers/Milias/Brown Act and case law interpreting said Act; or Federal law, the City shall have the duty to meet and confer with the Association regarding the impact of its decision/exercise of rights.

2.4. COMMENCEMENT OF NEGOTIATIONS

It is mutually agreed to begin the Meet and Confer process no later than the first Monday in February, regarding the terms and conditions applicable to successor MOUs. The process will be initiated by the San Rafael Police Association through the submittal of upcoming contract requests it wishes to be considered.

3 COMPENSATION

3.1. GENERAL WAGES AND COMPENSATION

3.1.1. Pay Dates

City employees are paid twice per month on the 15th and the last working day of the month. When a holiday falls on a pay day, the pay day will be transferred to the previous day of regular business unless the Finance Division is unable to complete the payroll by that work day, in which case the pay day will be the day following the holiday. The method of the distributing payroll shall be established by the Finance Division.

During the term of this Agreement, the City may institute a change of the payroll schedule from 24 pay cycles per year to 26 pay cycles per year, providing the City gives the association six months' notice.

3.1.2. General Wage Increases

Base salary increase shall be defined as an increase to general wages, excluding any benefit increases. Salary increases for all bargaining unit positions are established based on the base hourly rates set forth in the table attached as Exhibit A and included as part of this MOU. For the term of this agreement, the following base salary increases shall be applied on the identified effective date:

Effective the first full pay period following City Council ratification of a new MOU, the City will increase base wages for all employees by 2.0%. Effective the pay period including July 1, 2019, the City will increase base wages for all employees by 2.0%.

3.1.3. One-Time Payments

The following one-time, non-pensionable payments are limited to the two years cited in this agreement and are not scheduled to recur in the future.

Employees represented by the bargaining group will receive a one-time, non-pensionable payment of \$8,000 split as follows:

1. Effective the pay period including January 1, 2019, a one-time, non-pensionable payment of \$5,000 in exchange for the elimination of section 3.4, Revenue Sharing. This payment will not contribute to Classic or PEPRA employees' pensions and is subject to normal payroll taxation; and
2. Effective the pay period including January 1, 2020, a one-time payment of \$3,000 in exchange for the elimination of section 3.4, Revenue Sharing. This payment will not contribute to Classic or PEPRA employees' pensions and is subject to normal payroll taxation.

The one-time payments for part-time employees will be prorated based on the full-time equivalent (FTE) of the position. For example, an employee filling a half-time or 0.5 FTE position will receive a \$2,500 one-time, non-pensionable payment in the pay period including January 1, 2019, minus applicable taxes and a \$1,500 one-time, non-pensionable payment in the pay period including January 1, 2020. This payment will not contribute to Classic or PEPRA employees' pensions.

3.1.4. Definitions

Total Compensation shall be defined as: Top step salary (excluding longevity pay steps), educational incentive pay, holiday pay, uniform allowance, employer paid deferred compensation (except for such portion that may be part of employee cafeteria plan), employer's contribution towards employees' share of retirement, employer paid contributions toward insurance premiums for health, life, long term disability, dental and vision plans, and employer paid cafeteria/flexible spending accounts.

Either Party may prepare total compensation surveys in support of labor negotiations. The City will prepare total compensation surveys both with and without the employer's retirement contribution included in the computation. The City and the Association shall review the benchmark and related survey data for accuracy and completeness.

3.1.5. Compensation Plan

The Compensation Plan adopted by the City Council shall provide for salary schedules, base hourly rates, ranges, steps and any other special circumstances or items related to the total compensation paid employees. Each position within the classified services shall be allocated to its appropriate class in the classification plan on the basis of duties and responsibilities. Each class shall be assigned a salary range or a rate established in the salary plan. All persons entering the classified service shall be compensated in accordance with the salary plan then in effect.

3.1.6 Fair Labor Standards Act

The Parties shall continue to discuss changes to ensure the City's compliance with the FLSA. The Parties understand that the City has the management right to administer its payroll system in compliance with the law and also understand that all impacts of any resulting changes to employee compensation must be negotiated with SRPA. The City does not believe that any changes will lead to wage reductions for employees and the City will provide an offset if that occurs.

3.2. STEP INCREASES

3.2.1. Entry Level Step

Beginning July 1, 2018, all initial employment shall be at the entry level step for the base hourly pay rate as indicated in Attachment A. The City Manager or his/her designee may authorize, upon the recommendation of the Police Chief, a position at an appropriate higher salary when, in his/her opinion, it is necessary in order to obtain qualified personnel or when it appears that the education or experience of a proposed employee is substantially superior to the minimum requirements of the class and justifies beginning salary in excess of the first step. Initial employment appointments above Step C will require City Manager Approval.

3.2.2. Consideration for Step Increases

An employee may be considered for a step increase in accordance with their anniversary date and the parameters of the base hourly pay rate schedule. Advancement to a higher base hourly rate within the schedule may be granted for continued improvements and efficient and effective service by the employee in the performance of his/her duties. Base hourly rate advancement shall be made only upon the recommendation of the Police Chief, with the approval of the City Manager or their designee, and are not automatic, but based on acceptable work performance.

Accelerated merit performance step increases of five percent (5%) may be granted an employee based upon the recommendation of the Police Chief and approval of the City Manager.

3.2.3. Merit Increases

Employees at the maximum step of their base hourly pay rate may be granted a merit pay award of up to five percent (5%) above and beyond their base hourly pay rate. A merit pay award may be effective for up to one (1) year. A merit pay award when expired is not a disciplinary action and is not appealable. Merit pay awards may be granted in recognition of meritorious performance beyond the scope of regular duties and in response to extraordinary conditions.

3.3. ADDITIONAL PAY

3.3.1. Shift Differential Pay

A three percent (3%) shift differential shall be paid for all represented employees regularly scheduled to work fifty percent (50%) or more of their shift after 1500 hours.

A five percent (5%) shift differential shall be paid for all represented employee regularly scheduled to work fifty percent (50%) or more of their shift after 2200 hours.

Employees assigned to work the swing or graveyard shift time periods on overtime or in accordance with Article 6.3, Shift Changes, are excluded from shift differential pay for those time periods.

Shift differential shall not be considered an additional percentage on salary for personnel involved but shall apply only to hours actually worked; e.g., differential does not apply to sick leave, vacation or compensatory time, but does include overtime for employees regularly assigned to the swing or graveyard shifts. The current operational policies and provisions for shift rotation and assignment remain in effect.

3.3.2. Court Pay

If a police employee receives a subpoena requiring them, in the course and scope of their official employment, to appear in court or other official hearing other than during their regular tour of duty or shift of hours, they shall receive a minimum of two (2) hours pay at the overtime rate. "Other than during their regular tour of duty or shift hours" shall include vacation and compensatory time off.

The employee shall submit the required documentation (copy of subpoena and overtime slip) for all related court pay on or immediately after the actual court appearance or after date of cancellation.

If such appearance commences during the employee's regular tour of duty or shift of hours and continues beyond the normal completion time of the employee's regular tour of duty or shift of hours, then the employee will be compensated at the overtime rate for the actual time spent beyond the normal completion time of said tour/shift.

If an employee receives more than one subpoena for the same scheduled time, he/she will receive the minimum time frame rate only once.

The Police Department will provide appearance information for police employees. The department will be responsible for having such information available, when known, by 1800 hours. If the matter is not canceled by 1800 hours, on the court day preceding the appearance date, an employee shall receive one (1) hour pay at the overtime rate. Time spent at the appearance shall be compensated at the overtime rate.

Nothing in the provision shall be construed to mean that the Association agrees in any way to any method of "flex scheduling."

3.3.3. Call Back Pay

Call-back pay shall be provided at one and one-half times the regular rate with a three (3) hour minimum whenever required by the Department and with the expectation that the full three (3) hours will be worked. At no time will the minimum compensation overlap with a regularly scheduled work assignment.

3.3.4. Educational Expense Reimbursement

The Educational Expense Reimbursement Program shall apply to all employees of the Police Department represented by this contract who have completed a total of two (2) or more continuous years of full time service with the San Rafael Police Department. The Educational Expense Reimbursement Program shall relate to the completion of college credits while off-duty for job-related courses, awarded from an accredited community college or an accredited college or an accredited university. Job-related courses are defined as those which contribute to current job performance or prepare the employee for other City positions, including but not limited to obtaining bilingual skills.

An eligible employee who takes a job-related course during off-duty hours at an accredited institution of learning (see above) shall be eligible to receive reimbursement for the costs of tuition, fees, and course materials, up to a maximum of \$1,500 per fiscal year. The employee will be eligible for this

reimbursement upon the successful completion of the course and upon the employee having achieved a grade of “Pass” or “C” or better.

In order for the eligible employee to qualify for reimbursement, the employee must:

- a. Chief of Police or designee Approval – Prior to enrollment, the employee must receive the written approval of the department director or designee concerning the particular course. The decision of the department director shall be final. To be approved by the department director, the department director must find that the course is job-related after reviewing the request, which briefly describes why the employee believes the course to be job-related.
- b. Reimbursement Request – Provided that the Chief of Police finds that the course is job-related and approves the employee’s request, the employee shall submit a request for reimbursement to the City Manager or designee that includes a copy of the employee’s course grade, the receipts for all course expenses, and a total amount requested for reimbursement.
- c. City Manager or designee Approval – The City Manager or designee shall approve the employee’s request for reimbursement provided that the employee has prepared the request in compliance with this program.

To ensure that the City receives adequate benefit from the increased education of the educational expense reimbursement recipients, the following table of time worked after completion of course work shall apply to all recipients who terminate employment with the City of their own volition.

Time between receiving reimbursement and termination of employment	Percentage of tuition reimbursement to be repaid to the City
Up to 12 months	100%
Between 12 months and 18 months	50%
Over 18 months	0%

3.3.5. Certificate Incentive

The Certification Incentive Program for all employees of the Police Department offers monthly payment for POST Certification as follows:

Effective January 1, 2007 the payment for POST Intermediate or Advance Certification to Police Officer, Police Corporal or Police Sergeant shall be:

<i>Intermediate Certificate</i>	<i>3.0% increase to base hourly pay rate</i>
<i>Advanced Certificate</i>	<i>5.0% increase to base hourly pay rate</i>

Effective with the pay period start date of January 1, 2007 the payment for POST certificates for Communication Dispatcher, Dispatch Supervisor or Civilian Supervisor shall be:

<i>Public Safety Dispatcher Certificate</i>	<i>3.0% increase to base hourly pay rate</i>
<i>Records Supervisory Certificate</i>	<i>5.0% increase to base hourly pay rate</i>

3.3.6. Bilingual Pay

Expert Fluency Program. A ten percent (10%) pay incentive shall be paid to up to ten (10) designated bilingual employees (sworn or non-sworn).

Full Fluency Program. A five percent (5%) bilingual pay incentive shall be paid to up to ten (10) designated bilingual employees (sworn or non-sworn).

Conversational Fluency Program. Effective July 1, 2006, a two and one-half percent (2.5%) pay incentive shall be paid to up to thirty-five (35) designated bilingual employees (sworn and non-sworn).

Within the limits established in the first three paragraphs of this section, to qualify for the Expert or Full or Conversational Programs, employees must be certified as proficient in a language deemed to be of work related value to the Police Department as determined by the Police Chief and approved by the City Manager by established standards. It is agreed that the City will meet and confer with the Association in order to establish standards for the Expert Fluency Program with the understanding that the standards will focus on external testing and/or certification satisfactory to the Police Chief. Full or conversational proficiency certification may be obtained by passing a standardized departmental test (to be developed by the department) or a Fluency Certification of Completion from a departmental conversational test, or obtaining a conversational certification issued by an agency or other vendor approved by the Police Chief.

Fluency in more than one foreign language does not entitle an employee to more than one of the bilingual pay categories. Both parties agree to re-certification of proficiency every three (3) years at the department's expense and discretion to continue eligibility for the bilingual differential. The City shall provide initial certification testing and testing to advance to a higher program level each year if there are candidates who are both interested and qualified. Employees may acquire certification during the intervening periods at their own expense.

Shift assignments and distribution of bilingual employees shall be at the discretion of the Chief of Police.

3.3.7. *Uniform Allowance*

Each of the following represented classification will receive a uniform allowance for each six (6) months of service ending June 30 and December 31 as follows:

Effective July 1, 2018

	Classification	Semi - Annual	Annual
A.	All sworn employees, Police Service Specialist	\$730.00	\$1,460.00
B.	All other represented employees	\$325.00	\$650.00
C.	A pro-rated portion of the allowance may be given for the first and last six (6) months of service upon recommendation of the Police Chief.		

3.3.8. *Special Weapons and Tactics (SWAT) Team*

Police Department personnel assigned to the Special Weapons and Tactics (SWAT) Team shall receive additional compensation amounting to two and one-half percent (2.5%) of their base hourly pay rate. Team members shall be entitled to callback pay pursuant to the Call-Back Pay provisions of this MOU (Section 3.3.3). The City will pay for the equipment for SWAT team members, provided members obtain prior approval of the Chief of Police.

Employees shall be appointed to a five-year term beginning July 1, 2014 and may be extended on an annual basis by mutual agreement between the department and the employee.

3.3.9. *Hostage Negotiations Team (HNT)*

Police Department personnel assigned to the Hostage Negotiations Team (HNT) Team shall receive additional compensation amounting to one percent (1%) of their base hourly pay rate. Team members shall be entitled to callback pay pursuant to the Call-Back Pay provisions of this MOU (Section 3.3.3).

Employees shall be appointed to a five-year term beginning July 1, 2014 and may be extended on an annual basis by mutual agreement between the department and the employee.

3.3.10. Field Training Officer (FTO)

- a. The Police Department has established a program for selection of Field Training Officers. Field Training Officers and the Field Training Program Supervisor shall receive additional compensation amounting to two and one-half percent (2.5%) of their base hourly pay rate while assigned to the Patrol Division and shall receive an additional two and one-half percent (2.5%) while engaged in training of new Police Officers and Community Service Officers. Shift assignment will be at the discretion of the Chief of Police and based upon the needs of the Department. All other sworn personnel assigned as Field Training Officers will be paid five percent (5%) above their base hourly pay rate while engaged in training of new Police Officers and Community Service Officers.
- b. Non-sworn personnel may be formally assigned, in writing, to train employees in their new job classifications. For actual hours spent training this new employee, during the specified training period, the assigned trainer will be paid five percent (5%) above their base hourly pay rate.
- c. Employees shall be appointed to a three-year term beginning July 1, 2014 and may be extended on an annual basis by mutual agreement between the department and the employee.

3.3.11. Motor Officer Pay

Police Department personnel assigned to the following duty shall receive additional compensation amounting to five percent (5%) of their base hourly pay rate: Operation of a solo-motorcycle for more than 50% of his/her work month.

3.3.12. Major Accident Investigation Team

Tier 1 MAIT personnel on the Department's call-out list shall receive additional compensation amounting to one percent (1%) above their base hourly pay rate. All MAIT Personnel shall be entitled to callback pay pursuant to the Call-Back Pay provisions of this MOU (Section 3.3.3)

Employees shall be appointed to a three-year term beginning July 1, 2014 and may be extended on an annual basis by mutual agreement between the department and the employee.

3.3.13. Crime Scene Investigator (CSI)

Crime Scene Investigators on the Department's call-out list and the Supervisor shall receive additional compensation amounting to one percent (1%) above their base hourly pay rate. All Crime Scene Investigators shall be entitled to callback pay pursuant to the Call-Back Pay provisions of this MOU (Section 3.3.3).

Employees shall be appointed to a three-year term beginning July 1, 2014 and may be extended on an annual basis by mutual agreement between the department and the employee. The three-year term shall not apply to Community Service Officers.

3.3.14. Self-Defense and Tactics (SDAT) & Firearms Instructor Pay

The Police Department has established a program for selection of Self-Defense and Tactics (SDAT) & Firearms Instructors. Self Defense and Tactics (SDAT) or Firearms Instructors shall receive additional compensation amounting to two and one-half percent (2.5%) above their base hourly pay rate. Anyone that is a Self-Defense and Tactics (SDAT) Instructor and also a Firearms Instructor will be eligible for only a total of two and one-half percent (2.5%) and not a compounded five percent (5%).

Employees shall be appointed to a three-year term beginning July 1, 2014 and may be extended on an annual basis by mutual agreement between the department and the employee. The three-year term shall not apply to Community Service Officers.

3.3.15. Detective Pay

Sworn personnel assigned to the Support Services Divisions Investigations Unit shall receive additional compensation amounting to five percent (5%) above their base hourly pay rate. Unit

members shall be entitled to callback pay pursuant to the Call-Back Pay provisions of this MOU (Section 3.3.3).

3.3.16. Out of Class Pay

Police Services Specialists assigned in writing by their supervisor to work as a Communications Dispatcher shall be compensated at a rate 5% greater than the employee's current base hourly pay rate. The out-of-class increase shall be retroactive to the first day of the assignment and based on hours actually worked in the higher classification.

3.3.17. Canine Handler Pay

The parties agree to initiate a Canine Handler Program at a time to be determined by the Police Department. Officers assigned to and participating in the canine program shall receive additional compensation amounting to 5% above their base hourly pay rate subject to the restrictions stated in the attached Canine Handler Program Side Letter.

4 BENEFITS

4.1 EMPLOYEE BENEFITS COMMITTEE

Both parties agree to continue to utilize the Employee Benefits Committee for ongoing review of benefit programs, cost containment and cost savings options. The Committee shall be made up of representatives of the SEIU, SEIU-Childcare, Western Council of Engineers, Local 1 – Confidential, Police Association, Police Mid-Management, Fire Association, Fire Chief Officers Association, Management, and Mid-Management employees.

The Employee Benefits Committee may make recommendations for changes to existing benefits. However, changes to benefits identified in this agreement shall only occur after the City and Association have mutually agreed to meet and confer on such changes and have completed the meet and confer process, including impasse resolution. There shall be no change to any benefits that are subject to the meet and confer process provided in this Memorandum of Understanding absent the specific, written agreement of the Association and completion of the meet and confer process.

4.2 HEALTH & WELFARE

4.2.1 Full Flex Cafeteria Plan

Effective January 1, 2010, the City implemented a full flex cafeteria plan for active employees, in accordance with IRS Code Section 125. Active employees participating in the City's full flex cafeteria plan shall receive a monthly flex dollar allowance to purchase benefits under the full flex cafeteria plan.

Effective January 1, 2018, the monthly flex dollar allowance shall be:

For employee only:	\$ 758.08
For employee and one dependent:	\$1,517.19
For employee and two or more dependents:	\$1,972.45

The flex dollar allowances shall increase on the December 15th paycheck up to a maximum of three percent (3.0%) on an annual basis, based on but not to exceed the Kaiser Bay Area premium rate increase for the upcoming calendar year.

The City shall contribute to the cost of medical coverage for each eligible employee and his/her dependents, an amount not to exceed the California Public Employees' Medical and Hospital Care Act (PEMHCA) Minimum Employer contribution, as determined by CalPERS on an annual basis. This portion of the monthly flex dollar allowance is identified as the City's contribution towards PEMHCA. The monthly flex dollar allowance (including the PEMHCA minimum contribution) may be used in accordance with the terms of the cafeteria plan to purchase health benefits or may be converted to taxable income.

Conditional Opt-Out Arrangement: An employee may elect to waive the City's health insurance coverage and receive a \$300 monthly Opt-Out payment in accordance with the terms of the cafeteria plan, and the Affordable Care Act, if the employee complies with the following conditions:

- 1) The employee certifies that the employee and all individuals in the employee's tax family for whom coverage is waived have alternative Minimum Essential Coverage as defined by the Patient Protection and Affordable Care Act through a provider other than a federal marketplace, a state exchange, or an individual policy.
- 2) During the City's annual open enrollment period, the employee must complete an annual written attestation confirming that the employee and the other members of the employee's tax family are enrolled in alternative Minimum Essential Coverage. The employee agrees to notify the City no later than 30 days if the employee or other member(s) of the employee's tax family lose coverage under the alternative Minimum Coverage Plan.
- 3) The employee understands that the City is legally required to immediately stop conditional opt-out payments if the City learns that the employee and/or members of the employee's family do not have the alternative Minimal Essential Coverage.

The City reserves the right to modify at any time, the amount an employee is eligible to receive under this paragraph, if required by IRS Cafeteria Plan regulations, other legislation or Federal and/or California agency guidance.

4.2.2 Retirees Health Insurance

Employees represented by the Association who retire from the Marin County Employees' Retirement Association (MCERA) within 120 days of leaving their City of San Rafael position (and who comply with the appropriate retirement provisions under the MCERA laws and regulations) are eligible to continue in the City's retiree group health insurance program offered through PEMHCA. The City's contribution towards retiree coverage shall be the PEMHCA minimum contribution as determined by CalPERS on an annual basis.

A. Employees hired before January 1, 2010

The City shall make a monthly retiree health insurance payment on behalf of employees hired before January 1, 2010 and who retire from the City of San Rafael as described in this section.

The City's monthly payment shall be the difference between the premium cost of coverage minus the PEMHCA minimum contribution. The City's total payment (PEMHCA minimum contribution plus additional cost of retiree premiums) shall be \$386 per month. The City's retiree health insurance contribution shall continue for the lifetime of the retiree and retiree's spouse, in accordance with PEMHCA eligibility provisions for coverage.

B. Employees hired on or after January 1, 2010 and who meet the eligibility requirements for retiree health insurance are eligible to continue in the City's group health insurance program. The City's maximum contribution towards retiree coverage under this subsection, 4.2.3b, shall be the PEMHCA minimum contribution as determined by CalPERS on an annual basis. The City shall not be responsible for making any contributions towards the cost of coverage of the retiree's spouse, registered domestic partner, or dependents upon the employee's retirement from the City in excess of the PEMHCA minimum contribution as required by CalPERS.

The City shall additionally make available a retiree health care trust to enable these employees to prefund retiree health care premiums while employed by the City. The retiree health care trust shall be funded by annual conversion of 50 hours of sick time in service on July 1 of each year, provided an employee has a remaining balance of 75 hours of sick leave after the conversion.

4.2.3 Health and Dependent Care Spending Accounts

City will offer as part of its Section 125 Plan for as long as such a plan is desired by the Association and available pursuant to the IRS Code a Health and Dependent Care Spending Accounts. The Flexible Spending Accounts offered by the City include:

- a. Healthcare Spending Account: Out-of-pocket medical expenses that qualify under the IRS Code effective January 1, 2013 at IRS Code limit, not to exceed \$ \$2,500. Employees are responsible to pay the monthly administrative fee and any increase established by the third-party administrator.
- b. Dependent Care Spending Accounts: Dependent care expenses that qualify under the IRS Code at the IRS Code limit. Employees are responsible to pay the monthly administrative fee and any increase established by the third-party administrator.
- c. Premium Only Plan: Excess Medical premiums shall be deducted from employee's pay with pre-tax dollars as long as such deduction is allowable under the applicable IRS Code.

City shall establish an annual enrollment period and each employee must re-enroll annually for either plan noted in Section 4.2.3. a. and/or b.

4.3 PERS HEALTH INSURANCE BENEFITS

Upon reasonable advance notice to the Association, the City shall have the option of either contracting with the Public Employees Retirement System (PERS) Health Benefits Division for health insurance or contracting directly with some or all of the providers of health insurance under the PERS program; provided, however, contracting directly with the providers shall not cause any material reduction in insurance benefits for active or retired employees from those benefits available under the PERS program; and provided further such contracting shall not cause a material increase in premiums for either the City or the employees. There shall be no requirement for the City to meet and confer upon the City's exercising the option described above in accordance with the provisions of this paragraph.

4.4 DENTAL PLAN

The City will provide a dental insurance program providing 100% coverage for diagnostic and preventative care, \$25 deductible on corrective coverage (80/20) per eligible patient per calendar year, 80/20 cost sharing for cast, crowns and restorations, and orthodontic coverage (50/50) within the limits prescribed in the Group Plan document. The City shall continue the current or comparable program and shall pay any increased premium rate increases from date of the increase for the term of this MOU

The maximum benefit amount is \$1,500 per person per Calendar Year.

4.5 VISION PLAN

The City will contract for a vision plan for employee only vision benefits. Employees will be eligible to enroll qualified family members and will pay the premium costs for such enrollment.

4.6 LIFE INSURANCE AND ACCIDENTAL DEATH & DISMEMBERMENT

Effective January 1, 2010, the City shall be responsible for paying premiums for a life insurance and Accidental Death and Dismemberment (AD&D) policy for each employee. The life and AD&D policy shall provide a \$5,000 life insurance and a \$5,000 AD&D benefit.

4.7 LONG TERM DISABILITY POLICY

An employee shall have the option to fund a PORAC Long-Term Disability policy with after-tax income. In lieu of the City sponsored LTD plan, the City will pay an annual \$100 lump sum payment minus applicable taxes to each employee. This lump sum payment will be made in the first pay period in December of each year of this MOU.

4.8 RETIREMENT

4.8.1 Retirement Contribution

Bargaining unit members shall pay the full share of the employee's contribution to the Marin County Retirement System.

Effective the pay period including September 1, 2013, all current and "PEPRA" ("classic" and "new") bargaining unit members shall contribute an additional 1% of pensionable compensation to MCERA, over and above the employee's contribution noted above.

The City of San Rafael acknowledges that under its current practice, the employee's share of their retirement contribution is deducted with pretax dollars. This practice will continue until changed through the Meet and Confer process or until IRS regulations change.

4.8.2 Retirement Plans

The City shall provide the Marin County Employee Retirement Association 3% at 55-retirement program to all safety members, as defined under the 1937 Act Government Code Section 31664, subject to Marin County Employee Retirement Association procedures and regulations and applicable 1937 Act laws that govern such plans. This shall be based on an employee's single highest year of compensation.

The City shall provide the Marin County Employee Retirement Association 2.7% at 55-retirement program to all miscellaneous members, as defined under the 1937 Act Government Code Section 31676, subject to Marin County Employee Retirement Association procedures and regulations and applicable 1937 Act laws that govern such plans. This shall be based on an employee's single highest year of compensation.

Safety employees hired on or after July 1, 2011 will receive an MCERA retirement benefit at the formula 3% @ 55 calculated based on the average of their highest three years of compensation, with a 2% COLA benefit cap.

Non-safety employees hired on or after July 1, 2011 will receive an MCERA retirement benefit at the formula 2% @ 55 calculated based on the average of their highest three years of compensation, with a 2% COLA benefit cap.

Safety employees hired on or after January 1, 2013 who are defined as "new members" of MCERA in accordance with the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be enrolled in the MCERA 2.7% @ 57 plan for Safety members. The employee is responsible for paying the employee contribution of half of the total normal cost of the plan, as defined by MCERA, through a payroll deduction. Final compensation will be based upon the highest annual average compensation earnable during the thirty-six (36) consecutive months of employment immediately preceding the effective date of his or her retirement or some other period designated by the retiring employee.

Non-safety employees hired on or after January 1, 2013 who are defined as "new members" of MCERA in accordance with the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be enrolled in the MCERA 2% @ 62 plan for Miscellaneous members. The employee is responsible for paying the employee contribution of half of the total normal cost of the plan, as defined by MCERA, through a payroll deduction. Final compensation will be based upon the highest annual average compensation earnable during the thirty-six (36) consecutive months of employment immediately preceding the effective date of his or her retirement or some other period designated by the retiring employee.

4.8.3 Member Cost of Living Rates

Bargaining unit members who are eligible to participate in the Marin County Employee Retirement Association will pay their full share of member's cost of living rates as allowed under Articles 6 and 6.8

of the 1937 Retirement Act. Miscellaneous and safety member contribution rates include both the basic and COLA portions (50% of COLA is charged to members as defined in the 1937 Act).

4.8.4 Pension Costs

The parties shall discuss pension issues during the term of this MOU utilizing the Labor-Management Committee process memorialized in Section 6.6.5 of this agreement.

5 LEAVES

5.1 SICK LEAVE

5.1.1 Eligibility

Sick leave with pay shall be granted to each eligible employee. Sick leave shall not be considered a privilege, which an employee may use at the employee's discretion, but shall be allowed only in case of necessity and actual sickness or disability. The employee is required to notify employee's immediate supervisor or Police Chief according to department Rules and Regulations at the beginning of his/her daily duties. Every employee who is absent from his/her duties for two (2) consecutive work days shall file with the Human Resources Director should he/she so request, a physician's certificate or the employee's personal affidavit stating the cause of the illness or disability. The inability or refusal by said employee to furnish the requested information, as herein required, shall constitute good and sufficient cause for disciplinary action, including dismissal.

5.1.2 Sick Leave Accrual

All eligible full-time employees shall earn sick leave credits at the rate of eight (8) hours per month commencing with the date of employment (accrual pro-rated for P/T employees). Unused sick leave may be accumulated with no limit. A cap of twelve hundred (1200) hours shall be in effect for sick leave separation payoff purposes only.

5.1.3 Use of Sick Leave

An employee eligible for sick leave with pay will be granted such leave with the approval of the Police Chief for the following purposes:

1. Personal illnesses or illness within the immediate family (immediate family is defined as employee's spouse, dependent children and/or employee's parents), or physical incapacity resulting from causes beyond the employee's control; or,
2. Enforced quarantine of the employee in accordance with community health regulations.
3. Medical appointments that cannot be scheduled during non-working hours shall be charged to sick leave, unless the employee is a sworn police officer.

5.1.4 Advance of Sick Leave

Whenever circumstances require, and with the approval of the City Manager, sick leave may be taken in advance of accrual up to a maximum determined by the City Manager, provided that any employee separated from the service who has been granted sick leave that is un-accrued at the time of such separation shall reimburse the City of all salary paid in connection with such un-accrued leave.

5.1.5 Service Credit for Sick Leave

Employees who are eligible to accrue sick leave and who retire from the City of San Rafael's Marin County Employee's Retirement System, on or after January 1, 2003, and within 120 days of leaving City employment (excludes deferred retirement), shall receive employment service credit, for retirement purposes only, for all hours of accrued, unused sick leave (exclusive of any sick leave hours said employee is eligible to receive and elects to receive in compensation at the time of retirement).

Note: Refer to Section 5.1.2, Sick Leave Accrual, for sick leave cap limitation for payoff purposes.

5.1.6 Compensation for Unused Portion

Upon separation from employment, by resignation, retirement or death, an employee who leaves the City in good standing shall receive compensation for all accrued, unused sick leave based upon the rate of three percent (3%) for each year of service up to a maximum of fifty percent (50%).

5.2 VACATION LEAVE

5.2.1 Eligibility

Annual vacation with pay shall be granted each eligible employee. Employees will be permitted to use accrued vacation leave after six (6) months of employment subject to the approval of the Police Chief.

5.2.2 Rate of Accrual

Vacation benefits shall accrue during the probationary period. Each regular full-time employee (part time regular are prorated) shall commence to accrue vacation at the following rate for continuous service:

- The first three (3) years of continuous employment shall earn ten (10) working days of vacation per year. Such entitlement shall accrue at the rate of five-sixths (5/6) days per month.
- From the beginning of the fourth (4th) year of service through the end of the tenth (10th) year of service, fifteen (15) working days of vacation per year. Such entitlement shall accrue at the rate of one and one fourth (1-1/4) days per month.
- From the beginning of the eleventh (11th) year of service through the fifteenth (15th) year, twenty (20) working days of vacation per year. Such entitlement shall accrue at the rate of one and two-thirds (1-2/3) day per month.
- From the beginning of the sixteenth (16th) year of service and beyond, twenty-five (25) working days of vacation per year. Such entitlement shall accrue at the rate of two and one-twelfth (2-1/12) days per month.

Vacation Accrual chart:

YEARS OF SERVICE	ACCRUAL PER YEAR	ACCRUAL PER MONTH
1 - 3 years	10 days or 80 hours	.83 days or 6.66 hours
4 - 10 years	15 days or 120 hours	1.25 days or 10 hours
11 - 15 years	20 days or 160 hours	1.67 days or 13.36 hours
16 + years	25 days or 200 hours	2.08 days or 16.68 hours

When an employee is on an approved leave without pay, vacation accrual is prorated based upon paid hours in the pay period.

5.2.3 Administration of Vacation Leave

The City Manager, upon the recommendation of the Police Chief, may advance un-accrued vacation to any permanent regular and part time employee.

The time at which an employee may use his/her accrued vacation leave and the amount to be taken at any one time shall be determined by the employee's Police Chief with particular regard for the needs of the City, but also, insofar as possible, considering the wishes of the employee.

In the event that one or more City holidays falls within an annual vacation leave, such holidays shall not be charged as vacation leave, unless the employee is on a schedule to be paid for designated holidays in lieu of days off.

Upon termination, an employee shall be compensated in cash at his/her current rate of pay for any vacation accrued but not taken, up to the maximum accrual cap, provided that the employee has successfully six months of continuous employment.

5.2.4 Vacation Sign-up

Vacation sign-ups shall occur every six months during the designated shift rotations as outlined in Section 6.1.2 of this MOU. Employees will sign up for vacation based on seniority within their assigned work unit using the Vacation Sign-Up Roster. Employees who do not sign up during shift rotation will be able to sign up for vacation beyond the traditional shift sign up period only if the desired week(s) are open and available.

Employees may take a single vacation day only if the following criteria are met:

1. The single day vacation is selected 120 hours prior to the date to be taken.
2. The single vacation day does not cause the employee's assigned shift to go below the minimum staffing requirements.
3. The single vacation day may be denied between 120 and 71 hours in advance of the date to be taken if staffing is projected to fall below minimum staffing requirements due to additional employees using sick leave, comp time or for specific department needs.
4. If there are schedule changes due to additional employees using sick leave, comp time or other causes between 70 hours and the date to be taken, the department will honor the employee's single vacation leave request and allow the employee to use the single vacation day.

The Parties agree to discuss the vacation sign-up process (Section 5.2.4) and CTO (Section 6.2.2) during the term of this Agreement. The Parties must mutually agree to any changes to either or both sections.

5.2.5 Vacation Cap

No employee may accrue more than 250 hours of vacation leave. Vacation accruals will resume once the employee's accumulated vacation balance falls below the allowable cap limit.

Employees may, for special situations, i.e., extended medical leave, request an increase in their cap. Each request would need to be in writing, submitted through the department, and receive the approval of the Police Chief and the City Manager. Such requests would be reviewed on a case-by-case basis and would be evaluated based on the reason for the request. This additional vacation accrual could not exceed one-half of the employee's regular annual vacation accrual. In no case would the addition over the cap be extended beyond one additional year from date of approval.

5.2.6 Vacation Cash-In

Vacation Conversion: An employee is eligible to request a conversion of vacation time to a cash payment in May or November in any fiscal year in accordance with the following:

An employee who has taken at least ten (10) days of vacation in the preceding twelve (12) months and has accrued vacation during that time may request up to seven (7) days of vacation conversion. Such requests may be granted at the discretion of the City Manager.

If the request is granted, May requests will be paid in the last pay period in June and November requests will be paid in the last pay period in December. Employees cannot cash in more than seven (7) days of vacation in any one twelve (12) month period.

5.3 HOLIDAYS

The following thirteen (13) holidays will be observed:

New Year's Day	Labor Day
Martin Luther King Day	Admission Day
Washington's Birthday	Veteran's Day
Lincoln's Birthday	Thanksgiving Day
Cesar Chavez Day	Day after Thanksgiving

Memorial Day
Independence Day

Christmas Day

All represented employees in the Police Department shall receive straight time compensation for every holiday worked or which falls on a regularly scheduled day off in each given year, which all other employees receive as time off. Said compensation shall be during the pay period that the holiday occurs.

5.4 OTHER LEAVE

5.4.1 Bereavement Leave

In the event of the death of an employee's spouse, registered domestic partner, child, parent, brother, sister, in-laws, grandparent, grandchild or relative who lives or has lived in the home of the employee to such an extent that the relative was considered a member of the immediate family and/or another individual who has a legal familial relationship to the employee and resided in the employee's household, up to three (3) days of accrued sick leave within the State and up to five (5) days of accrued sick leave out-of-state may be granted for bereavement leave.

In those cases where the death involves an individual who had such a relationship with the employee, as defined above, the employee shall sign a simple affidavit describing the relationship and submit this to the Police Chief as part of the request for bereavement leave.

5.4.2 Jury Duty

Employees required to report to jury duty shall be granted a leave of absence with pay from their assigned duties until released by the court, provided that the employee provides advance notice to the Police Chief and remits to the City all per diem service fees except mileage or subsistence allowance within thirty days from the termination of such duty.

5.4.3 Military Leave

Military leave shall be granted in accordance with the State of California Military and Veteran's Code as amended from time to time. All employees entitled to military leave shall give the Police Chief an opportunity, within the limits of military regulations, to determine when such leave shall be taken.

5.4.4 Leave of Absence Without Pay

Leave of absence without pay may be granted by the City Manager upon the written request of the employee. Applicable accrued leave must be exhausted prior to the granting of leave without pay.

5.4.5 Industrial Injury Leave

For benefits under Workers Compensation, an employee should report any on the job injury to his/her supervisor as soon as possible, preferably within twenty-four (24) hours. The Human Resources' office coordinates benefits for Worker's Compensation claims.

For further information, see the City's Workers' Compensation policy located on the Intranet (<https://intranet.cityofsanrafael.org>).

Employees of the City who have suffered any disability arising out of, and in the course of their employment as defined by the Worker's Compensation Insurance and Safety Act of the State of California are entitled to all benefits allowed them by the Workers' Compensation Insurance and Safety Act of the State of California.

NON-SAFETY EMPLOYEES

Temporary disability payments (TD) are made to all employees (full and part-time) when a physician reports an employee is unable to perform their job duties due to an industrial injury and the City cannot accommodate the restrictions mandated by their physician. TD is set by State law and is approximately two-thirds of full salary with state-mandated minimums and maximums. For full-time, regular employees, however, the City augments disability payments to bring them to full salary for the first three (3) calendar months and to $\frac{3}{4}$ pay for the next 6 months. Compensation leave payments

shall not exceed the employee's regular full pay for the first three (3) calendar months and three-fourths (3/4) of the regular full pay for the following six (6) calendar months.

All other employees shall be entitled to such compensation as may be allowed them by the Worker's Compensation Insurance and Safety Act of the State of California.

SAFETY EMPLOYEES

Compensation leave payments are governed by Labor Code Section 4850. Labor Code Section 4850 provides that employees who sustain an industrial injury which precludes them from working are eligible to receive full salary for a period of up to one year during the period of such disability.

Sick Leave Usage Post Industrial Injury/Illness

The following rule applies to both Safety and Non-Safety personnel who have suffered an industrial injury/illness: Available accrued sick leave cannot be used for more than 60 calendar days after one of the following has been determined:

- The employee has reached maximum medical improvement and/or has been determined "permanent and stationary."
- The employee has been determined to be unable to return to their usual and customary occupation, with or without reasonable accommodation.

Given the above has occurred, next steps would include:

- The interactive process; attempt to locate other appropriate employment within the City
- If none available proceed with termination process, including disability retirement application and/or Skelly process, if appropriate.

5.4.6 Medical Leave of Absence

Family leave shall be granted in accordance with the federal Family and Medical Leave Act of 1993 and the California Family Rights Act of 1991. Requests for Family Care Leave are submitted to the Police Chief for approval and reviewed by the Human Resources Director for consistency with the law prior to approval. Employees approved for this type of leave must use appropriate accrued and unused vacation leave and/or compensatory time before going on leave without pay status. Accrued and unused sick leave may be used if requested. Sick leave usage is to be consistent with the sick leave provisions of the MOU; to be eligible for this family leave benefit, an employee must have worked for the City of San Rafael for at least 12 months and have worked a minimum of 1,250 hours in the previous 12-month period. For details, please see the City's FMLA policy located on the Intranet.

5.4.7 Absence without Authorized Leave

An unauthorized absence of an employee for three consecutive workdays shall constitute grounds for termination.

5.4.8 Catastrophic Leave

All employees of the Police Department should refer to City-Wide Catastrophic Leave Policy located on the City's Intranet (<https://intranet.cityofsanrafael.org>).

6 TERMS & CONDITIONS OF EMPLOYMENT

6.1 HOURS OF WORK/FLSA WORK PERIOD

The work period for personnel assigned to patrol is pursuant to a 21-day Section 207(k) of the FLSA, which begins and ends at 5:00 a.m. shift change. The work period for all other personnel is seven days, Sunday through Saturday of each calendar week, starting at midnight on the first day of the period and ending one minute before midnight on the last day of the period. An employee's normal total number of work hours per year shall be 2080 hours.

The parties may reopen negotiations during the term of the Agreement to negotiate the City's administration of a new payroll system and/or changes made to comply with a 28-day FLSA work period. Any changes to mandatory subjects of bargaining during the term of the MOU will be implemented subject to mutual agreement.

6.1.1 Alternate Work Weeks

Both parties agree that at the discretion of the Police Chief, alternative work schedules which include a total of 2,080 annual working hours, if mutually agreed to, may be implemented for designated periods of time for all represented employees for the lifetime of this MOU; any new alternative work schedule established during the term of this MOU shall initially be established on a six-month trial basis. During the trial period if there is a significant increase in overtime costs attributable to the trial plan, or significant increases in sick leave usage or workers compensation claims the department may opt to stop the trial work schedule.

For illustration and definition purposes the following chart is prepared:

Schedule	Definition
4-10	Four (4) consecutive ten (10) hour days with three (3) consecutive days off.
5-8	Five (5) consecutive eight (8) hour days with two (2) consecutive days off.
3-12	The standard work period will consist of 156 hours of work in a 28-day period, broken into thirteen (13) twelve (12) hour days. The standard work cycle consists of working alternately, three (3) consecutive days in a seven-day period, then four (4) consecutive days in a seven-day period. Each member will be given an extra twelve (12) hour day off during each 28-day period to ensure that no more than thirteen days are worked. This extra day off may be different for each employee on a given team to ensure adequate daily staffing. This extra day off will coincide with the employees' regular days off. As a result of working 156 hours in each 28-day period instead of the standard 160 hours, each member will owe the City 4 hours. The City and the Police Association agree to allow each member to bank these 4 hours for three 28-day periods, for a total of twelve (12) hours. Each member would be required to pay back these hours by working a scheduled day off selected by the Department. The scheduled pay back would be for training or other assignments as required by the Department.
4-4	Four (4) consecutive ten (10) hour days with four (4) consecutive days off. Each employee will work three-hundred twenty (320) hours of work within an eight-week cycle.

The following Alternative work schedules are currently being used:

PATROL:

The shifts listed are basic shifts that must be filled in order to meet the minimum staffing levels. If an officer filling one of those shifts is absent for a period of a week or longer, another officer may be required to change shifts to fill the vacancy in accordance with the existing provisions of the MOU regarding changes of assignments.

The rosters anticipate a minimum of twenty-seven officers being assigned to patrol in a duty status in the indicated shifts. In the event twenty-seven officers are not available, the department may opt to return to five eight-hour shifts per week for all patrol officers.

It is the department's intent to match staffing levels with calls for service. If calls for service change, the department may alter the hours of shifts to meet the change.

DETECTIVES:

A 4-10 or 5-8 plan for all detectives with the approval of the Bureau Commander.

FRONT OFFICE:

A system combining 5-8/4-10 for all front office Records Clerks.

COMMUNICATIONS DISPATCHERS:

1. Alternate Work Schedules for Communications Dispatchers include a 4-4 plan, a 4-10 plan or a 3-12 plan. Depending on department needs, some dispatchers may be assigned to work a 4-4 schedule while others may be assigned to a 4-10 schedule or a 3-12 schedule.
2. Under the 3-12 plan, Dispatchers will be required to work the following three-week schedule: Week 1 - three (3) 12-hour days; Week 2 - three (3) 12-hour days; and Week 3 - four (4) 12-hour days. The fourth 12-hour day in Week 3 is to be determined by the Division Captain and Dispatch Supervisor as part of the rotation schedule.
3. Overtime shall be earned in accordance with the FLSA, meaning that: a) only actual work hours are counted toward overtime; b) only actual work over 40 hours in the City's workweek are paid pursuant to FLSA requirements; and c) all actual work over 40 hours in the City's workweek will be paid at a rate of 1.5 times the individual employee's regular rate of pay.
4. Non-FLSA overtime will also be earned if a Dispatcher on a 3-12 schedule works over his or her scheduled work day or work week (e.g. more than 12 hours on a single day or more than 36 hours in a work week where the employee was scheduled to work three (3) 12-hour shifts, or more than 48 hours in the work week in which the Dispatcher is scheduled to work four (4) 12-hour shifts). The City will use the premium portion of any non-FLSA overtime premium pay due in any specific workweek to offset any FLSA overtime premium due in the same work week.

The 3-12 Alternate Work Schedule will not have any impact on holiday pay, sick, and vacation accrual rates. However, any holiday, sick, and vacation days off will be deducted for the number of hours scheduled to work, i.e. a sick day under the 3-12 plan will result in the deduction of twelve (12) hours of sick time.

6.1.2 Shift Rotation

Both parties agree that at the discretion of the Police Chief, the starting dates for the rotation, if mutually agreed to, may be changed for a designated rotation for all represented employees for the life of this MOU.

For members of the Patrol Bureau and Information Services Bureau, the spring rotation shall begin on the Sunday nearest the 15th of March and the fall rotation shall begin on the Sunday nearest the 15th of September. If the members of the Patrol Bureau or Information Services Bureau are working a 3-12 schedule, which operates on three-week cycles, then the Spring rotation shall begin on the Sunday nearest to the 15th of March following a completed three-week cycle and the Fall rotation shall begin on the Sunday nearest to the 15th of September following a completed three-week cycle.

Sergeants assigned to Patrol may select their shift by seniority, within rank. This paragraph shall not apply to probationary Sergeants. Probationary Sergeants shall be assigned at the discretion of the Division Captain, and any remaining open Sergeant slots shall be filled by seniority, within rank.

Corporals assigned to Patrol may select their shift by seniority, within rank. This paragraph shall not apply to probationary Corporals. Probationary Corporals shall be assigned at the discretion of the Division Captain, and any remaining open Corporal slots shall be filled by seniority, within rank.

Officers assigned to Patrol and not on probation may select their shift by seniority, within rank. This paragraph shall not apply to probationary Officers. Probationary Officers shall be assigned at the discretion of the Division Captain, and any remaining open Officer slots shall be filled by seniority, within rank.

Police Call Taker & Records Specialists work group working in the Records Unit will have the option to rotate three times per year: on the Sunday nearest the 15th of January; on the Sunday nearest the 15th of May; and on the Sunday nearest the 15th of September. This will begin at the September 2011 rotation. This practice will be at the discretion of the Chief of Police.

6.1.3 Patrol Briefing

Patrol briefing periods will be conducted within Patrol employees designated shifts.

6.1.4 Employee Break and Meal Periods

Employee break and meal periods are as follows:

Uniformed Patrol employees: One 15-minute break in first half of shift and one 45-minute meal period as scheduled and approved by the designated supervisor.

All other employees: One 15-minute break to be taken in the first half of the shift, one fifteen-minute break to be taken in the second half of the shift, and one 30-minute meal period as scheduled and approved by the designated supervisor. Combination of meal and break period must have prior supervisory approval.

No changes will be made in break and meal periods that would alter an employee's regularly scheduled working time without the advance approval from the employee's supervisor.

Break and meal periods are paid time and, as such, departmental needs will take priority. In the event that work demands preclude an employee from taking his or her break, and/or meal period, the employee will not be eligible for overtime compensation.

6.2 OVERTIME

6.2.1 Overtime

All represented employees who work overtime shall on forms provided by the Police Department designate whether they want the time accrued as compensatory time (C.T.) or paid as overtime at the rate of time and one-half. After initial selection (O/T pay vs. C.T.) if an employee wants to convert compensatory time to cash, or vice versa, the employee must submit a written request to the Police Chief and approval shall be at the discretion of the Police Chief.

Employees may accrue up to 200 hours of compensatory time at any time. However, employees may only use up to 120 hours of comp time each calendar year unless the Police Chief or the Chief's expressed designee approves additional comp time use up to the employee's 200-hour accrual cap. Approval to use comp time in excess of the 120-hour cap will generally only occur for catastrophic or other significant unforeseen circumstances. Employees who have a comp time balance in excess of the 200-hour cap will receive pay in lieu of continued carrying of these hours from the City on the next available pay check. At the end of the calendar year, any unused accrued comp time may be carried over to the next calendar year and said balance would affect the employees' ability to accrue additional comp time.

Before any Sergeant will be allowed to work an overtime shift replacing a beat officer, the overtime opportunity shall be posted for forty-eight (48) hours to allow officers to sign up. Only if officers fail to sign up, or the need to replace a beat officer arises with less than forty-eight (48) hours' notice, will sergeants be given the opportunity to work overtime in place of an officer/corporal. This restriction shall not apply to special events or foot beat duty.

Both parties agree that any changes in the overtime provisions of this MOU are subject to the meet and confer process.

All entry-level probationary employees shall not be allowed to accrue and bank any compensatory time until they have successfully completed their training program. Any overtime worked during their training program shall be paid at time and a half. This section does not apply to any employee that is promoted within the police department, and due to that promotion, is required to complete a training program. Promoted employees may elect to accrue and bank compensatory time or have such time paid at time and a half.

6.2.2 *Requests for Compensatory Time Off*

In the event that the granting of a request for compensatory time off creates one or more vacancies which bring the shift below the minimum staffing level or which otherwise needs to be filled, then the current practice will be utilized as follows: The supervisor will post the vacant slot(s) to be voluntarily back-filled with overtime. If one or more vacancies still exist then the supervisor will 1) assign personnel from the previous shift to hold over at the overtime rate, and/or 2) assign personnel from the following shift to report early at the overtime rate, and/or, in civilian work units, 3) assign personnel to work on their day(s) off.

All employees shall be granted compensatory time off when submitted at least 72 hours in advance of the requested time off. If an employee makes a request for compensatory time off with less than 72 hours advance notice and this request does not bring the shift below one above minimum staffing, then the employee shall be granted the time off. If the granting of the request would bring the shift to minimum staffing then the granting of the request would be at the discretion of the Police Chief or his designee.

The Parties agree to discuss the vacation sign-up process (Section 5.2.4) and CTO (Section 6.2.2) during the term of this Agreement. The Parties must mutually agree to any changes to either or both sections.

6.3 SHIFT CHANGES

Changes in the days or hours of the regular work schedule of an employee shall entitle such employee to be additionally compensated at one-half (1/2) their hourly pay rate for each hour worked outside their regular schedule unless the City has given the employee a minimum of seven (7) full days (or 168 hours) advance notice of such a change. No advance notice to employees by the City of shift change shall be required and no additional compensation shall be paid when shift changes occur as a result of work related emergencies, i.e., multiple sicknesses, disabilities or injuries; an unplanned for vacancy or shortage occurring less than seven days in advance of the shift change if the employee is given a minimum of twelve hours advance notice or at the specific request of an employee. If a shift change is due to work related illness or accident, it shall be considered an emergency and no overtime will be paid.

Vacancies of less than one workweek will be filled by overtime rather than shift changes.

This section shall not apply to personnel shortages arising from mutual aid requests, states of emergency declared by the Mayor, Board of Supervisors, Governor or the President or unplanned for critical incidents or situations of more than twenty-four hours duration.

6.4 PROBATIONARY PERIOD

6.4.1 *Purpose of Probation*

After passing an examination and accepting appointment, each employee shall serve a period of probation beginning on the date of appointment. Such period shall be for the purpose of determining the employee's ability to perform satisfactorily the duties prescribed for the position.

6.4.2 *Length of Probationary Period*

The probationary period on original appointments shall be eighteen (18) months. The probationary period on promotional appointments shall be twelve (12) months for internal promotions from:

- Police Officer to Police Corporal
- Police Corporal to Police Sergeant
- Dispatcher to Lead Dispatcher
- Lead Dispatcher to Dispatch Supervisor
- Records Specialist/Call Taker to Records Supervisor

All other internal promotions shall be subject to an eighteen (18) month probationary period.

6.4.3 Rejection During Probation

During the probationary period, an employee may be rejected at any time by the Appointing Authority without the right of appeal; except as otherwise provided for by the Public Safety Officers Bill of Rights Act, Government Code 3300, et.seq. for sworn officers, and as provided for in applicable existing case law concerning appeal rights/remedies of probationary employees.

6.4.4 Extension of Probationary Period

The probationary period shall not be extended except in the case of extended illness or injury or compelling personal situation during which time the employee was unable to work. In such cases, the probationary period may be extended for the length of time the ill or injured employee was unable to work.

6.4.5 Notification of Rejection or Extension

Upon determining that a probationary employee's work is not satisfactory, the Police Chief shall notify the Human Resources Director in writing of his/her intention to terminate the employee.

After discussion with the Human Resources Director, the Police Chief shall notify the employee in writing of the extension or rejection.

6.4.6 Regular Status

Regular status shall commence with the day following the expiration date of the probationary period.

6.4.7 Promotion of Probationary Employee

An employee serving a probationary period may be promoted to a higher position classification provided the employee is certified from the appropriate Eligible List. The employee promoted in this manner shall serve a new probationary period for the position to which employee is promoted and the new probationary period and promotional appointment shall be effective the same date.

6.4.8 Unsuccessful Passage of Promotional Probation

An employee who does not successfully pass the promotional probationary period shall be reinstated to the position in which the employee held regular status prior to his/her promotion. Provided, however, that if the cause for not passing the promotional probationary period was sufficient grounds for dismissal, the employee shall be subject to dismissal without reinstatement to the lower position.

6.5 PERSONNEL RULES & REGULATIONS

Both parties agree to the most updated Personnel Rules and Regulations that exist on July 1, 2011 for the purposes of this agreement, which are available on the City's intranet website. In the event that conditions appear in both the Rules and Regulations and the MOU, the MOU prevails.

6.5.1 Employer-Employee Resolution

The City and the Association agree to abide by the City of San Rafael's Employer-Employee Relations Resolution.

6.5.2 Drug and Alcohol Policy

The City and Association jointly recognize alcoholism and drug abuse as illnesses, which may be treatable. The parties are concerned regarding alcoholism and drug problems which cause poor attendance and unsatisfactory employment related performance, and/or which may pose a danger to employees or the public. Therefore, the City and Association endorse the concept of a drug free work place.

Possession, sale, use, or being under the influence of drugs or alcohol while on the job is strictly prohibited. Employees violating this policy are subject to discipline, up to and including termination. When reasonable cause (relates to readiness and/or ability to perform job responsibilities) exists, the City may require employees to submit to a medical examination, including but not limited to a urine or

blood analysis, to determine whether the employee is using drugs or alcohol. Said testing shall occur on City time and be paid for by the City. An employee's failure to submit to a medical examination will be considered an act of insubordination, and therefore, subject to disciplinary action.

Depending on the circumstances causing the order for medical examination, employees testing positive may be subject to discipline, up to and including termination. Upon being informed that the employee tested positive, the employee may request a meeting with the Human Resources Director and the Police Chief to review the test results and provide the employee's explanation for such results.

Employees are encouraged to voluntarily participate in the City sponsored employee assistance program (EAP). However, EAP participation may be a City-mandated alternative to disciplinary action arising out of a violation of the City's drug and alcohol policy.

As a course of participating in the EAP on a mandated basis, an employee may be required to enter into a "return to work agreement," with the City. Said agreement shall stipulate ongoing freedom from drug and/or alcohol use as a condition of continued employment.

Employees who seek voluntary assistance for alcohol and/or substance will not be disciplined for seeking such assistance. Requests from employees to the Police Chief for such assistance shall remain confidential and shall not be revealed to other employees or management personnel, who do not have a need to know, without the employee's consent. Employees enrolled in substance abuse programs shall be subject to all Employer rules, regulations and job performance standards with the understanding that an employee enrolled in such a program is receiving treatment for an illness.

An employee who is disciplined/discharged for inappropriate alcohol and/or drug use may appeal such action pursuant to Section 7.3.2 of the Memorandum of Understanding.

6.5.3 Outside Employment Policy

All employees of the Police Department should refer to City wide policy located on the City's Intranet (<https://intranet.cityofsanrafael.org>) for policies and procedures related to outside employment.

6.5.4 Harassment Policy

It is the City's intent and purpose to provide all officials, employees, applicants and contractors with an environment that is free from any form of harassment, discrimination or retaliation. Employees shall refer to the City Policy against Harassment, Discrimination and Retaliation which is available on the City's Intranet website.

6.5.5 Wireless Communication Policy

Union members agree to adhere to the provisions of the City's Wireless Communication Policy which is available on the City's Intranet Website.

6.5.6 Medical Standards

Attachments to the City of San Rafael's official job class specifications have been developed by Rehab 90 to describe the activity and frequency of the activities performed by the employee in the course and scope of their job classification. These descriptions are available for review by the employee's treating physician to assist the physician in determining whether the employee is able to return to his/her job after an absence due to an injury or illness.

6.5.7 Temporary Light Duty Policy Statement

The purpose of this temporary light duty program is to minimize the losses of productive time, while at the same time reintroducing the employee to work sooner to prevent deterioration of skills, facilitate recovery and reduce income loss. Light duty assignments will be structured so that employees are not placed in a duty status that would aggravate or incur an injury or illness. Light duty assignments are to be limited to temporary periods and are not to be used to create a permanent light duty assignment.

1. Coverage

Any employee who suffers a temporary and partial disability due to an industrial or non-industrial injury or illness will be covered by this light duty program.

2. Determination/Required Reports

- a. Light Duty assignments may be made following evaluation and determination by the Police Chief. The determination will be based on available medical information, and consultation with the employee or the affected supervisor. Determination will also be based on the needs of the City and the impact of light duty departmental operations.
- b. After the initial report, updated medical reports shall be submitted to the Police Chief at two-week intervals, or at other agreed upon intervals, for as long as the employee is off work. Reports will be required for all industrial or non-industrial injuries or illnesses regardless of whether or not a light duty assignment has been made.
- c. Reports will be evaluated by the Police Chief for purposes of continuing or terminating a current light duty assignment or to determine when to commence a light duty assignment.

3. Light Duty Assignments - Definitions/Restrictions

- a. Light duty assignments may consist of reduced work hours, limited work or any combination thereof.
- b. Light duty assignments will not adversely affect the employee's normal wage rate or retirement benefits.
- c. Light duty assignments will be within the employee's assigned department and will involve work which is consistent with the duties of the employee's classification.
- d. When feasible, light duty assignments will be during the employee's normal shift and duty hours. However, if it is determined that no useful work will be performed during the normal shift or duty hours, the employee will be assigned light duty during normal office hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.
- e. Specific light duty assignments will be developed based upon a case-by-case review of the medical restrictions, so as not to aggravate or incur an injury or illness.
- f. Employees will not be placed in light duty assignments that in the normal course of events will require that they provide direct field emergency response.

4. Holidays/Vacations

- a. Holidays shall be observed in accordance with the light duty assignment work hours and workweek. That is, if an employee is assigned to work hours in a department, division, or operating unit where employees in that work unit take the holiday off, so shall the light duty employee. If the employee is assigned to work hours on a work holiday, so shall the light duty employee. Compensation for holidays shall be in accordance with applicable Memorandum of Understanding or the Personnel Rules and Regulations.
- b. Employees assigned to light duty shall take their assigned (selected) vacation as normally scheduled. Vacations shall cover the same number of duty and calendar days as would have been enjoyed by the employee if they had remained on full duty. Employees may reschedule their assigned (selected) vacation with the approval of the Police Chief, provided the rescheduling does not result in increased costs or lost time to the City for relief personnel to cover the rescheduled vacation.

5. Return to Full Duty

Employees will be returned to full duty as soon as possible following medical certification that the employee is able to resume the full duties of his or her classification.

6.5.8 *Reinstatement*

Reinstatement after resignation shall be considered as new employment. Reinstatement may only be made upon request to the Police Chief if the individual has:

1. Left City service within the prior twenty-four (24) months.

and

2. Left City service in good standing. Good standing shall be defined for the purposes of reinstatement as: "The employee having provided in writing to the Department two weeks' notice of their resignation".

6.6 MISCELLANEOUS

6.6.1 *Gratuities / Solicitation of Contributions*

All employees of the Police Department should refer to Departmental General Orders for the policy and procedures related to gratuities/solicitation of contributions.

6.6.2 *Return of City Equipment*

Upon termination of employment, all City property assigned to an employee shall be returned to the employee's supervisor.

6.6.3 *Political Activity*

The political activity of City employees shall comply with pertinent provisions of State and Federal Law.

6.6.4 *Employment of Relatives*

The City retains the right:

1. To refuse to place one party to a relationship under the direct supervision of the other party to a relationship where such has the potential for creating adverse impact on supervision, safety, security or morale.
2. To refuse to place both parties to a relationship in the same Bureau or shift where such has the potential for creating adverse impact on supervision, safety, security, or morale or involves potential conflicts of interest.

6.6.5 *Labor / Management Advisory Meetings*

During the term of the Agreement, the City and the Association agree that consultation meetings may contribute to improved employer-employee relations.

The committee shall be comprised of three (3) representatives from the San Rafael Police Association and three (3) from City Management. The parties agree that committee members may change depending on the subject matter.

Meetings may be requested by either party. The party requesting the meeting shall submit a proposed agenda and the receiving party shall acknowledge and confirm the date, time and location of the requested meeting.

6.6.6 *Gym Membership Reimbursement*

Employees are eligible to receive up to \$50 reimbursement per month for paid gym memberships. Such reimbursement shall be paid once per year by the City in a lump-sum check and reported as taxable income to the employee.

7 PROCEDURES

7.1 DEMOTION & SUSPENSION

7.1.1 Demotion

The Police Chief or designee may demote an employee when the following occurs:

- A. The employee fails to perform his/her required duties;
- B. The need for a position which an employee fills no longer exists;
- C. An employee requests such a demotion.

No employee shall be demoted to a classification for which he/she does not possess the minimum qualifications.

When the action is initiated by the Police Chief, written notice of demotion shall be provided to an employee at least ten (10) working days before the effective date of the demotion, and a copy filed with the Human Resources Director. Withholding a salary step increase or withdrawing a merit step increase within or above the salary range of the employee's position shall not be deemed a demotion.

Disciplinary demotion action shall be in accordance with Article 7.3, "Disciplinary Action."

7.1.2 Suspension

The Police Chief or designee may suspend an employee from a position at any time for disciplinary purpose. Intended suspension action shall be reported immediately to the Human Resources Director, and shall be taken in accordance with Article 7.3, "Disciplinary Action."

7.2 TERMINATION OF EMPLOYMENT

7.2.1 Resignation

An employee wishing to leave the City service in good standing shall file with his/her immediate supervisor, at least fourteen (14) days before leaving the service, a written resignation stating the effective date and reason for leaving. A copy of the resignation shall be forwarded to the Police Chief and Human Resources Department.

7.2.2 Termination - Layoff

The Appointing Authority may terminate an employee because of changes in duties or organization, or abolition of position, or shortage of work or funds, or completion of work for which employment was made.

7.2.3 Termination - Disciplinary Action

An employee may be terminated at any time for disciplinary action, as provided in Article 7.3, "Disciplinary Action."

7.2.4 Retirement

Retirement from the City services shall, except as otherwise provided, be subject to the terms and conditions of the City's contract as amended from time to time, with the Marin County Retirement System.

7.3 DISCIPLINARY ACTION

7.3.1 Right to Discipline & Discharge

Disciplinary action shall mean discharge/dismissal, demotion, reduction in salary, suspension resulting in loss of pay, transfer for purposes of punishment, and written reprimand.

The City shall have the right to discharge or discipline any employee for dishonesty, insubordination, drunkenness, incompetence, negligence, failure to perform work as required or to observe the Department's safety rules and regulations or for engaging in strikes, individual or group slowdowns or work stoppages, or refusal to accept overtime, or for violating or ordering the violation of the Memorandum of Understanding.

The City may discipline or discharge an employee for the following:

- a. Fraud in securing appointment.
- b. Negligence of duty.

- c. Violation of safety rules.
- d. Unacceptable attendance record, including tardiness, overstaying lunch or break periods.
- e. Possession, Distribution or under the influence of alcoholic beverages, non-prescribed or unauthorized narcotics or dangerous drugs during working hours.
- f. Inability, unwillingness, refusal or failure to perform work as assigned, required or directed.
- g. Unauthorized soliciting on City property or time.
- h. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
- i. Unacceptable behavior toward the general public or fellow employees or officers of the City.
- j. Falsifying employment application materials, time reports, records, or payroll documents or other City records.
- k. Disobedience to proper authority.
- l. Misuses of City property.
- m. Violation of any of the provisions of these working rules and regulations or departmental rules and regulations.
- n. Disorderly conduct, participation in fights, horseplay or brawls.
- o. Dishonesty or theft.
- p. Establishment of a pattern of violations of any City policy or rules and regulations over an extended period of time in which a specific incident in and of itself would not warrant disciplinary action, however, the cumulative effect would warrant such action.
- q. Failure to perform to an acceptable level of work quality and quantity.
- r. Insubordination.
- s. Other acts inimical to the public service.
- t. Inability or refusal to provide medical statement on cause of illness or disability.

7.3.2 *Appeals*

If an employee believes he or she has been unjustly disciplined/discharged, he or she shall have the right to appeal his or her case through the appropriate procedure. A transfer for purpose of punishment not resulting in economic loss and a written reprimand shall only be appealable up to the level of the City Manager or "his/her designee and not eligible for arbitration. Discharge/dismissal, demotion, reduction in salary, suspension resulting in loss of pay, and transfer for purposes of punishment resulting in economic loss shall be appealable up to the level of arbitration. Such appeal must be filed with the City Manager by the employee in writing within five (5) working days from the date of receipt of the notice of discipline/discharge letter and unless so filed the right of appeal is lost.

7.3.3 *City Manager and Arbitration*

The employee (Appellant) may request the appeal be heard by the City Manager or may request arbitration. If arbitration is requested, representatives of the City and the employee (Appellant) shall meet promptly to select a mutually acceptable arbitrator, and to the extent possible for both parties the selection of the arbitrator should be made within 60 days of the request for arbitration. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City.

A hearing before the arbitrator shall be held within sixty days of the selection of the Arbitrator unless the mutually acceptable Arbitrator's schedule does not so permit. The arbitrator shall not have the power to amend or modify either party's position; but shall rule on the merits of each party's case as presented during the hearing. Decisions of the Arbitrator on matters properly before them shall be final and binding on the parties hereto, to the extent permitted by the Charter of the City.

7.4 GRIEVANCE PROCEDURE

7.4.1 Definition

A grievance is any dispute, which involves the interpretation or application of any provision of this Memorandum of Understanding.

7.4.2 Initial Discussions

Any employee who believes that he or she has a grievance may discuss his or her complaint with the top management official in the Police Department or with such subordinate management official as the Police Chief may designate. If the issue is not resolved within five (5) working days in the Department, or if the employee elects to submit his or her grievance directly to an official of the employee organization which is formally recognized as the representative of the classification to which he or she is assigned, the procedures hereafter specified may be invoked.

7.4.3 Referral to the City Manager

Any employee or any official of the employee organization which has been formally recognized by the City and which has jurisdiction over any position directly affected by the grievance may notify the City Manager and Police Chief in writing that a grievance exists, and in such notification, state the particulars of the grievance and, if possible, the nature of the determination which is desired. No grievance may be processed under Section 7.4.4 below which has not first been heard and investigated in pursuance of Section 7.4.2. A grievance which remains unresolved thirty (30) calendar days after it has been submitted in writing may be referred to the next step (see Section 7.4.4).

Any time limit may be extended to a definite date by mutual agreement of the Association and the appropriate management representative.

7.4.4 City Manager and Arbitration

If the grievance is not resolved at the previous step, the grievant, the Association, or the City may, after completion of the previous step in the grievance procedure, submit the grievance by written notice to the City Manager. If arbitration is requested, representatives of the City and the Association shall meet promptly to select a mutually acceptable arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Union and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post hearing briefs, if any. A hearing before the arbitrator shall be held within sixty days of the selection of the Arbitrator unless the mutually accepted Arbitrator's schedule does not so permit, and the arbitrator shall render a decision, within sixty days of the completion of the hearing unless the Arbitrator's schedule does not so permit, which is binding on the parties hereto, to the extent permitted by the Charter of the City.

7.4.5 No Abridgement of Other Rights of Appeal

The provisions of this grievance procedure shall not abridge on rights granted to employees under the City Charter or City ordinances, resolutions, rules and regulations providing other procedures for resolving disputes, except that an employee may not submit a grievance to an arbitrator in accordance with this grievance procedure if the employee has elected to use another procedure available under the City Charter or City ordinances, resolutions, rules and regulations for the resolution of his or her grievance.

If an employee feels he or she has been unjustly discharged/disciplined, the employee shall have the right to appeal his/her case pursuant to Section 7.3.2. Such appeals must be filed in writing within five (5) working days from date of receipt of the notice letter of discharge/discipline and unless so filed the right of appeal is lost, but, in the event that the dispute is carried to arbitration and that such employee is found to have been properly discharged/disciplined under the provisions of Article 7.3, such employee may not be ordered reinstated and no penalty may be assessed upon the Employer. The arbitrator shall not have the power to amend or modify either party's position; but shall rule on the merits of each party's case as presented during the hearing.

In addition to the arbitrators proposed by the State Mediation and Conciliation Service, the parties shall be free to select from a pool of arbitrators mutually agreed to by the City and the Association. The parties shall continue to meet and confer, after the adoption of this MOU on a mutually agreeable panel of arbitrators. Once agreed to the panel shall be identified by side letter to the MOU.

7.4.6 Pay Claims

All complaints involving or concerning payment of compensation shall be filed in writing and no adjustments shall be retroactive for more than thirty (30) days from the date of filing.

7.4.7 Matters Excluded from the Grievance Procedure of the Memorandum of Understanding

In those cases where the matter concerns any rule or policy or administrative procedure of the City contained in the City Charter, the Personnel Ordinance, or the Personnel Rules and Regulations which are adopted pursuant to the City Charter, the appeal procedures contained therein shall be utilized.

7.5 POSITION RECLASSIFICATION

Reclassification of positions covered by this MOU shall be in accordance with the City's Reclassification Policy available on the City's Intranet website.

7.6 REDUCTION IN FORCE

7.6.1 Notice

Employees designated for layoff or demotion due to a reduction in force shall be notified in writing at least thirty (30) calendar days prior to the anticipated date of termination or demotion. The employee organization shall also be so notified.

7.6.2 Order of Layoff

In reduction of forces, the last employee hired shall be the first employee laid off, and in rehiring, the last employee laid off shall be the first employee rehired until the list of former employees is exhausted; provided that the employee retained or rehired is capable, in the opinion of the City, to perform the work required. An employee laid off from City services prior to being rehired must pass the physical examination administered by a City-appointed physician and must pass the background check administered by the Police Department. The names of employees laid off shall be placed on a Re-employment Eligible List as hereinafter specified.

7.6.3 Re-Employment Eligibility List

The Re-employment Eligible List shall consist of the names of employees and former employees having probationary or permanent status that was laid off in that classification. The rank order on such list shall be determined by relative seniority as specified above. Such list shall take precedence over all other eligible lists in making appointments to the classification in which the employee worked.

Employees who did not complete their probationary period prior to being laid off; if re-employed must complete their probationary period. The employee may petition to the Police Chief for early release from this probationary period.

The name of any person laid off shall continue on the appropriate Re-employment Eligible List for a period of one (1) year after it is placed thereon. The names of any eligible employees on a Re-employment Eligible List shall be automatically removed from said list at the expiration of the appropriate period of eligibility.

SAN RAFAEL POLICE ASSOCIATION:

CITY OF SAN RAFAEL:

John Noble, SRPA Representative

**Tim Davis, Lead Negotiator
Attorney, Burke Williams & Sorensen**

Carl Huber, President

Cristine Alilovich, Assistant City Manager

Alex Holm

Stacey Peterson, Human Resources Director

Christopher Fuller

Sylvia Gonzalez-Shelton, HR Coordinator

Date

Date

**SAN RAFAEL POLICE ASSOCIATION
SALARY SCHEDULE
Effective September 16, 2018**

Grade*	Position		Entry Level Step A1	A	B	C	D	E
6203	COMMUNITY SERVICE OFFICER	Annually	\$ 59,780	\$ 62,767	\$ 65,900	\$ 69,205	\$ 72,657	\$ 76,292
		Monthly	\$ 4,982	\$ 5,231	\$ 5,492	\$ 5,767	\$ 6,055	\$ 6,358
		Hourly	\$ 28.7405	\$ 30.1763	\$ 31.6828	\$ 33.2716	\$ 34.9311	\$ 36.6788
6207	MENTAL HEALTH OUTREACH PROVIDER	Annually	\$ 66,255	\$ 69,572	\$ 73,048	\$ 76,696	\$ 80,539	\$ 84,566
		Monthly	\$ 5,521	\$ 5,798	\$ 6,087	\$ 6,391	\$ 6,712	\$ 7,047
		Hourly	\$ 31.8534	\$ 33.4482	\$ 35.1194	\$ 36.8730	\$ 38.7208	\$ 40.6568
6202	POLICE ADMINISTRATIVE TECHNICIAN	Annually	\$ 61,237	\$ 64,297	\$ 67,516	\$ 70,882	\$ 74,431	\$ 78,152
		Monthly	\$ 5,103	\$ 5,358	\$ 5,626	\$ 5,907	\$ 6,203	\$ 6,513
		Hourly	\$ 29.4407	\$ 30.9119	\$ 32.4595	\$ 34.0778	\$ 35.7843	\$ 37.5733
9420	POLICE CADET	Annually	\$ 27,944	\$ 29,339	\$ 30,808	\$ 32,350	\$ 33,966	\$ 35,667
		Monthly	\$ 2,329	\$ 2,445	\$ 2,567	\$ 2,696	\$ 2,831	\$ 2,972
		Hourly	\$ 13.4346	\$ 14.1054	\$ 14.8116	\$ 15.5530	\$ 16.3298	\$ 17.1478
2121	POLICE CALL TAKER & RECORDS SPECIALIST	Annually	\$ 57,540	\$ 60,417	\$ 63,440	\$ 66,610	\$ 69,939	\$ 73,440
		Monthly	\$ 4,795	\$ 5,035	\$ 5,287	\$ 5,551	\$ 5,828	\$ 6,120
		Hourly	\$ 27.6636	\$ 29.0465	\$ 30.5000	\$ 32.0241	\$ 33.6247	\$ 35.3077
6201	POLICE SUPPORT SERVICES SUPERVISOR	Annually	N/A	\$ 90,955	\$ 95,509	\$ 100,282	\$ 105,301	\$ 110,564
		Monthly	N/A	\$ 7,580	\$ 7,959	\$ 8,357	\$ 8,775	\$ 9,214
		Hourly	N/A	\$ 43.7286	\$ 45.9177	\$ 48.2127	\$ 50.6253	\$ 53.1557
9622	POLICE COMMUNICATIONS DISPATCH TRAINEE	Annually	\$ 50,208	\$ 52,730	\$ 55,362	\$ 58,128	\$ 61,041	\$ 64,089
		Monthly	\$ 4,184	\$ 4,394	\$ 4,613	\$ 4,844	\$ 5,087	\$ 5,341
		Hourly	\$ 24.1387	\$ 25.3509	\$ 26.6161	\$ 27.9460	\$ 29.3466	\$ 30.8118
6205	POLICE COMMUNICATIONS DISPATCHER	Annually	\$ 62,779	\$ 65,912	\$ 69,217	\$ 72,669	\$ 76,304	\$ 80,123
		Monthly	\$ 5,232	\$ 5,493	\$ 5,768	\$ 6,056	\$ 6,359	\$ 6,677
		Hourly	\$ 30.1822	\$ 31.6887	\$ 33.2775	\$ 34.9370	\$ 36.6847	\$ 38.5207
6215	POLICE LEAD COMMUNICATIONS DISPATCHER	Annually	N/A	\$ 70,857	\$ 74,407	\$ 78,128	\$ 82,032	\$ 86,133
		Monthly	N/A	\$ 5,905	\$ 6,201	\$ 6,511	\$ 6,836	\$ 7,178
		Hourly	N/A	\$ 34.0660	\$ 35.7726	\$ 37.5615	\$ 39.4387	\$ 41.4100
6106	POLICE CORPORAL	Annually	N/A	N/A	N/A	\$ 97,663	\$ 102,547	\$ 107,675
		Monthly	N/A	N/A	N/A	\$ 8,139	\$ 8,546	\$ 8,973
		Hourly	N/A	N/A	N/A	\$ 46.9533	\$ 49.3013	\$ 51.7670
6206	POLICE EVIDENCE & PROPERTY TECHNICIAN	Annually	\$ 62,779	\$ 65,912	\$ 69,217	\$ 72,669	\$ 76,304	\$ 80,123
		Monthly	\$ 5,232	\$ 5,493	\$ 5,768	\$ 6,056	\$ 6,359	\$ 6,677
		Hourly	\$ 30.1822	\$ 31.6887	\$ 33.2775	\$ 34.9370	\$ 36.6847	\$ 38.5207
6107	POLICE OFFICER	Annually	\$ 80,356	\$ 84,383	\$ 88,593	\$ 93,024	\$ 97,675	\$ 102,559
		Monthly	\$ 6,696	\$ 7,032	\$ 7,383	\$ 7,752	\$ 8,140	\$ 8,547
		Hourly	\$ 38.6325	\$ 40.5685	\$ 42.5928	\$ 44.7231	\$ 46.9592	\$ 49.3072
6109	POLICE RECRUIT	Annually	\$ 73,048	\$ 76,708	\$ 80,539	\$ 84,566	\$ 88,801	\$ 93,232
		Monthly	\$ 6,087	\$ 6,392	\$ 6,712	\$ 7,047	\$ 7,400	\$ 7,769
		Hourly	\$ 35.1194	\$ 36.8789	\$ 38.7208	\$ 40.6568	\$ 42.6929	\$ 44.8231
6111	POLICE REGULATORY OFFICER	Annually	\$ 62,779	\$ 65,912	\$ 69,217	\$ 72,669	\$ 76,304	\$ 80,123
		Monthly	\$ 5,232	\$ 5,493	\$ 5,768	\$ 6,056	\$ 6,359	\$ 6,677
		Hourly	\$ 30.1822	\$ 31.6887	\$ 33.2775	\$ 34.9370	\$ 36.6847	\$ 38.5207
4524	POLICE SECURITY OFFICER	Annually	\$ 58,801	\$ 61,739	\$ 64,823	\$ 68,067	\$ 71,469	\$ 75,043
		Monthly	\$ 4,900	\$ 5,145	\$ 5,402	\$ 5,672	\$ 5,956	\$ 6,254
		Hourly	\$ 28.2697	\$ 29.6820	\$ 31.1649	\$ 32.7243	\$ 34.3603	\$ 36.0786
6104	POLICE SERGEANT	Annually	N/A	N/A	N/A	\$ 111,678	\$ 117,259	\$ 123,122
		Monthly	N/A	N/A	N/A	\$ 9,306	\$ 9,772	\$ 10,260
		Hourly	N/A	N/A	N/A	\$ 53.6912	\$ 56.3746	\$ 59.1933
9525	YOUTH SERVICES PROGRAM SUPERVISOR	Annually	\$ 89,744	\$ 94,224	\$ 98,936	\$ 103,893	\$ 109,083	\$ 114,530
		Monthly	\$ 7,479	\$ 7,852	\$ 8,245	\$ 8,658	\$ 9,090	\$ 9,544
		Hourly	\$ 43.1460	\$ 45.2998	\$ 47.5653	\$ 49.9486	\$ 52.4437	\$ 55.0623

*Entry Level Pay Grade is 1XXXX (e.g., Entry Level Police Officer grade code is 16107)

**SAN RAFAEL POLICE ASSOCIATION
SALARY SCHEDULE
Effective July 1, 2019**

Grade*	Position		Entry Level Step A1	A	B	C	D	E
6203	COMMUNITY SERVICE OFFICER	Annually	\$ 60,976	\$ 64,022	\$ 67,218	\$ 70,589	\$ 74,110	\$ 77,818
		Monthly	\$ 5,081	\$ 5,335	\$ 5,602	\$ 5,882	\$ 6,176	\$ 6,485
		Hourly	\$ 29.3153	\$ 30.7798	\$ 32.3164	\$ 33.9370	\$ 35.6297	\$ 37.4124
6207	MENTAL HEALTH OUTREACH PROVIDER	Annually	\$ 67,580	\$ 70,964	\$ 74,509	\$ 78,230	\$ 82,150	\$ 86,257
		Monthly	\$ 5,632	\$ 5,914	\$ 6,209	\$ 6,519	\$ 6,846	\$ 7,188
		Hourly	\$ 32.4905	\$ 34.1171	\$ 35.8218	\$ 37.6105	\$ 39.4952	\$ 41.4699
6202	POLICE ADMINISTRATIVE TECHNICIAN	Annually	\$ 62,461	\$ 65,583	\$ 68,866	\$ 72,299	\$ 75,920	\$ 79,715
		Monthly	\$ 5,205	\$ 5,465	\$ 5,739	\$ 6,025	\$ 6,327	\$ 6,643
		Hourly	\$ 30.0295	\$ 31.5301	\$ 33.1087	\$ 34.7594	\$ 36.5000	\$ 38.3247
9420	POLICE CADET	Annually	\$ 28,503	\$ 29,926	\$ 31,424	\$ 32,997	\$ 34,645	\$ 36,381
		Monthly	\$ 2,375	\$ 2,494	\$ 2,619	\$ 2,750	\$ 2,887	\$ 3,032
		Hourly	\$ 13.7033	\$ 14.3875	\$ 15.1078	\$ 15.8641	\$ 16.6564	\$ 17.4907
2121	POLICE CALL TAKER & RECORDS SPECIALIST	Annually	\$ 58,691	\$ 61,625	\$ 64,709	\$ 67,942	\$ 71,338	\$ 74,909
		Monthly	\$ 4,891	\$ 5,135	\$ 5,392	\$ 5,662	\$ 5,945	\$ 6,242
		Hourly	\$ 28.2168	\$ 29.6274	\$ 31.1100	\$ 32.6646	\$ 34.2972	\$ 36.0138
6201	POLICE SUPPORT SERVICES SUPERVISOR	Annually	N/A	\$ 92,775	\$ 97,419	\$ 102,288	\$ 107,407	\$ 112,775
		Monthly	N/A	\$ 7,731	\$ 8,118	\$ 8,524	\$ 8,951	\$ 9,398
		Hourly	N/A	\$ 44.6031	\$ 46.8360	\$ 49.1769	\$ 51.6379	\$ 54.2188
9622	POLICE COMMUNICATIONS DISPATCH TRAINEE	Annually	\$ 51,213	\$ 53,785	\$ 56,469	\$ 59,290	\$ 62,262	\$ 65,370
		Monthly	\$ 4,268	\$ 4,482	\$ 4,706	\$ 4,941	\$ 5,188	\$ 5,448
		Hourly	\$ 24.6215	\$ 25.8579	\$ 27.1484	\$ 28.5050	\$ 29.9335	\$ 31.4281
6205	POLICE COMMUNICATIONS DISPATCHER	Annually	\$ 64,035	\$ 67,231	\$ 70,602	\$ 74,122	\$ 77,830	\$ 81,726
		Monthly	\$ 5,336	\$ 5,603	\$ 5,883	\$ 6,177	\$ 6,486	\$ 6,810
		Hourly	\$ 30.7858	\$ 32.3224	\$ 33.9431	\$ 35.6357	\$ 37.4184	\$ 39.2911
6215	POLICE LEAD COMMUNICATIONS DISPATCHER	Annually	N/A	\$ 72,275	\$ 75,895	\$ 79,690	\$ 83,673	\$ 87,856
		Monthly	N/A	\$ 6,023	\$ 6,325	\$ 6,641	\$ 6,973	\$ 7,321
		Hourly	N/A	\$ 34.7474	\$ 36.4880	\$ 38.3127	\$ 40.2275	\$ 42.2382
6106	POLICE CORPORAL	Annually	N/A	N/A	N/A	\$ 99,616	\$ 104,598	\$ 109,829
		Monthly	N/A	N/A	N/A	\$ 8,301	\$ 8,716	\$ 9,152
		Hourly	N/A	N/A	N/A	\$ 47.8924	\$ 50.2873	\$ 52.8023
6206	POLICE EVIDENCE & PROPERTY TECHNICIAN	Annually	\$ 64,035	\$ 67,231	\$ 70,602	\$ 74,122	\$ 77,830	\$ 81,726
		Monthly	\$ 5,336	\$ 5,603	\$ 5,883	\$ 6,177	\$ 6,486	\$ 6,810
		Hourly	\$ 30.7858	\$ 32.3224	\$ 33.9431	\$ 35.6357	\$ 37.4184	\$ 39.2911
6107	POLICE OFFICER	Annually	\$ 81,963	\$ 86,070	\$ 90,365	\$ 94,884	\$ 99,629	\$ 104,610
		Monthly	\$ 6,830	\$ 7,173	\$ 7,530	\$ 7,907	\$ 8,302	\$ 8,718
		Hourly	\$ 39.4052	\$ 41.3799	\$ 43.4447	\$ 45.6175	\$ 47.8984	\$ 50.2933
6109	POLICE RECRUIT	Annually	\$ 74,509	\$ 78,242	\$ 82,150	\$ 86,257	\$ 90,577	\$ 95,097
		Monthly	\$ 6,209	\$ 6,520	\$ 6,846	\$ 7,188	\$ 7,548	\$ 7,925
		Hourly	\$ 35.8218	\$ 37.6165	\$ 39.4952	\$ 41.4699	\$ 43.5467	\$ 45.7196
6111	POLICE REGULATORY OFFICER	Annually	\$ 64,035	\$ 67,231	\$ 70,602	\$ 74,122	\$ 77,830	\$ 81,726
		Monthly	\$ 5,336	\$ 5,603	\$ 5,883	\$ 6,177	\$ 6,486	\$ 6,810
		Hourly	\$ 30.7858	\$ 32.3224	\$ 33.9431	\$ 35.6357	\$ 37.4184	\$ 39.2911
4524	POLICE SECURITY OFFICER	Annually	\$ 59,977	\$ 62,973	\$ 66,120	\$ 69,428	\$ 72,899	\$ 76,544
		Monthly	\$ 4,998	\$ 5,248	\$ 5,510	\$ 5,786	\$ 6,075	\$ 6,379
		Hourly	\$ 28.8351	\$ 30.2756	\$ 31.7882	\$ 33.3788	\$ 35.0475	\$ 36.8001
6104	POLICE SERGEANT	Annually	N/A	N/A	N/A	\$ 113,911	\$ 119,604	\$ 125,585
		Monthly	N/A	N/A	N/A	\$ 9,493	\$ 9,967	\$ 10,465
		Hourly	N/A	N/A	N/A	\$ 54.7651	\$ 57.5021	\$ 60.3772
9525	YOUTH SERVICES PROGRAM SUPERVISOR	Annually	\$ 91,539	\$ 96,108	\$ 100,915	\$ 105,971	\$ 111,265	\$ 116,820
		Monthly	\$ 7,628	\$ 8,009	\$ 8,410	\$ 8,831	\$ 9,272	\$ 9,735
		Hourly	\$ 44.0089	\$ 46.2058	\$ 48.5167	\$ 50.9476	\$ 53.4926	\$ 56.1636

*Entry Level Pay Grade is 1XXXX (e.g., Entry Level Police Officer grade code is 16107)

**SIDE LETTER BETWEEN THE CITY OF SAN RAFAEL AND THE
SAN RAFAEL POLICE ASSOCIATION REGARDING CANINE HANDLER PROGRAM**

Compensation

In accordance with the Fair Labor Standards Act (FLSA), the City and the Association agree that the average amount of time required for the proper care of feeding, grooming, cleaning, cleaning, and kenneling, a police canine is one half (1/2) hour per day for every day the officer has the responsibility for the dog.

All canine handlers who have an active canine will report for their regularly scheduled shift one hour later than scheduled. For example, if the canine handler is scheduled to work from 1600 to 0200 hours, the canine handler will be required to be at work and on duty at 1700 hours. This will allow the canine handlers to accrue one hour per day, four days a week, for a total of four hours a week. This is thirty minutes more than required by FLSA and will be used to compensate the canine handlers for additional canine maintenance activities as assigned by their supervisor.

Work Shifts

Officers assigned as canine handlers will work a 4-10 shift. If there are two canine handlers each will be assigned to hours (generally swing shift) that provide maximum seven day coverage. Canine handlers will rotate between shifts every four months.

Canine handlers shall receive a five percent (5%) incentive pay added to their base wage so long as they are assigned to the canine program and are responsible for their canine. Newly assigned canine handlers will be required to resign from collateral assignments as Field Training Officers (FTO) and/or SWAT. After one (1) year as a canine handler, the canine handler will be allowed to apply for collateral assignments as they open, excluding Field Training Officer. Reinstatement to SWAT after one year will be based on the officer's ability to pass the physical agility test, the recommendation of the SWAT lieutenant, and the recommendation of the canine program lieutenant.

Canine Food and Care

The City shall provide canine food, reasonable veterinary care, ordinary equipment, and any other essential items associated with the care and maintenance of any police canine that has not been permanently retired.

Retirement

The Chief of Police shall have the sole authority to deem a canine permanently retired and may factor in past, present, and future veterinary costs in making the decision on whether to permanently retire the canine.

Canine Purchase

In the event the City owned canine is permanently retired, the most recent canine handler shall have the option to purchase the canine from the City for one dollar (\$1). The purchase of the canine shall include an indemnification and hold harmless agreement signed by the purchasing officer releasing the City from all liability, including future veterinary care, maintenance, and other costs, relating to the canine.

Removal from Program

The City may remove an employee from the canine program without providing a hearing or other due process unless the removal is for disciplinary reasons. An employee removed from the canine program under any circumstances shall no longer receive canine incentive pay. An employee removed from the program for disciplinary reasons will have appeal rights under the Public Safety Officers Procedural Bill of Rights and the MOU. Except for this specific appeal right, the parties agree that discretion for this assignment remains with the City.

City Vehicles

Canine Officers will transport their assigned police service dogs in a City of San Rafael canine vehicle during their work shifts. Canine Officers will use these vehicles normally for patrol duties. Canine Officers may only use a take-home vehicle, if any, for transportation to and from an assigned work shift or other authorized activities.

San Rafael Police Association:



Carl Huber, Police Corporal

City of San Rafael:



Anil Comelo, Human Resources Director