



SAN RAFAEL CITY COUNCIL – MONDAY, SEPTEMBER 17, 2018

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

AGENDA

**OPEN SESSION – COUNCIL CHAMBERS, CITY HALL**

1. None.

**CLOSED SESSION – THIRD FLOOR CONFERENCE ROOM, CITY HALL**

2. None.

**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. **Bicycle & Pedestrian Advisory Committee Vacancy**

- Call for Applications to Fill One Unexpired Four-Year Term on the San Rafael Bicycle and Pedestrian Advisory Committee, to the End of November 2019 Due to the Resignation of Joakim Osthus (CC)

- Recommended Action – Approve staff recommendation*

- b. **Delegation of Authority to Accept Grants of Real Property**

- Resolution Authorizing the Mayor and City Manager to Accept Grants of Interests in Real Property on Behalf of the City of San Rafael (CA)

- Recommended Action – Adopt Resolution*

- c. **Porchfest Event Road Closure**  
Resolution Authorizing Temporary Closure of Portions of City Streets for the San Rafael Porchfest on Sunday, September 23, 2018 from 10:00am to 6:00pm (CS)  
*Recommended Action – Adopt Resolution*
- d. **Environmental Consultant Services Agreement**  
Resolution Authorizing the City Manager to Execute an Agreement for Professional Services with Amy Skewes-Cox for Environmental Consulting Services for the BioMarin & Whistlestop/Eden Housing Project at 999 Third Street (CD)  
*Recommended Action – Adopt Resolution*
- e. **Ralph Pata Resolution of Appreciation**  
Resolution of Appreciation for Police Lieutenant Ralph Pata, Retiring After 34 Years of Service (PD)  
*Recommended Action – Adopt Resolution*
- f. **Hunter Young Resolution of Appreciation**  
Resolution of Appreciation for Hunter Young, Senior Civil Engineer, Employee of the Second Quarter, 2018 (PW)  
*Recommended Action – Adopt Resolution*
- g. **Francisco Blvd. West Multi-Use Path Funding Request**  
Resolution Requesting the Metropolitan Transportation Commission for the Allocation of Fiscal Year 2018-19 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding (PW)  
*Recommended Action – Adopt Resolution*
- h. **FY 2018-19 Fleet Vehicle Purchases: Police and Fire Departments**  
Resolution Authorizing the City Manager to Purchase Five Fleet Vehicles for the Police and Fire Departments for a Not-to-Exceed Amount of \$298,000 (PW)  
*Recommended Action – Adopt Resolution*
- i. **Albert Park Play Area Improvements Project**  
Resolution Awarding and Authorizing the City Manager to Execute a \$598,020 Construction Contract to M3 Integrated Services, Inc. and Authorizing a Total Appropriated Amount of \$614,300 for the Albert Park Play Area Improvements Project, Project No. 11299 (PW)  
*Recommended Action – Adopt Resolution*

#### **SPECIAL PRESENTATIONS:**

##### **5. Special Presentations:**

- a. Presentation of Resolution of Appreciation to Police Lieutenant Ralph Pata, Retiring After 34 Years of Service
- b. Presentation of Resolution of Appreciation to Hunter Young, Senior Civil Engineer, Employee of the Second Quarter, 2018

## **PUBLIC HEARINGS:**

### **6. Public Hearings:**

#### **a. 1650 Los Gamos Road – Kaiser-Permanente Office Building**

Consideration of Proposed Conversion of an Existing Administrative/General Office Building at 1650 Los Gamos Road to Medical Office Uses, and Construction of New 433-space, three-Level, Parking Structure, Through Approval of Two Ordinances Rezoning Existing PD District, and Resolutions: 1) Certifying Final Environmental Impact Report; 2) Adopting Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program; and 3) Approving a Use Permit, Environmental and Design Review Permit, and Sign Program Amendment (CD)

*Recommended Action – Adopt (3) Resolutions and Pass Ordinances (2) to print*

## **OTHER AGENDA ITEMS:**

### **7. Other Agenda Items:**

#### **a. San Rafael Firefighters' Association Memorandum of Understanding**

Discussion and Consideration of a Memorandum of Understanding Pertaining to Compensation and Working Conditions for San Rafael Firefighters' Association (SRFA) (July 1, 2018 Through June 30, 2020) (HR)

*Recommended Action – Direct staff to return with resolution adopting MOU*

## **COUNCILMEMBER REPORTS / REQUESTS FOR FUTURE AGENDA ITEMS:**

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

### **8. Councilmember Reports:**

## **SAN RAFAEL SUCCESSOR AGENCY:**

### **1. Consent Calendar: - None.**

## **ADJOURNMENT:**

*Any records relating to an agenda item, received by a majority or more of the Council less than 72 hours before the meeting, shall be available for inspection 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.*



**SAN RAFAEL**  
THE CITY WITH A MISSION

Agenda Item No: 4.a

Meeting Date: September 17, 2018

## SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Clerk

Prepared by: Lindsay Lara,  
City Clerk

City Manager Approval: \_\_\_\_\_

**TOPIC:** BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE VACANCY

**SUBJECT:** CALL FOR APPLICATIONS TO FILL ONE UNEXPIRED FOUR-YEAR TERM ON THE SAN RAFAEL BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE, TO THE END OF NOVEMBER 2019 DUE TO THE RESIGNATION OF JOAKIM OSTHUS

### RECOMMENDATION:

It is recommended that the City Council approve the following:

1. Call for applications to fill one unexpired four-year term on the San Rafael Bicycle and Pedestrian Advisory Committee to the end of November 2019;
2. Set deadline for receipt of applications for Tuesday, October 9, 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 Bicycle and Pedestrian Advisory Committee (BPAC) consists of seven members, two alternate members, and two youth members who advise and support the goals and objectives of the City of San Rafael as they relate to bicycle and pedestrian matters. Committee members contribute their experience and expertise with specialized initiatives, such as reducing the City's carbon footprint, improving the bicycle and pedestrian environment in San Rafael, and advising staff on projects which impact pedestrian and bicycle activity. The goal of BPAC is to promote bicycling and walking as viable means of transportation throughout San Rafael, to provide conceptual input on public bicycle and pedestrian infrastructure projects, and to support the implementation of the City's Bicycle and Pedestrian Master Plan. [Meetings](#) are held on the first Wednesday of each month at 6:00 p.m. at San Rafael City Hall.

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FOR CITY CLERK ONLY

File No.:

Council Meeting:

Disposition:



In February 2014, the City Council adopted [Resolution 13681](#) limiting Bicycle and Pedestrian 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.

**ANALYSIS:**

On Saturday, August 25, 2018, BPAC member Joakim Osthus resigned from the Committee, citing a change in residency. Eligibility to serve on BPAC includes residency or work in San Rafael. By approving this item, staff will be able to release a Call for Applications for eligible and interested community members to apply. Once applications are received and reviewed, the City Clerk's Office will schedule a special City Council meeting where the City Council will interview candidates and make a selection to appoint the candidate to BPAC.

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

**RECOMMENDED ACTION:** It is recommended that the City Council approve the following:

1. Call for applications to fill one unexpired four-year term on the San Rafael Bicycle and Pedestrian Advisory Committee to the end of November 2019;
2. Set deadline for receipt of applications for Tuesday, October 9, 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.

**ATTACHMENTS:**

1. Application materials
2. Resignation letter from Joakim Osthus

## **One Vacancy**

### **Bicycle and Pedestrian Advisory Committee**

Applications to serve on the Bicycle and Pedestrian Advisory Committee to fill one unexpired four-year term to the end of November 2019, 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 online and in the City Clerk's Office.

Deadline for filing applications: **Tuesday, October 9, 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.

**ONLY RESIDENTS OF OR BUSINESS OWNERS WITHIN THE CITY OF SAN RAFAEL MAY APPLY.**

The Bicycle and Pedestrian Advisory Committee meets on the first Wednesday of every other month in the 3<sup>rd</sup> floor conference room at City Hall, San Rafael. 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.

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Lindsay Lara  
City Clerk  
City of San Rafael

Dated: October 9, 2018

**CITY OF SAN RAFAEL  
APPLICATION TO SERVE AS MEMBER OF  
BICYCLE & PEDESTRIAN ADVISORY COMMITTEE**

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP CODE: \_\_\_\_\_

RESIDENT OF THE CITY OF SAN RAFAEL FOR \_\_\_\_\_ YEARS

PRESENT POSITION: \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

\*HOME & BUSINESS PHONE: \_\_\_\_\_

\*E-MAIL ADDRESS: \_\_\_\_\_

EDUCATION: \_\_\_\_\_

\_\_\_\_\_

PARTICIPATION IN THE FOLLOWING CIVIC ACTIVITIES: \_\_\_\_\_

\_\_\_\_\_

MEMBER OF FOLLOWING CIVIC ORGANIZATIONS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MY REASONS FOR WANTING TO SERVE ARE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

DATE: \_\_\_\_\_

**Filing Deadline:**

Date: Tuesday, October 9, 2018

Time: 5:00 p.m.

SIGNATURE: \_\_\_\_\_

**Mail or deliver to:** City of San Rafael, Dept. of City Clerk  
City Hall, 1400 Fifth Avenue, Room 209  
P.O. Box 151560, San Rafael, CA 94915

\*Information kept confidential, to the extent permitted by law.

# **BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE**

## **PURPOSE**

The Bicycle and Pedestrian Advisory Committee meets twice a year to review the City's progress in implementing the San Rafael Bicycle and Pedestrian Master Plan and other related issues as directed by the City Council. The Committee will also promote public involvement and support for bicycling and walking as viable alternatives to driving.

## **QUALIFICATIONS**

All members of the Bicycle and Pedestrian Advisory Committee must be individuals with a strong interest and enthusiasm for planning and improving bicycle and pedestrian facilities.

The Advisory Committee shall consist of seven (7) members. Members of the Committee may either be:

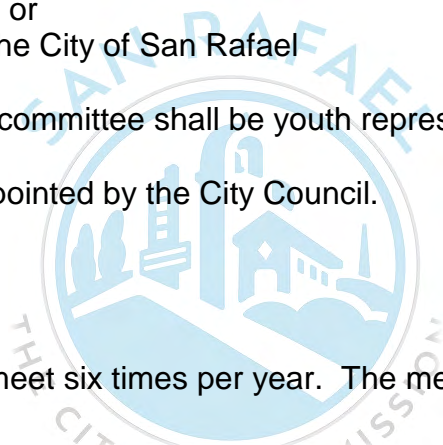
Residents of San Rafael; or  
Business owners within the City of San Rafael

Two additional members of the committee shall be youth representatives.

Committee members will be appointed by the City Council.

## **TIME COMMITMENT**

The Advisory Committee shall meet six times per year. The meetings shall comply with all provisions of the Brown Act.



## 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 or self-study. Currently, only "in-person" classes are available. Self-study classes are being developed and should be available in the next several months. 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, a copy of your certificate needs to be given to the City Clerk for our files.

#### **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, online or self-study. For those in office on 1/1/06, the first round of training must be completed by 1/1/07.
- **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.

**From:** Joakim Osthus  
**To:** [Lindsay Lara](#)  
**Cc:** [REDACTED]  
**Subject:** Resignation From San Rafael Bicycle & Pedestrian Committee  
**Date:** Saturday, August 25, 2018 7:27:01 AM

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Lindsay,

Please consider this email my request to resign from the BPAC before the end of my term. I have moved from San Rafael to the City of Novato and therefore do not believe that I meet the qualifications for serving on the BPAC (I also do not work in San Rafael).

City Staff, BPAC members and activists,

It has been my pleasure to serve on the BPAC with all the great people who have been and still are involved. I am proud of the master plan that we have helped usher through and the other work we accomplished during my tenure. I will look to get involved in similar ways for the cause of pedestrians and bicyclists with the City of Novato or Marin County and hope to cross paths with you again sometime in the future.

Thank you,

Joakim Osthus



**SAN RAFAEL**  
THE CITY WITH A MISSION

Agenda Item No: 4.b

Meeting Date: September 17, 2018

## **SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: CITY ATTORNEY

Prepared by: Lisa Goldfien,  
Assistant City Attorney

City Manager Approval: \_\_\_\_\_

**TOPIC: DELEGATION OF AUTHORITY TO ACCEPT GRANTS OF REAL PROPERTY**

**SUBJECT: RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO ACCEPT GRANTS OF INTERESTS IN REAL PROPERTY ON BEHALF OF THE CITY OF SAN RAFAEL**

### **RECOMMENDATION:**

Adopt the attached resolution authorizing the Mayor and City Manager to accept grants of interests in real property on behalf of the City of San Rafael.

### **BACKGROUND:**

Occasionally the City receives grants of real property, or easements over real property, for public purposes. This often occurs during construction of public works, when the City has need for temporary and permanent easements, or to purchase small pieces of private property to widen or realign City rights-of-way. In order for these real property conveyances to be recorded in the official records of the County, the City must formally "accept" them and provide evidence of such acceptance to the County Recorder, in the form of a Resolution or a "certificate of acceptance".

### **ANALYSIS:**

While the City Council may adopt a resolution or approve a Certificate of Acceptance for each individual conveyance, State law allows the City Council to adopt a resolution delegating this task to one or more officers or agents of the City.

Staff recommends that the City Council adopt the attached resolution to give the Mayor and City Manager the authority to accept real property conveyances on behalf of the City, and to sign the required certificates of acceptance for purposes of recording. This resolution would not preclude the possibility of staff seeking approval from the City Council for the acceptance of any donation or acquisition of an interest in real property; however, it would allow execution of the necessary certificate of acceptance without specific Council action for uncontroversial matters and in cases where time is of the essence, such as in public works projects.

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### **FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

**FISCAL IMPACT:**

This action will have no direct fiscal impact on the City, but, by avoiding the necessity of City Council approval of the acceptance of real property conveyances, it may allow certain public works projects to proceed at a faster pace than would be permitted if specific Council action were required.

**OPTIONS:**

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

1. Adopt the attached resolution as presented;
2. Adopt a modified resolution authorizing different City officers or agents;
3. Do not adopt the resolution, with the result that the City Council will be required to act to accept each conveyance of an interest in real property.

**RECOMMENDED ACTION:**

Adopt the resolution

**ATTACHMENTS:**

1. Resolution of the City Council of the City of San Rafael Authorizing the Mayor and City Manager to Accept Grants of Interests in Real Property on Behalf of the City of San Rafael



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN  
RAFAEL AUTHORIZING THE MAYOR AND CITY MANAGER TO  
ACCEPT GRANTS OF INTERESTS IN REAL PROPERTY ON  
BEHALF OF THE CITY OF SAN RAFAEL**

**WHEREAS**, from time to time the City of San Rafael receives, for public purposes, deeds and other documents granting the City interests in or easements upon real property, which documents require recordation; and

**WHEREAS**, California Government Code Section 27281 requires that for any such deed or similar document to be recorded, it must be accompanied by evidence of the City's acceptance of the document and consent to its recordation, which may be in the form of a duly executed "certificate of acceptance" attached to and recorded with the document; and

**WHEREAS**, pursuant to Government Code Section 27281, the City Council may authorize one or more City officers or agents to sign such certificates of acceptance on behalf of the City of San Rafael;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of San Rafael that the Mayor and the City Manager are hereby authorized to, and either one individually may, accept and consent to all deeds and grants conveying an interest in or easement upon real property to the City of San Rafael for public purposes, and to execute a certificate of acceptance and consent to record the same.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 17<sup>th</sup> day of September 2018 by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

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LINDSAY LARA, City Clerk



**SAN RAFAEL**  
THE CITY WITH A MISSION

Agenda Item No: 4.c

Meeting Date: September 17, 2018

## **SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Community Services**

**Prepared by: Brian Auger, Events Coordinator**

**City Manager Approval:** \_\_\_\_\_

**TOPIC: PORCHFEST EVENT ROAD CLOSURE**

**SUBJECT: RESOLUTION AUTHORIZING TEMPORARY CLOSURE OF PORTIONS OF CITY STREETS FOR THE SAN RAFAEL PORCHFEST ON SUNDAY, SEPTEMBER 23, 2018 FROM 10:00 AM TO 6:00 PM**

### **RECOMMENDATION:**

Adopt a resolution authorizing temporary street closures of portions of City streets for the San Rafael Porchfest on Sunday, September 23, 2018 from 10:00 AM to 6:00 PM.

### **BACKGROUND:**

Porchfests are annual music events that are held across the United States and in Canada and are most commonly conducted on residential homes' 'front porches. Porchfest events bring local musicians and neighborhoods together to celebrate and highlight music while creating a sense of community.

The original event was held in Ithaca, New York in 2007 with about 20 musicians, and has since grown to over 100 musicians. Bands, singers, and instrumentalists participate in the festival to showcase their talents and engage the community. Music is diverse and can range from Country to Pop, Classical, Reggae, Blues, Rock, Jazz, Latino, R&B, Folk and many others. Musicians voluntarily take to the "stage" on porches at their designated times and perform for the public. Signs with artists' names and performance times are usually posted in front of porches and online.

Volunteers and other organizations normally facilitate the event by selecting appropriate dates, acquiring musicians, and publicizing the event. Residents volunteer their porches as a way to support the local music scene and interact with their neighbors. Events can last from a few hours to most of the day. Schedules and maps are usually posted online or in local media.

Because these are normally neighborhood events, people walk, ride bikes or scooters, drive golf carts, or push strollers as they move from one porch to another along a determined route to partake in the festivities. Children often build lemonade stands to help quench thirst on hot days while vendors oftentimes provide ice cream, hot dogs, and other snacks. A few porchfests have expanded to include arts festivals.

On September 23, 2018 from 12:00 PM to 5:00 PM, the Gerstle Park Neighborhood Association, along with a team of community members and sponsors, will host the first San Rafael Porchfest. The event is

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### **FOR CITY CLERK ONLY**

**File No.:** \_\_\_\_\_

**Council Meeting:** \_\_\_\_\_

**Disposition:** \_\_\_\_\_

free, family-friendly, and will feature more than 30 local musicians performing on nearly 20 porches throughout the Gerstle Park neighborhood. Food trucks and additional restrooms will be provided for attendees.

**ANALYSIS:**

To ensure safety, portions of four (4) residential streets located in the Gerstle Park neighborhood will be closed to through traffic to create a perimeter around the event area. Residents needing vehicle access to their property will be allowed to enter the area and will be escorted by a designated event volunteer. The event producer, with assistance from the Gerstle Park Neighborhood Association, will work with residents on the modified traffic plan as well as the over-all event production. Residents will volunteer their porches for music performances. Food trucks and portable restrooms will be located near Gerstle Park.

**STREET CLOSURE:** Streets to be closed by City staff on Sunday, September 23, 2018 from 10:00 AM to 6:00 PM:

1. Bayview Street from D Street to Clark Street
2. San Rafael Avenue from D Street to Clark Street
3. Clorinda Avenue from Main Street to Clark Street
4. Main Street from Ross Street to San Rafael Avenue

**COMMUNITY OUTREACH:**

The producers and sponsors will provide City staff with marketing material, event plans, event schedule, and suggested traffic detours. The producers will communicate event related information to the neighborhood via signage around the event perimeter, Gerstle Park Neighborhood Association, social media, and press releases.

**FISCAL IMPACT:**

There is no fiscal impact associated with this item.

**RECOMENDED ACTION:**

Adopt a resolution authorizing temporary street closures of portions of City streets for the San Rafael Porchfest on Sunday, September 23, 2018 from 10:00 AM to 6:00 PM.

**ATTACHMENTS:**

1. Resolution
2. Road Closure Map A
3. Press Release
4. Neighborhood Notice
5. Event Poster

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING  
TEMPORARY CLOSURE OF PORTIONS OF CITY STREETS FOR THE  
SAN RAFAEL PORCHFEST ON SUNDAY, SEPTEMBER 23, 2018 FROM  
10:00AM TO 6:00PM**

**WHEREAS**, the San Rafael Porchfest will occur in the Gerstle Park Neighborhood of San Rafael on Sunday, September 23, 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 the downtown area, the streets shown below should be temporarily closed to through traffic for the date and times as specified below:

**STREET CLOSURE:** Streets to be closed, Sunday, September 23, 2018 for times shown below:

10:00 a.m. to 6:00 p.m.

1. Bayview Street from D Street to Clark Street
2. San Rafael Avenue from D Street to Clark Street
3. Clorinda Avenue from Main Street to Clark Street
4. Main Street from Ross Street to San Rafael Avenue

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL HEREBY  
RESOLVES AS FOLLOWS:**

1. That all 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 streets for the date and times described above.

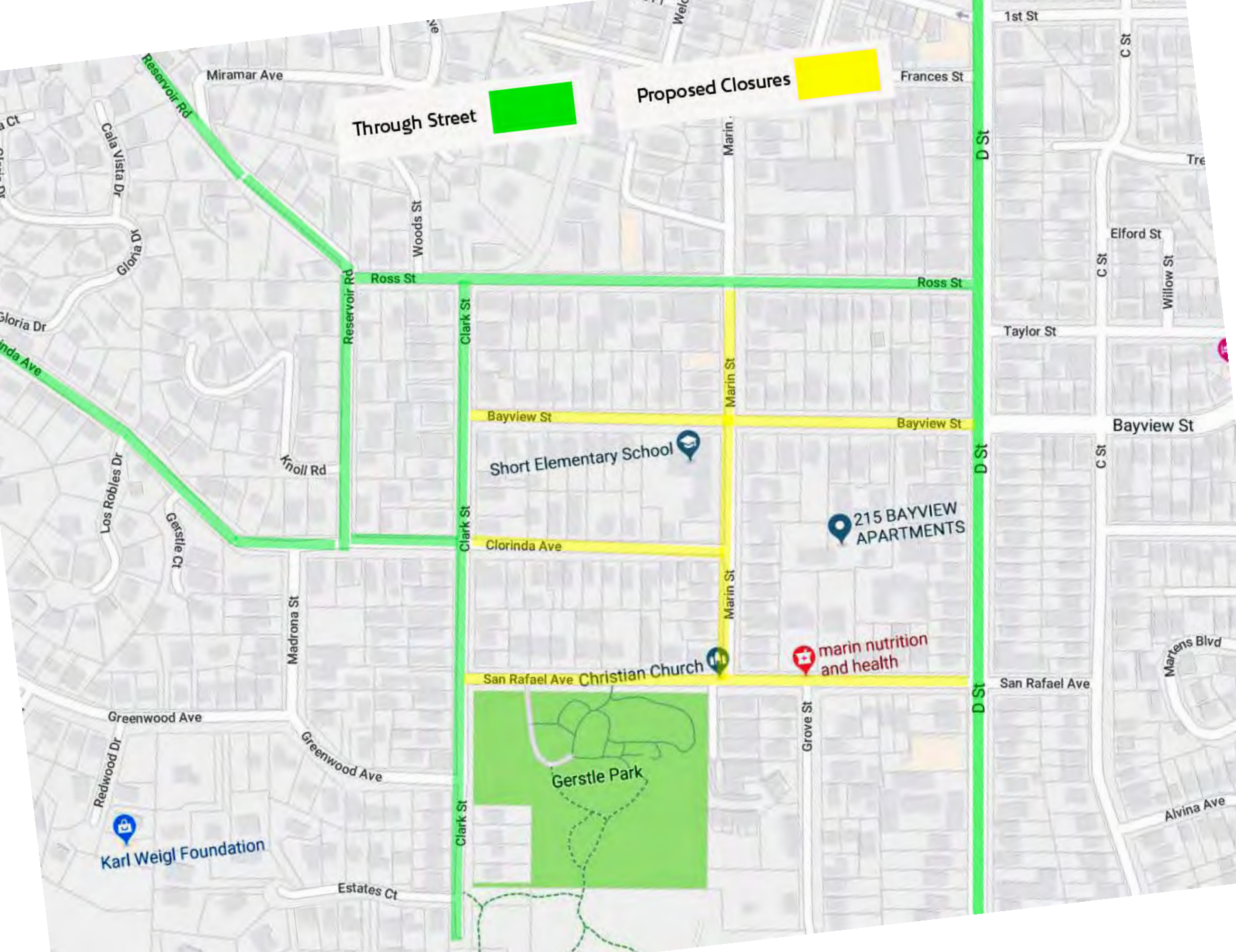
I, Lindsey Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the seventeenth day of September 2018, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

\_\_\_\_\_  
**Lindsay Lara, City Clerk**



Proposed Closures

Through Street

Short Elementary School

215 BAYVIEW  
APARTMENTS

marin nutrition  
and health

Christian Church

Gerstle Park

Karl Weigl Foundation

FOR IMMEDIATE RELEASE

San Rafael PorchFest  
Media Contact: Tom Obletz  
Email: [sanrafaelporchfest@gmail.com](mailto:sanrafaelporchfest@gmail.com)  
Web: [sanrafaelporchfest.com](http://sanrafaelporchfest.com)  
Facebook: [facebook.com/sanrafaelporchfest](https://facebook.com/sanrafaelporchfest)  
Phone: 415.691.4567

SAN RAFAEL, CA August 1, 2018

**THE FIRST SAN RAFAEL PORCHFEST TO TAKE PLACE ON SEPTEMBER 23, 2018**

On September 23, from 12:00 p.m. to 5:00 p.m., the Gerstle Park Neighborhood in San Rafael will be filled with music and people enjoying the first San Rafael PorchFest.

A free, family-friendly event, San Rafael's Porchfest will feature more than 30 local musicians performing on nearly 20 porches throughout the Gerstle Park neighborhood. Musical acts will trickle down Ross Street, and backup Marin Street and throughout the neighborhood. Food trucks, to keep hungry music lovers happy, will be located at Gerstle Park, at the corner of San Rafael Avenue and Clark Street.

The music event will offer a variety of musical styles including Traditional Americana, Rock, Folk, Latino and Jazz. Musicians at the event will be performing for free and without compensation.

To locate the various bands, grab a map at the information tent in front of Short School on Marin Street at Bayview Street, or online at [www.sanrafaelporchfest.com](http://www.sanrafaelporchfest.com). Pick out your favorite musical genre then walk or bike around the pedestrian- and bicycle-friendly zone.

San Rafael Porchfest is currently on the hunt for volunteers to help with a variety of tasks. To learn more about how to get involved, visit [www.sanrafaelporchfest.com](http://www.sanrafaelporchfest.com) or email [sanrafaelporchfest@gmail.com](mailto:sanrafaelporchfest@gmail.com).

The Gerstle Park Neighborhood Association is a sponsor of the event.

PorchFest is a nationwide group of volunteers dedicated to creating a greater sense of community through local, one-day free music events in more than fifty cities.

Come join your neighbors for a fun day of music in the Gerstle Park neighborhood at San Rafael's Porchfest.

###



# Gerstle Park Neighborhood Notice



## SAN RAFAEL PORCHFEST

**San Rafael PorchFest** is a free, one-day outdoor community celebration of local, live music planned for the Gerstle Park neighborhood on **Sunday, September 23rd**. Performances will be on your neighbors' porches and lawns from **noon to 5:00pm**.

A temporary Pedestrian Zone will be created by the City of San Rafael Events Department to ensure safety for PorchFest attendees, neighborhood residents and others. For a map of the Zone, please see **[www.sanrafaelporchfest.com](http://www.sanrafaelporchfest.com)**.

PorchFest volunteers will be wearing brightly colored T-shirts, have radio communications and will monitor traffic and attendee behavior throughout the day. Access for residents and their guests will not be restricted during the event.

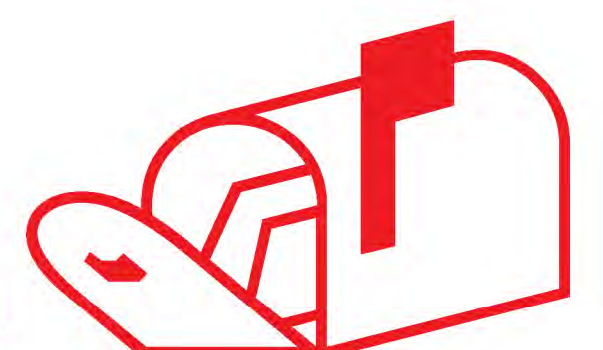
No alcohol will be allowed in the Zone.

The City of San Rafael has issued a use permit for the two picnic areas in lower Gerstle Park for music performances on 9/23.

The event is supported by the  
**Gerstle Park Neighborhood Association.**



**415.851.9944 or [SanRafaelPorchFest@gmail.com](mailto:SanRafaelPorchFest@gmail.com)**



Bands, Porches, Sponsors and Volunteers are needed to make  
San Rafael PorchFest successful!



# SAN RAFAEL PORCHFEST 2018



**SUNDAY  
SEPTEMBER 23RD  
12 TO 5**

**ALL GENRES 🎵 ALL AGES 🎵 ALL FREE**

Bring a friend, a chair, ride a bike and join the roving audience in and around San Rafael's beautiful Gerstle Park for an afternoon of live music, fun and community! No alcohol, please.



**SAN RAFAEL**  
THE CITY WITH A MISSION



Neighborhood  
Association

Bands, porches,  
sponsors and  
volunteers wanted





**SAN RAFAEL**  
THE CITY WITH A MISSION

Agenda Item No: 4.d

Meeting Date: September 17, 2018

## SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

*Paul A. Jensen*

Prepared by: Paul Jensen (AMG)  
Community Development Director

City Manager Approval: \_\_\_\_\_

*[Signature]*

**TOPIC: PROFESSIONAL SERVICES AGREEMENT FOR ENVIRONMENTAL CONSULTANT SERVICES**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE PROFESSIONAL SERVICES AGREEMENT (PSA) FOR ENVIRONMENTAL CONSULTING SERVICES FOR THE BIOMARIN & WHISTLESTOP/EDEN HOUSING DEVELOPMENT PROJECT AT 999 THIRD STREET**

### RECOMMENDATION:

Staff recommends that the City Council adopt the attached Resolution.

### BACKGROUND:

In 1998 the City of San Rafael approved PD (Planned Development) District zoning, an Environmental and Design Review Permit, a Conditional Use Permit and a Development Agreement for the San Rafael Corporate Center Project (formerly Fair Isaac). Since these approvals were subject to environmental review, pursuant to the California Environmental Quality Act (CEQA) an Environmental Impact Report (EIR) for the project was prepared and certified by the City Council in January 1998.

Since the approval, the center has developed in accordance with the approved Master Plan. To date, four of the five approved buildings have been built and are nearly all occupied. One of the two approved parking structures has been built (at corner of 2nd St/ Lindaro Ave). Based on the original approval for this site, there are two structures that remain entitled, but yet unbuilt: a four-story office building (at the corner of 2nd St/Lincoln Ave); and a multi-story parking structure on the east side of Lincoln Ave, across from the center.

Over the past few years, BioMarin Pharmaceutical, Inc. (BioMarin), has been exploring expansion of their facilities and has recently partnered with Whistlestop/Eden Housing on a proposal to develop the property at 999 Third Street with two buildings for research and development offices as well as a new senior housing facility with associated support services. The project will require new entitlements and the preparation of an EIR.

---

### FOR CITY CLERK ONLY

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

Given the environmental complexities of the site, the City will need an environmental consulting firm, to provide guidance to the City on the CEQA process and to prepare the necessary environmental document (EIR) to determine project impacts. In May of 2018, the City released a Request for Proposals (RFP) inviting four (4) environmental consulting firms to propose on the environmental consulting work. Three (3) of the firms responded to the RFP, and the City held subsequent interviews with each of the responding firms. While all firms demonstrated an ability to complete the environmental work with similar budget amounts, the consulting team of Amy Skewes-Cox demonstrated exceptional awareness of the environmental issues related to the particular site at this important intersection near the City's downtown. The proposal submitted by Amy Skewes-Cox includes an overall budget of \$277,771.

In addition, the applicants have expressed their desire for an extremely focused and timely review process. Given the limited staffing in the current planning division along with the various other development projects city staff is unable to focus attention on this project. Therefore, the City will hire Sean Kennings from LAK Associates, Inc, a local planning services firm. Mr. Kennings has submitted a proposal for services with a total contract amount of \$65,000 billable at an hourly rate of \$155/hour. This amount is within the signing authority of the City Manager and does not require City Council authorization. However, a copy of the Professional Services Agreement is attached for reference.

**ANALYSIS:**

Pursuant to CEQA, the City of San Rafael will act as lead agency for environmental review of the proposed project. As discussed above the City released an RFP and determined that of the three (3) firms that responded, the environmental consulting team of Amy Skewes-Cox demonstrated an exceptional awareness of the environmental issues related to the project and proposed a budget of \$277,771, which was similar to the budget proposals of the other two consultant teams.

**FISCAL IMPACT:**

The cost of retaining an EIR Consultant (\$277,771) plus a 25% EIR administration fee (\$69,443) will be paid for entirely by the applicant. (See Attachment 3). In addition, the applicant will be responsible for payment of all project application fees, which will be determined at the time of application submittal.

**OPTIONS:**

The City Council has the following options:

1. Adopt the resolution authorizing the City Manager to execute a Professional Services Agreement with Amy Skewes-Cox;
2. Direct Staff to work with the applicant to revise the proposal based on City Council discussion;
3. Continue the matter and request additional information.

**RECOMMENDED ACTION:**

It is recommended that the City Council adopt the attached Resolution.

**ATTACHMENTS:**

1. City Council Resolution authorizing execution of PSA between the City and Amy-Skewes Cox, with Exhibit "A": Professional Services Agreement
2. Draft PSA between the City and LAK Associates, LLC
3. Reimbursement Agreement

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY  
MANAGER TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES WITH  
AMY SKEWES-COX FOR ENVIRONMENTAL CONSULTING SERVICES FOR THE  
BIOMARIN & WHISTLESTOP/EDEN HOUSING PROJECT AT 999 THIRD STREET**

(Term of Agreement: from October 1, 2018 to March 31, 2020, for an amount not to Exceed \$277,771)

**WHEREAS**, BioMarin Pharmaceuticals, the owner of the 999 Third Street project site, is proposing to submit a development proposal to consisting of a research and development facility and will partner with Whistlestop/Eden Housing for a senior housing facility with support service on the same site; and

**WHEREAS**, due to the environmental complexities of the site, the City will need an environmental consulting firm, to provide guidance to the City on the CEQA process and provide CEQA analysis through the preparation of an EIR., and

**WHEREAS**, in May of 2018, the City released a Request for Proposals (RFP), received a response from three (3) firms, and held subsequent interviews with each on the responding firms; and

**WHEREAS**, the consulting team of Amy Skewes-Cox demonstrated exceptional awareness of the environmental issues related to the particular site at this important intersection near the City's downtown; and submitted a proposal with a not-to-exceed amount of \$277,771; and

**WHEREAS**, the developer has agreed to pay all costs associated with preparation of the EIR through certification of the EIR, plus a 25% administration fee (\$69,9443.).

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of San Rafael does hereby authorize the City Manager to execute, on behalf of the City of San Rafael, an Agreement for Professional Services with Amy Skewes-Cox in the form attached hereto as Exhibit "A" and incorporated herein, subject to final approval as to form by the City Attorney.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Tuesday, the 17<sup>th</sup> day of September 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

\_\_\_\_\_  
Lindsay Lara, City Clerk

Exhibit A: Professional Services Agreement between City of San Rafael and Amy Skewes-Cox, with Attached Work Program

**AGREEMENT FOR PROFESSIONAL SERVICES WITH AMY SKEWES-COX FOR  
CONTRACT CEQA CONSULTANT SERVICES RELATED TO THE  
BIOMARIN/WHISTLESTOP LAND USE ENTITLEMENTS PROJECT PROPOSED AT  
999 3RD STREET**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and AMY SKEWES-COX (hereinafter "**CONTRACTOR**").

**RECITALS**

**WHEREAS**, the property owner and a major tenant at the 999 3<sup>rd</sup> Street have expressed interest in pursuing changes to the adopted master plan for the San Rafael Corporate Center (the "BioMarin/Whistlestop project"); and

**WHEREAS**, amendment to the Master Plan for the BioMarin/Whistlestop project at 999 3rd Street, would require planning entitlements including, but not limited to a General Plan Amendment, Zoning Amendment (Planned Development) Minor Tentative Subdivision, Use Permit, Design Review Permit, and Sign Program amendment, and

**WHEREAS**, due to the complexity of the environmental review process and the expertise required to comply with the California Environmental Quality Act (CEQA), the City must hire an Environmental Consultant to provide CEQA guidance and prepare an Environmental Impact Report in accordance with CEQA

**WHEREAS**, **CONTRACTOR** has submitted its proposed "Work Program" for the performance of services, which is attached hereto as Exhibit A and incorporated by reference herein; and

**WHEREAS**, **CONTRACTOR** represents that she is qualified to perform such services and is willing to perform such professional services as hereinafter defined;

**AGREEMENT**

**NOW, THEREFORE**, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

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

B. **CONTRACTOR'S Project Director.** **CONTRACTOR** shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONTRACTOR**. Amy Skewes-Cox is hereby designated as the PROJECT

DIRECTOR for **CONTRACTOR**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR, for any reason, the **CONTRACTOR** shall notify the **CITY** within ten (10) business days of the substitution.

2. DUTIES OF CONTRACTOR.

**CONTRACTOR** shall perform the duties and/or provide professional services as Environmental Consultant, including review of technical reports, coordination with City Staff, and attendance at public hearings and preparation of an EIR. These services shall be performed under the supervision of the Planning Manager, in conjunction with the CITY's procedures for processing development entitlements and shall include the tasks described in Attachment "A", incorporated herein.

3. DUTIES OF CITY.

**CITY CITY** shall pay the compensation as provided in Paragraph 4, and perform the duties as follows: the **CITY** shall provide suitable workspace, if necessary, which is accessible to telephone and computer facilities. **CITY** shall provide **CONTRACTOR** with copies/sets of project plans and materials, historical files on this development, local plans, ordinances and reports that are pertinent to the project that has been assigned to the **CONTRACTOR**.

4. COMPENSATION.

For the full performance of the services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** at the hourly rates outlined in Table 2 of the Work Program (Exhibit A) in an amount not to exceed \$277,771 (including optional items and contingencies) without express written approval of the City Manager. In no event shall the total billing for services hereunder exceed \$287,771.

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

5. TERM OF AGREEMENT.

The term of this Agreement shall be for 18 months commencing on October 1, 2018, and ending on March 31, 2020. Upon mutual agreement of the parties, and subject to the approval of the City Manager the term of this Agreement may be extended for an additional period of 12 months.

6. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to

cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

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

7. OWNERSHIP OF DOCUMENTS.

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

8. INSPECTION AND AUDIT.

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

9. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

10. INSURANCE.

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

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

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

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount



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

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

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

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

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

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

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

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

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

7. The limits of insurance required in this Agreement may be satisfied by a

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

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

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

## 11. INDEMNIFICATION.

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



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

B. Where the services to be provided by **CONTRACTOR** under this Agreement are design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, **CONTRACTOR** shall, to the fullest extent permitted by law, indemnify, release, defend and hold harmless the **City Indemnitees** from and against any CLAIMS that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of **CONTRACTOR** in the performance of its duties and obligations under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such CLAIM which is caused by the sole negligence or willful misconduct of **CITY**. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault.

C. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

12. NONDISCRIMINATION.

**CONTRACTOR** shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

13. COMPLIANCE WITH ALL LAWS.

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

14. NO THIRD PARTY BENEFICIARIES.

**CITY** and **CONTRACTOR** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

15. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO **CITY's** Project Manager:

Raffi Boloyan  
City of San Rafael  
1400 Fifth Avenue  
San Rafael, CA 94901

TO **CONTRACTOR's** Project Director:

Amy Skewes-Cos  
P.O. Box 422  
Ross, CA 94957

16. INDEPENDENT CONTRACTOR.

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

17. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONTRACTOR** and the **CITY**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONTRACTOR** and the **CITY**.

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

the terms and conditions of this Agreement shall control.

18. SET-OFF AGAINST DEBTS.

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

19. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

20. COSTS AND ATTORNEY'S FEES.

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

21. CITY BUSINESS LICENSE / OTHER TAXES.

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

22. APPLICABLE LAW.

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

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

**CITY OF SAN RAFAEL**

**CONTRACTOR**

\_\_\_\_\_  
JIM SCHUTZ, City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Amy Skewes-Cox*

*Amy Skewes-Cox*

*Sole Proprietor*

ATTEST:

\_\_\_\_\_  
LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
ROBERT F. EPSTEIN, City Attorney

**Exhibit A:** Amy Skewes-Cox Environmental Consultin Services for BioMarin/Whistlestop  
Project - 999 3rd Street



### III. WORK PROGRAM



This section outlines the detailed work program that the EIR team will follow. The work program and schedule outlined in this proposal are predicated on the following assumptions:

- Any additional technical studies to be prepared by our team beyond those we have identified herein will require revisions to the proposed scope and budget.
- The Skewes-Cox EIR team will prepare the Notice of Preparation, the Notice of Completion, and the Notice of Determination (with one revision for each based on City comments). The City will be responsible for public noticing and mailing of environmental documents to the Office of Planning and Research (OPR) and neighbors. The City will be responsible for posting the CEQA documents on the City's website.
- The project will start on or near October 2018 and be completed no later than December 2019. Should the project extend beyond this period, an adjustment will need to be made to the budget.
- The proposed schedule will be contingent on timely receipt of project description materials and background documents, as well as City staff comments on the various memos, work products, and Administrative Drafts of the NOP, Initial Study, Draft EIR, and Final EIR described in this proposal.
- The proposed schedule may require revisions related to any unexpected delays that are outside of our control.
- Should any changes to the project description occur after work on the EIR is begun, a revision to the proposed schedule, scope, and budget may be required.
- Any comments on the CEQA documents by City staff will be consolidated into one comment copy in Microsoft Word format to avoid conflicts among comments. Any comments on documents will be done using Microsoft Word and tracking, and will not entail comments in a pdf format.
- The City will provide a clear site plan in pdf format and a written description of the project identifying locations and sizes of all new buildings, uses and hours of use, estimated number of occupants, landscaping provisions, on-site parking provisions, and access. We would also request a copy of any landscape plans, building elevations, grading plans, lighting plans, and utility plans if available. We understand that the project is still undergoing revisions and assume that the EIR process will start when a formal application has been completed.

#### TASK 1. PROJECT INITIATION AND COORDINATION WITH CITY STAFF

To begin the CEQA process, we will hold a kick-off meeting with City staff to coordinate the scope of work, deliverables, and schedule, and to determine protocols for contacting all parties. At this time, we will request copies of any new available project description data and technical information, and address any other relevant CEQA issues. We propose that Amy Skewes-Cox, Bruce Abelli-Amen, and David Parisi attend this meeting. In this way, the sharing of information can be described so that it flows smoothly during the EIR preparation. At this kick-off meeting, we can review the proposed schedule and the roles that everyone will play. Communication protocol can also be discussed.

## **TASK 2. ASSEMBLE AND REVIEW BACKGROUND INFORMATION**

We will work closely with City staff and others to assemble a “library” of background materials and will create a list of such materials that can be continually adjusted through the process. This list will identify who on the EIR team has been provided the relevant documents and when any revisions are being made. These documents will become part of the Administrative Record for the CEQA process.

### **A. TECHNICAL STUDIES**

We would request that any background studies be provided at the start of the EIR process. We understand that the following studies are being prepared by the applicant:

- Photo simulations
- Geotechnical report
- Traffic and parking study
- Hazards and hazardous materials studies
- Hydrology/floodplain study and stormwater control plan

We would review these and avoid duplication of effort while providing objective, third-party review. While we have not yet seen these studies, we assume that they will address many of the impact criteria to be evaluated in the EIR.

### **B. BASE MAPS**

We assume that a number of base maps have been prepared by the applicant and that we would be provided with these in pdf format. We would also request at least two copies of base maps in hard copy, printed at 11 by 17 inches or 24-by-36-inch format if possible. One full set of all project drawings in 11-by-17-inch format for the Project Manager would also be requested.

## **TASK 3. SITE VISITS**

An initial site visit by Ms. Skewes-Cox will be coordinated with the kick-off meeting (Task 1 above). Many EIR team members will want to do their own site visits (obtaining the necessary permission). At this time, we are assuming this first site visit will require two hours and will include City staff. This site visit will allow the EIR team to become familiar with the site and to ask questions while there. The first site visit will be attended by, at minimum, Amy Skewes-Cox, David Parisi, Andrew Lee, Tim Jones, and Bruce Abelli-Amen.

## **TASK 4. MEETINGS WITH CITY STAFF**

We assume that at least 12 two-hour meetings will be required with City staff. At this time, we propose that Amy Skewes-Cox attend all of these meetings. Bruce Abelli-Amen and David Parisi would be available to attend at least six of these meetings. Additional conference calls can be arranged if these are needed. Ms. Skewes-Cox's offices are only 15 minutes from the City offices; thus, she is available to attend meetings upon short notice.

## **TASK 5. PREPARE DRAFT PROJECT DESCRIPTION**

Ms. Skewes-Cox will prepare a detailed project description for review and approval by City staff.

We assume that digital and hard copies of the following plans (with number of copies needed shown in parens) will be provided in full set scale as background for the project description, if available:

- Base topography (2)
- Base site plan showing building layouts, access points, parking, landscaping (4)
- Utility plan (2)
- Building elevations (1)
- Landscaping plans (1)
- On-site vehicle circulation for parking area access (including emergency access) (2)

We would also request digital copies of the above graphics (pdf or Adobe Illustrator format) to be incorporated into the EIR. A full list of data needs is provided in **Appendix B**. Based on materials provided by the City, we will prepare graphics necessary for an adequate project description (e.g., Regional and Project Location, Site Plan, etc.) and for an adequate assessment of environmental impacts. Our budget assumes that all graphics will be 8.5 by 11 inches and black and white, except for up to 12 graphics that are assumed to be color graphics that are 8.5 by 11 inches.

The project description section of the EIR will identify the following:

- Size and location of the project site.
- Project components by phase, with square footage (net and gross), proposed heights, and bulk of each building.
- Specifics regarding hours and days of use, parking, access, and lighting.
- Defined "area of disturbance" for each new building that includes building envelope (which is assumed to include likely surrounding construction zone).
- Construction details, including proposed hours of construction.
- Occupancy for Whistlestop/Eden Housing (both residential and employee) and employee occupancy for both BioMarin buildings.
- Proposed drainage provisions, including on-site detention.
- Proposed grading (expected to be minimal) (cut and fill volumes, etc.).
- Lighting plans, if available.
- Alternative energy and energy conservations measures (summarized).
- Access to parking, parking provisions, and emergency access provisions (external and internal).
- Staging areas for construction and types of construction equipment to be used (needed for noise analysis).
- Utility line extensions and new utility corridors (including mapping).
- Total net new area of impervious surface to result from new construction.
- Timing and staging of the project.
- The applicant's objectives for the project.
- Summary of required permits.

This task assumes one round of edits after City review. Please note that we are requesting that formal City approval of our draft of the project description be completed prior to our starting the EIR analysis. It is critical that the City understands that analysis of the project will have to be redone if the project changes during the EIR process. We would like to minimize changes to the scope of work and budget as much as possible.



## TASK 6. SCOPING MEETING

We have included one scoping meeting in our scope of work due to the complexity of the project and the fact that many people may be interested in attending. This meeting would allow the public to comment on CEQA topics that they would like addressed in the EIR. We will make a presentation about the project to be evaluated, using maps provided by the City, and briefly explain the CEQA process and topics to be addressed. The meeting will then be opened to public comments and notes will be taken. These notes will be summarized in the EIR.

We would ask that City staff assist in notification for this meeting and the arrangements for a meeting space. Ms. Skewes-Cox can make the formal presentation related to the EIR. We would suggest that City staff and/or members of the applicant's team begin with a short presentation on the project itself, but that this presentation be limited to no more than 15 or 20 minutes. This presentation would be followed by Ms. Skewes-Cox explaining the CEQA process and the topics to be addressed. A handout will be provided for those who want to comment in writing rather than orally at the meeting. It is also a good idea to have large-scale drawings of the project on display in the meeting room so that people can view these before and after the meeting. We assume that the scoping meeting will be no more than four hours in duration. At this time, we propose that Ms. Skewes-Cox, Mr. Parisi, and Mr. Abelli-Amen attend the scoping meeting, but if the City would like additional team members to attend, this can easily be arranged.

## TASK 7. NOTICE OF PREPARATION

We will prepare the NOP for the EIR and make one round of edits based on City comments. We suggest that the NOP summarize the topics to be addressed in the EIR.

Digital copies of the administrative draft NOP will be prepared for City staff to review. We will revise the NOP and assume that City staff will distribute the public version to the County Clerk and the State Clearinghouse. We assume that the City will be responsible for mailing the NOP to neighbors. We also assume that the City will post the NOP on the City's website.

The comment period for the NOP will be 30 days. We will incorporate comments received on the NOP into an appendix of the EIR in summary format. The EIR will address NOP comments in the EIR analysis, as appropriate.

## TASK 8. ADMINISTRATIVE DRAFT EIR

The EIR team will prepare the Administrative Draft EIR, including all text, graphics, and footnotes, for review by City staff. The content and format of the EIR will be presented to staff early in the process to ensure that the format meets City standards.

We will provide the City with **one digital copy (non-write protected) and ten hard copies** of the Administrative Draft EIR. We anticipate that the EIR will evaluate the topics listed below. For each topic, we will clearly identify existing conditions, potential impacts, and reasonable mitigation measures for potentially significant impacts. The Administrative Draft EIR will also include an introduction, a summary chapter (summarizing impacts and mitigation measures), and a project description. As required by CEQA, alternatives to the project will be evaluated as described below. Please note that we would request assistance from City staff in developing possible alternatives to the project.

### A. PROJECT DESCRIPTION AND SUMMARY

The ADEIR will include the Project Description (described above under Task 5) chapter and a Summary chapter that will summarize all the impacts and mitigation measures that have been identified. The topics to be addressed are



discussed below. A Summary table will clearly identify all impacts and mitigation measures (verbatim from main body of text). The Summary chapter will also identify any significant, unavoidable impacts that have been identified, and will summarize the project alternatives evaluated.

## **B. LAND USE**

Amy Skewes-Cox, AICP, will conduct the land use analysis and prepare this EIR section, which will focus on the project's compliance with existing City of San Rafael General Plan policies and zoning regulations. This section of the EIR will address all the land use entitlements being requested: a General Plan amendment, rezoning, use permit, and design review. Also, it is assumed that a parcel map may be required to separate the Whistlestop/Eden Housing site from the remainder of the parcel. Ms. Skewes-Cox will complete the following tasks for this EIR section:

- Identify existing land uses at the site and in the immediate environs, including easements.
- Summarize all land use entitlements and create a table to explain why these entitlements are required. This may be done as part of the project description and can be cross-referenced if needed.
- Explain density bonuses allowed and requested for both the Whistlestop/Eden Housing and BioMarin components of the project.
- Describe applicable planning documents relevant to the project site and surroundings, including the City's General Plan 2020, the City's Bicycle and Pedestrian Master Plan, and the City's Emergency Operations Plan. Also, address how the City's General Plan is currently being updated.
- Prepare a summary table identifying the project's relationship to relevant General Plan policies. Policies relevant to environmental impacts will be the focus of this analysis. Because policy consistency is a determination to be made by the decision-makers, the City may prefer that we only list relevant policies and not address policy consistency or applicable mitigation. This can be determined early in the scope refinement. Cross-references will be made to other sections of the EIR that have identified policies related to specific topics such as traffic, air quality, and other topics.
- Identify mitigation measures as necessary.

While not required by CEQA significance criteria, we can address the project's compatibility with surrounding development (addressing secondary issues such as noise, visual quality, etc.) if requested by the City.

## **C. VISUAL RESOURCES**

Amy Skewes-Cox will conduct the visual and aesthetics analysis with the assistance of Environmental Vision (simulation specialists). The proposed project will represent a significant change to a site that is now vacant and unvegetated within downtown San Rafael. Building scale and height of the proposed project, as related to the surrounding urban development, will be evaluated. Blockage of any significant views, as seen from Second Street and Third Street by motorists as well as by bicyclists and pedestrians, will be assessed. The potential for increased light and glare will also be evaluated. However, given that the site is within an urbanized core of the city, this potential impact is not likely to be significant.

At this time, we assume that elevations and final visual simulations based on those elevations will be provided for the two projects. Ms. Skewes-Cox, who is trained in landscape architecture, will complete the following tasks:

- Document existing visual conditions, using photographs to supplement the text, with photos taken from key viewpoint locations approved by City staff (e.g., Second Street, Third Street, Brooks Street, Lindaro Street, and uphill at Boyd Memorial Park.).
- Summarize relevant visual-related policies of the City's General Plan.

- Assess the potential for impacts on scenic vistas and view corridors. Because the site is located within an urbanized area of San Rafael and buildings are primarily infill within the existing downtown, new buildings would not be expected to have significant impacts on scenic vistas. However, the proposed height of both the Whistlestop/Eden Housing building and the BioMarin buildings may have impacts on some long-distance views from public locations and this will be studied in the field, especially in terms of views of Mount Tamalpais, the San Rafael hills, and Boyd Memorial Park.
- Identify the potential for increased light and glare from new development, especially as seen from nearby residences, as applicable. Because senior housing would be placed next to the two new BioMarin buildings and parking areas, light impacts for project residents will also be addressed.
- Document proposed landscaping and evaluate how such landscaping may minimize potential visual impacts of new development. If specific areas for visual screening have not been identified, we will suggest these as part of the recommended mitigation measures and include monitoring for the success of such screening. Landscaping with trees at the edge of the site is expected to be especially important given the scale of proposed buildings.

The visual impact analysis will rely on the applicant's visual simulations. However, we have included the firm of Environmental Vision on our team to provide an objective review of the submitted simulations and to ensure that the images are scaled correctly (see below). EIR text will refer to the simulations in explaining how the projects will appear from key vantage points.

**COMPUTER-ASSISTED PEER REVIEW OF VISUAL SIMULATIONS PREPARED BY PROJECT APPLICANT:** Environmental Vision will conduct peer review of visual simulations prepared by the project applicant to show the proposed project design. The peer review evaluation will address the general accuracy of the simulation images by determining whether the location, massing, and scale of proposed development are shown correctly. In addition, the peer review will address questions of whether the simulation images provide a reasonable illustration of the proposed project design, and whether the simulation photographs show accurate, representative views seen by the public. For purposes of this technical review, Environmental Vision will employ computer-assisted modeling techniques, aerial photography data, and project design data (refer to requested data listed below).

The budget includes evaluation of up to five visual simulations showing the project from ground-level viewpoints. Results of the peer review evaluation will be presented in a brief technical memo outlining assumptions, technical findings, methodology, and conclusions including recommendations for revisions, additional information, or new simulations from additional viewpoints. One review/revision cycle based on minor comments is included.

The following data will be requested (Please note: digital drawings are requested in CAD **and** pdf format):

- High-resolution image files and hard copy versions of the simulation photographs and rendered simulation images in addition to information on camera model and lens used to shoot simulation photographs;
- A scaled map showing the project layout with the simulation photograph point locations;
- Description of computer modeling and rendering methodology used to prepare the simulation images;
- Site plan drawing (to scale) showing existing and proposed new building footprints with existing features;
- Elevation drawings with dimensions for proposed buildings;
- Information on proposed exterior color, material, and finish of buildings and structures;
- 3D digital project model; and
- Heights of existing nearby buildings/structures.

**ASSUMPTIONS:** *We assume that the applicant's visual simulations will be available at the start of the EIR to evaluate potential impacts as seen from critical nearby viewpoint locations. We assume that the City would request a simulation from Boyd Memorial Park upper elevations to confirm whether the project would be visible from this public vantage point. We also assume that project elevations in final format will be available at the start of the EIR.*

## **D. HAZARDS**

Bruce Abelli-Amen and Cem Atabek, both with BASELINE Environmental Consulting (Baseline), which specializes in characterization and cleanup of hazardous waste sites and related CEQA analysis, will evaluate potential impacts related to hazards that may result from development of the proposed project.

The former use of the project site as a Manufactured Gas Plant (MGP) by Pacific Gas and Electric Company (PG&E) resulted in the contamination of soil and groundwater underlying the project site. By-products of MGP processes typically included tars, light oils, sludge, lampblack, and other hazardous materials that can contaminate soil and groundwater and cause substantial odors if exposed at the surface. Due to the health risks posed by the contamination, a deed restriction was established for the project site that prevents it from being used for residences or elder care facilities. Remediation activities have been performed at the project site; these included excavation and off-site disposal of contaminated soil as outlined in a Remedial Action Plan (RAP) that was developed and implemented under the oversight of the Department of Toxic Substances Control (DTSC). Post-remediation soil gas sampling has also been performed at the project site, and a Remedial Action Completion Report will be prepared to document the post-remediation conditions at the project site. Based upon remediation results, PG&E will work with DTSC to amend the deed restriction to allow residential development as long as the proposed development is designed to meet specific standards and protections.

For the Hazards and Hazardous Materials EIR section, Baseline will complete the following tasks:

- Review available regulatory agency records to describe known and potential hazardous materials issues at and near the project site.
- Describe the environmental setting for the proposed project, including the existing conditions at the project site and the existing regulatory framework for hazards and hazardous materials that are applicable to the proposed project.
- Summarize post-remediation conditions and future actions. It is assumed that the Remedial Action Completion Report will be available by the time the CEQA analysis is underway. This completion report will provide updated information and assist Baseline in summarizing the future actions required to address the hazardous materials issues at the site.
- Contact DTSC. In our experience, establishing and maintaining a dialogue between the CEQA team and DTSC staff provides valuable benefits to a successful CEQA process, including transparency and better understanding of health risk issues and future actions that will be required to maintain a safe project site.
- Identify potential impacts related to hazardous materials management. For example, it is likely that on-site excavations (for foundations and utilities) could encounter residual hazardous materials in soil that have strong chemical odors. These types of odors, when emanating from a construction site, can be highly alarming to the public. Baseline will ensure that this possibility is anticipated and that the soil management plan for the site includes measures to address odors that could be generated during construction (required by mitigation measure, if necessary).
- Describe local policies, including policies in the City's General Plan that address hazardous materials and other public health and safety concerns.



- Assess potential public health and safety impacts for future construction workers and future occupants and workers that could result from project development.
- Draft practical mitigation measures to address any identified significant impacts.

## E. TRANSPORTATION AND TRAFFIC

David Parisi and Andrew Lee of Parisi Transportation Consulting (Parisi) will prepare a transportation and traffic analysis for the proposed project. The traffic analysis will be based upon a peer review of BioMarin's transportation analysis conducted by Fehr & Peers. It is assumed that Fehr & Peers' analysis will have adequately covered the following:

- An assessment of existing traffic conditions at all study intersections for weekday AM and PM peak hours.
- An estimate of vehicle trips that the project would generate upon full build-out.
- An assessment of existing plus project traffic conditions at all study intersections for weekday AM and PM peak hours.
- An assessment of cumulative and cumulative-plus-project traffic conditions at all study intersections for weekday AM and PM peak hours.
- An assessment of the project's potential impacts on vehicular traffic, pedestrians, bicyclists, and transit.
- An assessment of potential traffic impacts of limited on-site parking.
- An evaluation of relevant City General Plan policies related to transportation and parking.

Parisi's tasks will include the following:

- Participate in an EIR kick-off meeting to ensure that the goals and objectives for the project are understood. Based on the kick-off meeting, Parisi will prepare a revised scope and fee, as appropriate.
- Review Fehr & Peers' transportation analysis and recommend changes, as appropriate. Any changes would be conducted by Fehr & Peers based on Parisi input.
- Prepare the Transportation and Traffic section of the Initial Study.
- Using the background transportation assessment, complete the Transportation section of the Administrative Draft EIR, which will include text with supporting tables, figures, and technical appendices.
- Respond to one set of unified, non-contradictory comments on the Administrative Draft EIR Transportation section and prepare the public review Draft EIR transportation section.
- Assist in responses to transportation-related public comments. Parisi has included time to assist in responses to public comments on the Draft EIR as they relate to the public review Draft EIR Transportation section for incorporation into the Final EIR.
- Attend one hearing/meeting before the City Council or Planning Commission to answer questions and provide information on traffic impacts and mitigations as needed. City staff may determine this attendance is not required depending on the issues identified in the EIR.
- Manage the transportation elements of the EIR.

**ASSUMPTIONS:** Only one administrative draft report is assumed. Because it is speculative to estimate the number and nature of transportation-related comments on a Draft EIR, Parisi has made certain assumptions about the level of effort required to assist in addressing such comments. If significant additional effort is needed to address transportation-related comments, Parisi will respectfully ask for a contract amendment at that time. Only those items

*specifically identified above are included in the scope of services. Parisi will not conduct any additional scope item without prior consultant or City staff approval.*

*It is further assumed that Parisi will find that Fehr & Peers' transportation study, including parking analysis and vehicle miles traveled (VMT) estimates, is reasonable and adequate, and that any changes identified by Parisi will be conducted by Fehr & Peers. It is assumed that no new traffic counts or surveys will be required.*

*For any analysis of alternatives, it is assumed that such analysis would be qualitative only and that no new quantitative analysis will be necessary.*

## **F. NOISE**

Lisa Luo of Baseline will conduct the noise and vibration analysis. The major noise issues related to the proposed project would be exposure of nearby residents to construction-period noise (likely to include pile-driving), the potential increased traffic noise associated with the proposed project, and the compatibility of the proposed senior housing and R&D uses with the existing noise environment. Baseline will complete the following tasks:

- Describe existing noise conditions. The primary source of noise in the vicinity of the project site is vehicle traffic on Highway 101 and local roadways, including Second Street and Third Street. To establish the ambient noise levels at the project site and at nearby residential receptors, Baseline will collect up to two 24-hour noise measurements and up to four short-term 10-minute noise level measurements (the exact number and location of the measurements will be determined during the site reconnaissance based on the conditions observed in the field) in order to help characterize ambient noise conditions. Based on the ambient noise level data collected, Baseline will evaluate whether the senior housing and R&D components proposed by the project are consistent with the land use compatibility guidelines in the Noise Element of the City of San Rafael General Plan.
- Describe the existing regulatory environment for noise and vibration, including policies contained in the City's General Plan, Noise Ordinance, and any other applicable requirements.
- Assess short-term construction noise impacts. Sensitive receptors located in proximity to the project site include a three-story apartment building to the south of the project site. Baseline will conduct a quantitative analysis to determine whether the project would be likely to result in short-term noise impacts during construction. If potential short-term noise impacts on sensitive receptors are identified (i.e., if construction noise levels exceed construction noise limits in the City of San Rafael's Noise Ordinance), then feasible mitigation measures (which may include limiting work hours, equipment shielding, and noise barriers) will be developed.
- Assess long-term operational noise impacts. During operation, noise impacts could occur as a result of the increased vehicle traffic noise associated with the proposed project. Baseline will conduct a quantitative analysis to estimate project-generated traffic noise to determine whether the project would cause a significant increase in traffic noise levels along local roadways. Based on preliminary review, it is not anticipated that project-generated traffic would significantly increase long-term ambient noise levels.
- Recommend mitigation measures, as needed, to reduce or eliminate any significant noise and/or vibration impacts to less-than-significant levels, if feasible.

## **G. AIR QUALITY AND GREENHOUSE GAS EMISSIONS**

Ivy Tao and Patrick Sutton of Baseline will evaluate the potential impacts related to air quality and greenhouse gas emissions that may result from implementation of the proposed project. The primary temporary sources of air quality and greenhouse gas impacts would be off-road heavy-duty equipment and on-road haul trucks and vehicles used during construction. Construction activities would also generate diesel particulate matter (DPM), which could pose adverse health risks to off-site sensitive receptors at the adjacent hospital and multi-family residential buildings (and

to residents at the proposed senior housing during Phase 2 construction of the BioMarin project component).

Potential permanent sources of air quality and greenhouse gases impacts would be stationary equipment, building operations, and vehicular traffic. In particular, diesel emergency generators in the proposed buildings and use of chemicals in the proposed R&D facilities, if any, could result in significant incremental increases in health risks at the on-site and off-site sensitive receptors.

In preparation of the air quality and greenhouse gas sections (two separate sections) of the EIR, Baseline will complete the following tasks:

- Describe existing air quality conditions in the San Francisco Bay Area Air Basin, including the regional climate, meteorology, and topography, as well as existing air pollution sources and ambient air quality conditions.
- Describe the existing regulatory environment for air quality and greenhouse gases, including federal and state ambient air quality standards, provisions of the San Rafael Climate Change Action Plan issued in April 2009 and its subsequent annual updates, policies contained in the City's General Plan, and any other applicable requirements.
- Determine the significance of impacts related to the project's criteria air pollutant and greenhouse gases emissions in accordance the Bay Area Air Quality Management District (BAAQMD) CEQA Air Quality Guidance. This evaluation will be based on the most current version of the California Emissions Estimator Model (CalEEMod). Research laboratory emissions of reactive organic compounds (through vent hoods) could contribute to the project's criteria pollutant emissions. Therefore, we assume that the applicant will be able to provide information on the type and quantity of chemicals that would be used in the proposed lab spaces and the associated emissions.
- Determine the significance of health risk impacts related to project construction and operation. DPM emissions from diesel equipment and vehicles used during project construction and from diesel emergency generator(s) during project operation will be modeled in a pollutant dispersion model in accordance with the relevant BAAQMD guidelines. Health risks due to the project's DPM emissions at the nearby sensitive receptors will be evaluated in accordance with the guidelines from Office of Environmental Health Hazard Assessment.
- In addition to evaluating health risk impacts due to DPM emissions, conduct a health risk screening analysis as a part of permit application required under BAAQMD Rules 2-1 and 2-5, if the project would include more than 25,000 square feet of laboratories or more than 50 fume hoods in any of the proposed buildings.
- Evaluate the cumulative health risks due to project construction, operation, and other stationary and mobile sources of toxic air contaminants in the project vicinity using BAAQMD's online screening analysis tools.
- Determine the significance of impacts related to the project's consistency with the applicable plans and regulations, such as the BAAQMD 2017 Clean Air Plan and the City's Climate Change Action Plan.
- Recommend mitigation measures, as needed, to reduce or reduce any significant air quality and/or greenhouse gas emissions impacts Plan to less-than-significant levels, if feasible.

## **H. GEOLOGY, SOILS, AND SEISMICITY**

Bruce Abelli-Amen and Lisa Luo of Baseline will prepare an analysis of potential impacts related to geology, soils, and seismicity that may result from development of the proposed project.. The project site is located in a seismically active portion of Northern California, between the San Andreas Fault to the west and the Hayward/Rodgers Creek Fault to the east. Based on current estimates, it is likely that a major earthquake on these or other regional faults will occur during the design life of the project.



The topography of the site is flat, eliminating the potential for impacts from landslides or other slope stability concerns. However, soils underlying the site consist of artificial fill over Bay Mud deposits, which may have the potential to liquefy during seismic events, magnifying potential earthquake impacts. The fill and Bay Mud deposits may pose substantial challenges related to foundation designs for medium high-rise structures, potentially requiring pile foundations. In preparation of the geology, soils, and seismicity section of the EIR, Baseline will complete the following tasks:

- Describe regional and site-specific geologic and seismic conditions for the project site based on review of available geotechnical reports and other available information.
- Identify sources of regional earthquakes and expected levels of seismic shaking (and related potential for ground failure) at the site.
- Describe soil conditions (including erosion hazards and shrink-swell potential) at the site on the basis of Natural Resources Conservation Service mapping and available geotechnical investigations.
- Describe the regulatory framework for geology, soils, and seismicity, including state laws for seismic safety. Local municipal requirements and policies from the City's General Plan will be summarized.
- Evaluate the proposed project for compliance with local ordinances and requirements and standard geotechnical principles. Any potential impacts associated with seismicity or unstable soils will be described.
- Draft practical mitigation measures that would reduce or eliminate any identified significant impacts related to geologic, soils, or expected seismic conditions to a less-than-significant level.

## **I. HYDROLOGY AND WATER QUALITY**

Bruce Abelli-Amen and Lisa Luo of Baseline will prepare an analysis of potential impacts related to hydrology and water quality that may result from development of the project. Development will be subject to National Pollutant Discharge Elimination System program (NPDES) permitting during construction and operation. The NPDES Construction General Permit requires implementation of Best Management Practices (BMPs) during construction activities, while the Phase II Municipal Stormwater Permit (Phase II Permit) E.12 provisions, implemented locally by the City, require capture and treatment of stormwater prior to discharge to storm sewers. Any stormwater discharges from the site would flow from the City storm drainage system to nearby San Rafael Creek, which is located approximately 750 feet south of the project site and discharges to San Pablo Bay. Flooding is also a concern, as much of the project site is located in a Federal Emergency Management Agency (FEMA)-mapped 100-year flood hazard zone.

In preparation of the hydrology and water quality section of the EIR, Baseline will complete the following tasks:

- Review available site-specific hydrologic information, including the hydrology/floodplain study and Stormwater Control Plan prepared for the project.
- Using information from site plans and publicly available resources such as the San Francisco Bay Basin Plan, describe regional and site-specific hydrologic and storm drainage conditions.
- Describe surface and groundwater quality in the site vicinity (contaminants in groundwater related to the former PG&E MGP site will be described in the Hazards section of the EIR), including existing water quality impairment of San Rafael Creek.
- Describe the regulatory framework for stormwater quality, including federal, state, and local plans, laws, and regulations. These will include local requirements, including the San Rafael Municipal Code and measures from the City's General Plan related to stormwater protection.
- Qualitatively evaluate changes in runoff volume and quality based on construction of new buildings, roadways, and other improvements as part of the proposed development.



- Describe potential water quality impacts, including discharge of urban pollutants (petroleum hydrocarbons and heavy metals associated with automobile use) from parking areas that could occur under the development.
- Draft practical mitigation measures that would reduce or eliminate any identified significant impacts related to hydrology and water quality to a less-than-significant level.

## **J. PUBLIC SERVICES AND UTILITIES**

Natalie Macris will conduct the public services and utilities analysis, which will evaluate project impacts on police and fire protection services, water, sewer, and solid waste disposal services. Evaluation of emergency access provisions will be coordinated with the EIR traffic analysis.

To address impacts on public services and utilities, Natalie Macris will complete the following tasks:

- Compile information on existing public service conditions in the project area through contacts with service agency personnel.
- Identify impacts on public services and utilities based on information from the City and service agency personnel. The evaluation will focus on the possible need for new or physically altered governmental facilities and the physical impacts of constructing these new facilities or facility alterations. The evaluation will consider whether effects on established service ratios, response times, capacity versus projected demand, or other performance objectives would result in the need for new or altered facilities, and whether construction of these facilities would cause significant environmental impacts.
- Recommend mitigation measures as necessary.

Storm drainage impacts will be addressed in the Hydrology and Water Quality section of the EIR, rather than in the Public Services and Utilities section.

**ASSUMPTIONS:** *For purposes of this proposal, it is assumed that the applicant will provide (1) written descriptions of existing and proposed service and utility features (e.g., water and sewer connections, emergency access, proposed utility relocations); (2) quantified estimates of water demand, sewage generation, and solid waste generation for the project, including during project construction; (3) written description of any measures included in the project to limit water demand and sewage or solid waste generation; and (4) written description of any measures included in the project to avoid impacts on utilities in the vicinity.*

## **K. PARKS AND RECREATION**

Natalie Macris will complete the following tasks for this EIR section:

- Describe existing parks and recreation facilities in the vicinity.
- Analyze project impacts on parks and recreational facilities, including any facilities included in the project along with the potential for physical deterioration of existing facilities and requirements for new facilities to serve the proposed development.
- Recommend mitigation measures for any potentially significant impacts.

**ASSUMPTIONS:** *For purposes of this proposal, it is assumed that the applicant will provide a written description of proposed on-site recreational features.*

## **L. ENERGY RESOURCES**

Natalie Macris will prepare the Energy Resources section of the EIR. The section will evaluate the potential for the project to have significant impacts on energy resources. Tasks will include the following:

- Compile information on existing gas and electrical facilities in the project area.
- Summarize project impacts on energy resources by identifying the project's proposed energy-saving features, projected energy consumption, consistency with applicable energy efficiency policies and standards, and the potential need for new energy supplies or facilities to serve the project
- Recommend mitigation measures as necessary.

**ASSUMPTIONS:** *For purposes of this proposal, it is assumed that the applicant will provide (1) written descriptions of any proposed energy-saving features; (2) quantified estimates of the project's energy consumption with and without any proposed energy-saving features, including consumption during project construction; (3) written description of proposed connections to and any proposed relocation of existing gas or electrical facilities; and (4) written description of any measures included in the project to avoid impacts on gas and electrical facilities in the vicinity.*

## **M. CULTURAL RESOURCES AND TRIBAL CULTURAL RESOURCES**

Tim Jones with LSA will prepare the Cultural Resources and Tribal Cultural Resources sections of the EIR. The Cultural Resources section of the EIR will (1) describe the prehistoric, ethnographic, and historical settings of the project site; and (2) evaluate potential impacts on cultural resources that may result from the proposed project. Cultural resource technical specialists will use available studies whenever possible. The Tribal Cultural Resources section of the EIR will (1) describe the results of the City's consultation efforts with the Federated Indians of Graton Rancheria, and (2) evaluate potential impacts on tribal cultural resources based on the results of this consultation.

The following specific tasks will be completed:

- **Conduct Records Searches and Literature Review.** Records searches and a literature review will document the baseline conditions for cultural resources. LSA will conduct a records search at the Northwest Information Center at Sonoma State University to identify previously recorded cultural resources within, and cultural resource studies of, the project site. LSA will also request a review of the Native American Heritage Commission (NAHC) Sacred Lands File to identify sites of Native American concern in or adjacent to the project site. LSA will review appropriate literature to document the historical, ethnographic, archaeological, and paleontological contexts of the project site.
- **Conduct Site Visit.** A qualified cultural resources manager will conduct one site visit to observe and photograph the existing conditions.
- **Describe Relevant Laws, Regulations, and Policies.** Relevant local and state cultural resource laws, regulations, and policies will be summarized in the EIR.
- **Identify Potential Impacts and Develop Mitigation Measures.** Potential project impacts on cultural resources and mitigation measures will be provided to avoid or to reduce the severity of significant cultural resource impacts.
- **Respond to Comments.** Cultural resources staff will respond to the following: (1) one set of non-contradictory City staff comments on the Administrative Draft EIR, and (2) public comments on the Draft EIR.

**ASSUMPTIONS:** *This proposal includes the following assumptions:*

- *There are no cultural or tribal cultural resources at the project site that will require recordation or evaluation.*
- *The City will conduct Assembly Bill 52 (AB 52) and Senate Bill 18 (SB 18) consultation with appropriate local tribal representatives, including letter notifications and meetings. The City will communicate the results of this consultation to Ms. Skewes-Cox and LSA, who will prepare the tribal cultural resources section of the EIR.*

## **N. ALTERNATIVES**

Amy Skewes-Cox and Bruce Abelli-Amen will lead the alternatives development effort. CEQA requires that alternatives to the project be evaluated in the EIR. These alternatives must have fewer and/or reduced impacts as compared to the proposed project. Thus, the final selection of alternatives is best made after potential impacts of the project are known. We propose that the following alternatives be considered for evaluation in the EIR at a level of detail specified by the CEQA Guidelines and suggest that the City choose three alternatives that we will evaluate at a more general level than the proposed project:<sup>1</sup>

- No Project Alternative (assumes no change from existing conditions), which is mandated by CEQA;
- Project without a General Plan amendment or rezoning (we would request City staff assistance in identifying the level of development that could occur under this alternative and could still assume allowable density bonuses);
- Reduced Scale Alternative (may possibly assume a reduction in the Whistlestop unit count to 54 total units and/or a reduction in square footage for the BioMarin component);
- Alternative with increased on-site parking to meet code requirements;
- Redesign Alternative (may include a reconfiguration of some buildings to result in fewer environmental impacts) and;
- Off-Site Alternative (if deemed feasible).

Each alternative will be compared to the proposed project, especially as related to identified significant impact. It will also be important to compare the alternatives to the applicant's objectives identified in Chapter 1 of the EIR. The environmentally superior alternative will be identified.

We will also identify and briefly discuss alternatives considered but rejected. For example, we may mention the original location proposed for Whistlestop (existing site near SMART station) and the reasons for rejection of that site.

If the City would like additional or different alternatives included, this can easily be arranged.

## **O. GROWTH INDUCEMENT AND CUMULATIVE IMPACTS**

Amy Skewes-Cox will assess the growth-inducing effects of the proposed project on the general site area and the city as a whole. The analysis will include consideration of existing and projected development patterns in the vicinity, along with any existing land use controls that would limit growth inducement. The issue of growth inducement related to increased housing demands associated with increased employment will be addressed. The city's housing vacancy rate will be identified and we will discuss with City staff how this issue might best be addressed.

The cumulative impacts of the project will be addressed for each topic of the EIR. We will request information from the City of San Rafael about other proposed or permitted projects that may not yet be developed in the area around the site. Other projects of importance are expected to include the relocation of the Transit Center, the 755 Lindero project, and others that the City may identify.

## **P. OTHER ISSUES**

The EIR team will complete the other required CEQA assessment conclusions regarding significant and unavoidable impacts and significant irreversible environmental changes. The Administrative Draft and Draft EIRs will also include

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<sup>1</sup> No detailed traffic modeling is assumed in the proposed budget for the alternatives evaluation.

a brief review of other required CEQA topics such as Agricultural and Forestry Resources, Mineral Resources, and Population and Housing. No significant impacts related to these three topics are expected.

### **TASK 9. PUBLIC REVIEW DRAFT EIR**

After receiving City comments, we will make any final changes to the Administrative Draft EIR (ADEIR) requested by City staff to produce the public review Draft EIR. We assume that all City comments will be consolidated into one comment copy (to avoid conflicts among commenters). We would request that the City's CEQA attorney take part in review of the ADEIR.

One screencheck copy of the public review Draft EIR will be submitted for City approval prior to printing. We will submit one electronic (Microsoft Word 2010) non-write protected copy, 30 bound copies, and 1 CDs or thumb drive with the public review Draft EIR in pdf format (including graphics). We will also identify the cost per copy if these exceed the budget we have set aside for this task. A total of 15 CDs will be prepared for the copies to be sent to the State Clearinghouse. A total of 30 CDs will include the appendices at the back of the Draft EIR hard copies.

### **TASK 10. NOTICE OF COMPLETION**

We will prepare the Notice of Completion (NOC) for submittal by City staff to the State Clearinghouse and County Clerk. We assume that the City will submit the required number of EIRs to the State Clearinghouse. We assume that the public review Draft EIR will be distributed to other interested parties by City staff. We can make additional CDs and hard copies upon request. We would ask that the City file the NOC with the County Clerk; however, we can adjust our scope of work to include this task if requested to do so by the City.

### **TASK 11. PUBLIC HEARINGS**

Amy Skewes-Cox will attend one public hearing (four hours) with the Planning Commission during the Draft EIR review period. She will also attend two four-hour meetings with the Commission and two four-hour meetings with the Council during the Final EIR and project entitlement process. Mr. Abelli-Amen and Mr. Parisi will be available to attend three of these hearings. If requested by the City, other CEQA team members can attend hearings with a scope amendment.

We have included a court reporter be present to record the proceedings for up to five hearings (20 hours total). In this way, the Final EIR can address all oral comments.

### **TASK 12. ADMINISTRATIVE DRAFT FINAL EIR**

After the public comment period for the Draft EIR, we will produce the Administrative Draft Final EIR, including an introduction outlining the Final EIR purpose and contents, responses to all comments received during the comment period, and a section on changes to the Draft EIR text. We will provide the City with one electronic (Microsoft Word) non-write protected copy and five hard-copy prints of the Administrative Draft Final EIR. We assume that a rewrite and reprinting of the entire Draft EIR will not be done, but that the Final EIR will be an Addendum to the Draft EIR.

It is very difficult to anticipate the number of comments to be received. At this point, our budget assumes responding to up to 30 letters, or a maximum of 120 distinct comments, whichever is less. We assume that some comments can



have a standard response that is applicable to repetitive comments, and propose "Master Responses" for this reason. The hours shown in the proposed budget are our best estimate of the time required. However, should the comments substantially exceed our estimate, we would request that a budget adjustment be made for this task.

### **TASK 13. FINAL EIR**

We will make any final changes to the Administrative Draft Final EIR requested by City staff to produce the Final EIR, which will consist of the comments and responses along with revisions to specific sections of the Draft EIR text. The Final EIR is assumed not to include all the text (as revised) of the Draft EIR. We will submit one electronic (Microsoft Word) non-write protected copy, 30 bound copies, and 1 CD or thumb drive with the EIR in pdf format (including graphics). At this time, we assume that City staff will distribute the Final EIR.

### **TASK 14. MITIGATION MONITORING AND REPORTING PROGRAM**

The Mitigation Monitoring and Reporting Program (MMRP) will include all mitigation measures identified in the EIR. The MMRP will be a stand-alone document and will also be incorporated into the Final EIR. The MMRP can be integrated into the Final EIR.

### **TASK 15. DRAFT AND FINAL FINDINGS**

At this time, we assume that the City's attorney will prepare the necessary Findings for adoption of the EIR. This task is not included in our scope of work. However, we can easily add this task to our scope, assuming that legal review of our findings would be done prior to publication.

### **TASK 16. NOTICE OF DETERMINATION**

Once the project is formally approved by the City, we will prepare the Notice of Determination (NOD) (to be filed within 5 days of approving the project). We assume that City staff will file the NOD with the County Clerk. However, we can easily adjust our scope of work to include this task if preferred by the City.

### **TASK 17. PROJECT MANAGEMENT AND WORKING WITH CITY AND APPLICANT'S CONSULTANT TEAM**

Amy Skewes-Cox will have primary responsibility for project management, with assistance from Bruce Abelli-Amen as her Assistant Project Manager. Project management includes the following:

- Finalizing the contract with the client;
- Finalizing subcontracts with team members;
- Helping on background staff report information that City staff will incorporate into project staff reports, as related to environmental findings;
- Communicating with City staff and team members throughout the EIR process;
- Scheduling with team members and the client;
- Invoicing; and

- Disseminating project drawings and information to all team members.

Ms. Skewes-Cox and Mr. Abelli-Amen will both be available for meetings with City staff. Ongoing phone calls and email correspondence are included in this task.





### **III. PRODUCTS, MEETINGS, AND SCHEDULE**



#### **A. PRODUCTS AND MATERIALS TO BE PROVIDED BY EIR CONSULTANT**

We will submit the following products to the City:

1. Draft Project Description: One electronic, non-write protected copy.
2. Administrative Draft NOP: One digital copy and five hard copies.
3. Administrative Draft EIR: One electronic (Microsoft Word 2010) non-write protected copy and five bound copies.
4. Public Draft EIR: One electronic (Microsoft Word 2010) non-write protected copy, 30 bound copies, and one CD/thumb drive with the EIR in pdf format (including graphics). Fifteen CDs for State Clearinghouse delivery will be provided.
5. Administrative Draft Final EIR: One electronic (Microsoft Word 2010) non-write protected copy and 10 bound copies.
6. Final EIR: One electronic (Microsoft Word 2010) non-write protected copy, 30 bound copies, and one CD/thumb drive with the EIR in pdf format (including graphics).
7. Mitigation Monitoring and Reporting Program: One electronic (Microsoft Word) copy as part of Administrative Draft Final EIR and Final EIR.
8. Notice of Preparation, Notice of Completion, and Notice of Determination: One digital copy of each.

High-resolution pdf files will be prepared for all public documents (including all color and black/white graphics). For the City's website, a low-resolution pdf file will be created for public review documents, broken into manageable chapters for searchable text. The main PDF file will be divided into individual chapters so that the digital file can be loaded more easily on the City's website.

#### **B. MEETINGS AND HEARINGS**

Amy Skewes-Cox will attend the following meetings:

- Twelve 2-hour meetings with City staff
- One 4-hour scoping meeting
- One 4-hour Planning Commission meeting on Draft EIR
- Two 4-hour meeting with Planning Commission on Final EIR
- Two 4-hour meetings with City Council on FEIR

Bruce Abelli-Amen will be available to attend one-half of these meetings, as requested by City staff. David Parisi will attend the scoping meeting, 3 public hearings, and 6 meetings with staff (assumed to be 2 hours each).

## C. TENTATIVE SCHEDULE

Our proposed work schedule for the EIR is shown in **Table 1A**. Compliance with the schedule is highly dependent on the timely submittal of the required information listed above and review comments by City staff. The schedule assumes a start date of **September 2018**. At this time, we are not expecting significant unforeseen delays. However, if the project does not terminate by December 2019, we would request a budget augmentation if unexpected delays are caused.

**Table 1B** shows an optional schedule if an Initial Study is not included in the scope of work (see Section IV below). This second schedule table shows that about 11 fewer weeks would be needed if an Initial Study were not included.

TABLE 1

## Tentative Schedule for BioMarin and Whistlestop/Eden Housing EIR

Prepared August 2018

	Calendar Days to Complete	Start Date	Completion Date
Project Start-Up with Kickoff Meeting	0	10/7/2018	10/7/2018
Startup and Preparation of Project Description	14	10/1/2018	10/15/2018
City Reviews and Approves Project Description	7	10/15/2018	10/22/2018
Conduct Initial Site Visit for Team (other site visits to be held during EIR process)	Ongoing	ongoing	
Complete Notice of Preparation	5	10/15/2018	10/20/2018
City Reviews Notice of Preparation	7	10/20/2018	10/27/2018
NOP out for public review (includes 4 days for publication/distribution)	34	10/23/2018	11/26/2018
Scoping Meeting (expected to be in early Spring or late winter 2019)	to be determined		
Begin Administrative Draft EIR (assumes all data in hand from revised studies)		10/22/2018	10/22/2018
Traffic section completed and delivered to Air/Noise team	14	12/8/2018	12/22/2018
<b>All EIR sections completed and submitted to EIR Project Manager (assumes no major new issues raised by comments on NOP). Traffic section delivered to air/noise team 2 weeks prior</b>	62	10/22/2018	12/23/2018
Administrative Draft EIR Finalized Internally by Skewes-Cox team	36	12/23/2018	1/28/2019
City Staff Review Administrative Draft EIR	21	1/28/2019	2/18/2019
CEQA Teams Revises ADEIR and Prepares Screencheck Draft EIR	14	2/18/2019	3/4/2019
City Reviews Screencheck Draft EIR	14	3/4/2019	3/18/2019
EIR Printed and Submitted for Public Review	3	3/18/2019	3/21/2019
Public Review of EIR (45 days minimum)	45	3/21/2019	5/5/2019
Prepare Admin. Final EIR	21	5/5/2019	5/26/2019
City Staff Review Admin. Final EIR	21	5/26/2019	6/16/2019
Revise and Submit Screencheck Final EIR	14	6/16/2019	6/30/2019
City staff review and approve Screencheck Final EIR	14	6/30/2019	7/14/2019
CEQA Team Prepares Final EIR and MMRP for public distribution	14	7/14/2019	7/28/2019
Final EIR out for public review (20 days)	20	7/28/2019	8/17/2019
Certification of FEIR (to be determined -estimated to be Fall 2019)	7	8/17/2019	8/24/2019

Note: This schedule is subject to revisions based on consultation with City staff through the duration of the process. This schedule assumes that revisions to address staff comments on administrative drafts would not require substantial new analysis, and it also assumes that the project description would not be revised substantially, once it is approved by City staff.

\* If NOP comments result in requiring revisions to the ADEIR, the schedule will change.

## IV. ESTIMATED COSTS

■ ■ ■

The EIR will be completed for a time-and-expense not-to-exceed budget of \$231,476 as shown in Table 2. Our printing/reproduction budget assumes that the EIR will be no more than 250 pages and will have up to 10 color graphics and no 11-by-17-inch graphics. If the City requests that significant appendices material (e.g., geotechnical study) be attached to hard copies, we would request that an adjustment be made to the printing budget, which is shown in Table 2. We have assumed production of the requested number of hard copies of documents, and full digital copies for all documents in both Microsoft Word and pdf format. A total of 15 CDs will be provided of the Draft EIR for submittal to the State Clearinghouse. And 30 CDs will be provided in hard copies of the Draft EIR for the appendices material.

A 20 percent contingency budget has been recommended under "Optional Items".

We would bill the City on a monthly basis with payments due within 30 days.

Table 2 Budget for BioMarin and Whistlestop/Eden Housing Full EIR

Hrly. Rate	EIR Team													Total Hours	
	Principal (AS-C)	Planner (NM)	Traffic (Paris)	Traffic (Paris)	Traffic (Paris)	Traffic (Paris)	Principal/ Deputy PM (Baseline)	Environmental Engineer III (Baseline)	Environmental Engineer II (Baseline)	Environmental Engineer I (Baseline)	Cultural (LSA)	Graphics	Word Process.		
	\$220	\$135	\$245	\$165	\$130	\$105	\$220	\$175	\$160	\$140	\$135	\$85	\$90		
1. Coordination with Staff	8													8	\$1,760
2. Review Background Information	10		6	8	6		6	1	2	2				41	\$7,865
3. Site Visit	4		4		4		4				4			20	\$3,800
4. Meetings with City (throughout process)	24		12				12							48	\$10,860
5. Prepare Project Description	12	5					4					5	3	29	\$4,890
6. Scoping Meeting	4		4				4							12	\$2,740
7. Prepare NOP	4						2						1	7	\$1,410
8. Administrative Draft EIR															
Introduction	1												1	2	\$310
Summary	2												1	3	\$530
Project Description (see above)	5						2						1	8	\$1,630
Aesthetics	16											2	2	20	\$3,870
Agricultural and Forestry Resources	1												1	2	\$200
Air Quality and Greenhouse Gas Emissions	2						4	4	65			2	2	79	\$12,770
Biological Resources	1												1	2	\$310
Cultural Resources and Tribal Issues	1										40		1	42	\$5,710
Energy	1	20											1	22	\$3,010
Geology and Soils	1						1			16		2	1	21	\$2,940
Hazards and Hazardous Materials	2						4	40				2	2	50	\$8,670
Hydrology and Water Quality	2						1			20		2	2	27	\$3,810
Land Use and Planning	20											2	2	24	\$4,760
Mineral Resources	1												1	2	\$200
Noise	2						4			60			2	68	\$9,900
Population/Housing	1												1	2	\$310
Public Services	1	15											1	17	\$2,335
Recreation	1	5											1	7	\$875
Transportation/Traffic	3		18	16	40	16						3	3	99	\$15,115
Public Utilities	1	20											2	23	\$3,100
Alternatives	8			6	10		6					3	3	36	\$5,895
CEQA Conclusion Chapter	4												1	5	\$970
Review and Editing	16	25										4	16	61	\$8,675
9. Draft EIR	24	15	4		8	4	2	1	2	2		3	14	79	\$12,475
11. Notice of Completion	2												1	3	\$530
12. Public Hearings (for all stages)	20		12				12							44	\$9,980
13. Admin. Draft Final EIR	32	15	8	8	24	12	8	2	6	8	4	2	18	147	\$23,245
14. Final EIR	24	10	4		12	4	3		2	2	4		14	79	\$12,650
15. Mitigation Monitoring Program	6	1											2	9	\$1,635
16. Findings														0	\$0
17. Notice of Determination	2												1	3	\$530
18. Project Management	32						17							49	\$10,780
TOTAL HOURS	300	131	72	38	104	36	96	48	77	110	52	32	103	1,199	
TOTAL LABOR COST	\$65,890	\$17,685	\$17,640	\$6,270	\$13,520	\$3,780	\$21,120	\$8,400	\$12,320	\$15,400	\$7,020	\$2,720	\$9,270	\$201,035	\$201,035
<b>Direct Costs and Expenses</b>															
Deliveries and Communications															\$100
Travel															\$50
Maps, Plans, Reports															\$50
Court Reporter (American Reporting Services); Assumes 100 pages per hearing and 5 hearings; it is \$6/page of transcript and \$80 per hour labor; assumes 20 hrs. total)															\$4,000
CDs for delivery to State Clearinghouse and 30 CDs for appendices of Draft EIR															\$88
Report Reproduction															\$4,600
Subtotal Direct Costs and Expenses															\$8,868
<b>Subconsultants Direct Costs and Specialists</b>															
Paris Trans.															\$200
Baseline Environmental Consulting															\$300
LSA (Includes NWIC records search fee)															\$250
Macris															\$200
Environmental Vision															\$6,860
Subtotal Subconsultants Direct Costs															\$7,810
TOTAL DIRECT COSTS AND EXPENSES															\$16,478
Administrative Fee for Direct Costs and Subconsultants (10 percent)															\$13,963
CONTRACT TOTAL															\$231,476
<b>Optional Tasks</b>															
Suggester Contingency Budget															\$46,295

**AGREEMENT FOR PROFESSIONAL SERVICES WITH LAK ASSOCIATES, LLC, TO  
SERVE AS PROJECT PLANNER FOR THE BIOMARIN & WHISTLESTOP/EDEN  
HOUSING PROJECT PROPOSED AT 999 3RD STREET**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and LAK ASSOCIATES, LLC (hereinafter "**CONTRACTOR**").

**RECITALS**

**WHEREAS**, BioMarin Pharmaceuticals, the owner of the 999 Third Street project site, have expressed interest in pursuing a development proposal to consisting of a research and development facility and will partner with Whistlestop/Eden Housing for a senior housing facility with support service on the same site (the "BioMarin/Whistlestop project"); and

**WHEREAS**, the proposed BioMarin/Whistlestop project at 999 3rd Street, would require planning entitlements including, but not limited to, a General Plan Amendment, Zoning Amendment (Planned Development) Minor Tentative Subdivision, Use Permit, Design Review Permit, and Sign Program, and

**WHEREAS**, given the current workload of **CITY** staff, the **CITY** has determined that professional planning services are needed to supplement the existing staffing through assignment of this project to an experienced planning consultant with the capacity and expertise to process a project of this nature.

**WHEREAS**, **CONTRACTOR** has submitted its proposed "Approach and Scope of Work" dated July 25, 2018, which is attached hereto as Attachment "A" and incorporated by reference herein; and

**WHEREAS**, **CONTRACTOR** represents that it is qualified to perform such services and is willing to perform such professional services as hereinafter defined;

**AGREEMENT**

**NOW, THEREFORE**, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY's Project Manager.** The Planning Manager is hereby designated the PROJECT MANAGER for the **CITY** and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

B. **CONTRACTOR.** **CONTRACTOR** shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONTRACTOR**. Sean Kennings is hereby designated as the PROJECT DIRECTOR for **CONTRACTOR**. Should circumstances or conditions subsequent to the execution of this



Agreement require a substitute PROJECT DIRECTOR for any reason, the **CONTRACTOR** shall notify the **CITY** within ten (10) business days of the substitution.

2. **DUTIES OF CONTRACTOR.**

**CONTRACTOR** shall perform the duties and/or provide professional services as Contract Planner for the BioMarin/Whistlestop project, including but not limited to review of plans and application materials, correspondence with applicant and public and City staff, coordination and management of City's review of the project, preparation of staff reports, analysis of the project for consistency with adopted Plans and Ordinances, and any other tasks described in Attachment "A", attached. These services shall be performed under the supervision of the Planning Manager, in conjunction with the **CITY's** procedures for processing development entitlements.

3. **DUTIES OF CITY.**

**CITY** shall pay the compensation as provided in Paragraph 4, and perform the duties as follows: the **CITY** shall provide suitable workspace, if necessary, which is accessible to telephone and computer facilities. **CITY** shall provide **CONTRACTOR** with copies/sets of project plans and materials, historical files on this development, local plans, ordinances and reports that are pertinent to the project that has been assigned to the **CONTRACTOR**. The **CITY** shall provide **CONTRACTOR** with supervision and direction on processing the development application in accordance with local procedures.

4. **COMPENSATION.**

For the full performance of the services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** an hourly rate of \$155.00 per hour. The billing amounts authorized under this Agreement shall not exceed \$65,000 without express written approval of the City Manager. Amendments to this budget cap can be authorized by the City Manager provided that the total compensation payable under this Agreement shall not exceed \$75,000.

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

5. **TERM OF AGREEMENT.**

The term of this Agreement shall be for 18 months commencing on October 1, 2018 and ending on March 31, 2020. Upon mutual agreement of the parties, and subject to the written approval of the City Manager, the term of this Agreement may be extended for an additional period of 12 months.

6. **TERMINATION.**

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

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

7. **OWNERSHIP OF DOCUMENTS.**

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

8. **INSPECTION AND AUDIT.**

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

9. **ASSIGNABILITY.**

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

10. **INSURANCE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

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

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

## 11. INDEMNIFICATION.

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

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

B. Where the services to be provided by **CONTRACTOR** under this Agreement are design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, **CONTRACTOR** shall, to the fullest extent permitted by law, indemnify, release, defend and hold harmless the **City Indemnitees** from and against any CLAIMS that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of **CONTRACTOR** in the performance of its duties and obligations under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such CLAIM which is caused by the sole negligence or willful misconduct of **CITY**. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault.

C. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

12. **NONDISCRIMINATION.**

**CONTRACTOR** shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

13. **COMPLIANCE WITH ALL LAWS.**

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



14. NO THIRD-PARTY BENEFICIARIES.

**CITY** and **CONTRACTOR** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

15. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

**TO CITY's Project Manager:** Raffi Boloyan, Planning Manager  
City of San Rafael  
1400 Fifth Avenue  
San Rafael, CA 94901

**TO CONTRACTOR's  
Project Director :** Sean Kennings  
LAK Associates  
3030 Bridgeway, Suite 103  
Sausalito, CA 94965

16. INDEPENDENT CONTRACTOR.

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

17. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONTRACTOR** and the **CITY**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONTRACTOR** and the **CITY**.

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

18. SET-OFF AGAINST DEBTS.

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

19. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

20. COSTS AND ATTORNEY'S FEES.

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

21. CITY BUSINESS LICENSE / OTHER TAXES.

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

22. APPLICABLE LAW.

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

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

**CITY OF SAN RAFAEL**

**CONTRACTOR**

\_\_\_\_\_  
JIM SCHUTZ, City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
ROBERT F. EPSTEIN, City Attorney

**Exhibit A:** LAK Associates Planning Services for BioMarin/Whistlestop Project - 999 3rd Street

## REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (Agreement) is entered into this \_\_\_\_\_ (“Effective Date”), between BioMarin Pharmaceutical, Inc. (“Developer”), and the CITY OF SAN RAFAEL, a municipal corporation organized and existing under the laws of the State of California (“the City”).

### RECITALS

- A. Developer is preparing to submit an application for a development proposal to add a Research and Development facility with Senior Housing development on a portion of the site (“the proposed project”).
- B. Developer is considering options for the new research and development facility and senior housing project and has not yet finalized plans for submittal.
- C. Pursuant to the City's comprehensive planning and environmental review process, the City has tentatively determined that the proposed project will require the following permits and land use entitlements [*mark those applicable*]:
  - ☒ General Plan Amendment
  - ☒ Zoning Change/Planned Development
  - ☒ Minor Subdivision/Tentative Map
  - ☐ Major Subdivision/Tentative Map
  - ☒ Use Permit
  - ☒ Environmental and Design Review
  - ☐ Variance
  - ☒ Sign Review/ Sign Program/Amendment
  - ☒ Environmental Impact Report
- D. Due to the current work load of the City's Community Development Department and the aggressive timeline requested by the Developer, the City must hire a Contract Planner to serve as “Project Planner” for this project and expedite the review of the proposed project on the condition that Developer reimburse the City for its costs incurred in connection with these outside vendors (“Contract Planner”).
- E. In addition, due to the complexity of the environmental review process and the expertise required to comply with the California Environmental Quality Act (CEQA), the City must hire an Environmental Consulting firm to provide CEQA guidance and prepare an Environmental Impact Report in accordance with CEQA (“Contract CEQA Consultant”), and City may also be required to consult with an outside law firm for expert legal advice regarding CEQA or other applicable law (“Contract Law Firm”), on the condition that Developer reimburse the City for its costs incurred in connection with these outside vendors.

- D. California Public Resource Code Section 21082.1 authorizes the City to employ a Contract Planner and Contract CEQA Consultant to provide planning and environmental review services, including preparation of the environmental documents required by the California Environmental Quality Act (CEQA) for the proposed project.
- E. California Government Code Section 66014, California Public Resource Code Section 21089, and San Rafael Municipal Code Section 3.34.40 entitle the City to recover its costs of processing the applications for the land use entitlements required for the proposed project, including but not limited to the cost of the City's preparation and review of all required environmental documents. Accordingly, the City is entitled to recover its Contract Planner and Contract CEQA Consultant costs from Developer.
- F. This Agreement is intended to set forth procedures and a funding mechanism for Developer's payment of all planning and environmental consulting costs that will be incurred in connection with the proposed project.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereby agree as follows:

#### **TERMS OF REIMBURSEMENT AGREEMENT**

1. Recitals Incorporated. The foregoing recitals are incorporated into this Agreement.
2. Reimbursement. The City will contract directly with Contract Planner and Contract CEQA Consultant to provide planning and environmental consulting services for the proposed project. Developer agrees to reimburse the City for all Contract Planner and Contract CEQA Consultant costs that the City incurs which are related to the proposed project. The Contract Planner costs may include charges for various independent contractors working under Contract Planner's supervision (for example, traffic engineering consultants, biological study consultants, etc.). Developer agrees that the Contract Planner and Contract CEQA Consultant reimbursement charges will be separate and are in addition to the City's other processing and development fees to be charged to and paid by Developer pursuant to San Rafael Municipal Code Section 3.34.40.
3. Project Reimbursement Account. The contract amount of the proposed project includes two separate contracts, one for Contract Planner and one for Contract CEQA consultant.
  - A. The initial contract amount of the Contract Planner is \$65,000 ("the Contract Amount"). Developer shall pay 50% of the Contract Amount (\$32,500.00) to the City within 30 days of receiving the City's request, for deposit to a non-interest-bearing Reimbursement Account that will be created by the City's Finance Department for the proposed project. This amount does not include the planning application submittal fees that would be required for this project and are required to cover City staff time associated with oversight and supervision of the Contract Planner. The application fees will be based on the scope of the project, once finalized by the Developer, but may include General Plan Amendment, Planned Development/Rezoning, Minor Subdivision, Use Permit, Design Review Permit,



and Sign Program. These application fees shall be paid at the time of submittal of the formal applications and shall be paid by a separate check.

The City will hold Contract Amount funds in the Reimbursement Account and charge invoices received from Contract Planner against the Reimbursement Account. The City will provide Developer with copies of all such invoices, however, Developer agrees that the City may redact portions of the Contract Law Firm invoices to protect the City's attorney-client privilege. Within 30 days of Developer's receipt of the City's written notice that the Reimbursement Account has been reduced to a balance of less than \$10,000.00, Developer agrees to pay the remaining 50% of the Contract Amount (\$32,500.00) to the City to replenish the Reimbursement Account. Developer agrees to continue making such payments until the City is reimbursed for all the Contract Planner costs related to the proposed project. The City will hold any funds remaining in the Reimbursement Account until the City's processing of the proposed project is completed. Although the Reimbursement Account is primarily intended to fund the costs related to Contract Planner, Developer agrees that the City may collect any unpaid development fees and charges related to the proposed project from the funds in the Reimbursement Account. Any remaining funds in the Reimbursement Account after payment of all fees and costs related to the proposed project shall be refunded to Developer.

- B. The initial contract amount (including optional tasks and contingencies) of the Contract CEQA Consultant is \$277,771 ("the Contract Amount - CEQA"). Developer shall pay 50% of the Contract Amount (\$138,885.50) to the City within 30 days of receiving the City's request, for deposit to a non-interest-bearing Reimbursement Account that will be created by the City's Finance Department for the proposed project. This amount does not include the 25% EIR administrative fee that is required to cover City staff time associated with review of EIR and administration of contract. This 25% administrative fee (\$69,442.75) shall be paid at the time of submittal of the fund for the Initial Study/EIR contract and shall be by a separate check.

The City will hold Contract Amount funds in the Reimbursement Account and charge invoices received from Contract CEQA Consultant Firm against the Reimbursement Account. The City will provide Developer with copies of all such invoices, however, Developer agrees that the City may redact portions of the invoices to protect the City's attorney-client privilege. Within 30 days of Developer's receipt of the City's written notice that the Reimbursement Account has been reduced to a balance of less than \$10,000.00, Developer agrees to pay the remaining 50% of the Contract Amount (\$138,885.50) to the City to replenish the Reimbursement Account. Developer agrees to continue making such payments until the City is reimbursed for all the Contract CEQA Consultant costs related to the proposed project. The City will hold any funds remaining in the Reimbursement Account until the City's processing of the proposed project is completed. Although the Reimbursement Account is primarily intended to fund the costs related to Contract CEQA Consultant, Developer agrees that the City may collect any unpaid development fees and charges related to the proposed project from the funds in the Reimbursement Account. Any remaining funds in the Reimbursement Account after

payment of all fees and costs related to the proposed project shall be refunded to Developer.

C. The initial contract amount of the Contract Law Firm is \$0 (“the Contract Amount - Legal”). Developer agrees to reimburse the City for all Contract Law Firm costs that the City incurs that are related to the proposed project. In the event City is required to incur fees to a Contract Law Firm in connection with the proposed project, City and Developer will enter into an amendment to this Agreement setting forth the Contract Amount- Legal, and the reimbursement terms for such costs.

4. Automatic Withdrawal of Application. Developer's failure to make the payments required by the provisions of Section 3 of this Agreement shall result in an automatic withdrawal of the application for the proposed project. Notwithstanding such automatic withdrawal, Developer shall remain responsible for all amounts due pursuant to this Agreement and shall submit the same for payment to the City within 30 days of the City's demand for payment. After automatic withdrawal of the application pursuant to this Section, should Developer desire to re-apply for approval of the proposed project, City will require that Developer pay all regular City fees then applicable to initiate processing of a new application. Should Developer fail to make the payments required under this Agreement, or otherwise breach this Agreement, the City will not be obligated to complete any environmental review that has been initiated with respect to the proposed project.
5. Binding Effect of Agreement. This Agreement inures to the benefit of and binds the parties to this Agreement and their respective agents, employees, successors, and assigns.
6. Relationship of Parties.
  - a. Contract Planner, Contract CEQA Consultant, and Contract Law Firm (and their agents and employees) are not employees of the City but instead are independent contractors.
  - b. Contract Planner, Contract CEQA Consultant, and Contract Law Firm shall act solely on behalf of the City and shall not be consultants to, representatives of, or agents of Developer. Developer agrees not to communicate with or contact Contract Planner, Contract CEQA Consultant, or Contract Law Firm (or any of their respective consultants, agents, or employees) without prior written authorization from the City.
  - c. Developer agrees that this Agreement and any document executed in connection herewith shall not cause Developer and the City to become joint venturers or partners.
  - d. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns and does not, nor is it intended to, create any rights in favor of or obligation owing to any third parties.
7. No Entitlements Granted. This Agreement provides no legal or vested right to Developer to secure approval of any development plan, any particular environmental determination under CEQA, or any particular permit or land use entitlement. Accordingly, Developer understands

and agrees that in the performance of their services, including the preparation and review of all necessary environmental documents, Contract Planner and Contract CEQA Consultant will be as accurate and objective as reasonably possible. The City may determine during the course of processing of the proposed project application that final approval will require issuance of other permits in addition to those listed in Recital B of this Agreement, due to changes in the applicable state law, City Municipal Code, changes to the proposed project, or otherwise. Due to the nature of the required environmental and planning review, the City cannot predict with accuracy the total costs that the City will incur and charge to Developer concerning the proposed project. Developer agrees that it has not relied (and will not rely) on any estimates that the City may provide in this regard.

8. Notices. All notices required or provided by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Developer. Notice shall be effective on the date it is delivered in person, or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below:

**Notice to the City:**

Raffi Boloyan, Planning Manager  
City of San Rafael – Community  
Development Department  
PO Box 151560  
San Rafael, CA 94915-1560

**Notice to Developer:**

Dan Oppenheimer  
GVP Development & Portfolio Strategy  
BioMarin Pharmaceutical Inc.  
105 Digital Drive  
Novato, CA 94949

9. Indemnification, Defense and Hold Harmless. With respect to any claim, action, or proceeding arising from this Agreement, Developer agrees to defend and indemnify the City and hold it harmless against all damages, costs and fees that may be incurred by the City.
10. Amendments. No amendment of this Agreement shall be valid or binding unless made in writing, duly authorized, and signed on behalf of both parties.
11. Administrator. The City employee with responsibility for administering this Agreement is Raffi Boloyan, Planning Manager, or other employee as may be designated by the City's Community Development Director.
12. Integration Clause. This Agreement constitutes the full, final, complete and entire agreement between the parties with respect to the subject matter of this Agreement, and there are no other terms, obligations, covenants, representations, statements, or conditions except as set forth in this Agreement. No change or amendment to this Agreement will be effective unless in writing and signed by the parties to this Agreement. Failure to insist upon strict compliance with any term or provision of this Agreement will not be deemed to be a waiver of any rights under a subsequent act or failure to act. This Agreement specifically supersedes all prior agreements between the parties with respect to the subject matter of this Agreement.

13. Severability Clause. Should any portion of this Agreement be declared void or unenforceable, such portion(s) shall be considered independent and severable from the remainder, and the validity of the remainder shall remain unaffected.
14. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
15. Public Record. This Agreement and all non-privileged documents prepared pursuant to this Agreement shall be maintained as public records.
16. Representation of Comprehension. In entering into this Agreement, the parties represent that they have read the Agreement, that they have had the opportunity to review the terms of the Agreement with counsel of their choosing, and that the terms of the Agreement are understood and voluntarily accepted by them. If any dispute or ambiguity should arise in the future over the terms of this agreement, neither party will be deemed the drafter of this document.
17. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any action arising out of or connected with this Agreement shall be instituted and maintained in the Marin County Superior Court.
18. Attorneys' Fees. In any action arising out of this Agreement, the prevailing party shall be entitled to costs (including non-statutory costs) and reasonable attorneys' fees from the non-prevailing party or parties.
19. Counterparts. The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.
20. Authority. The person signing this Agreement for Developer hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Developer.

IN WITNESS WHEREOF this Agreement has been executed by the parties on the day and year first above written,

**CITY OF SAN RAFAEL**

**DEVELOPER**

\_\_\_\_\_  
Jim Schutz, City Manager

By: \_\_\_\_\_  
BioMarin Pharmaceuticals, Inc.

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

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Lindsay Lara, City Clerk

APPROVED AS TO FORM:

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Robert F. Epstein, City Attorney



**SAN RAFAEL**  
THE CITY WITH A MISSION

Agenda Item No: 4.g

Meeting Date: September 17, 2018

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: Bill Guerin,  
Director of Public Works

City Manager Approval:

File No.: 01.25.18

**TOPIC: FRANCISCO BLVD WEST MULTI-USE PATH FUNDING REQUEST**

**SUBJECT: RESOLUTION REQUESTING THE METROPOLITAN TRANSPORTATION COMMISSION FOR THE ALLOCATION OF FISCAL YEAR 2018-19 TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 PEDESTRIAN/BICYCLE PROJECT FUNDING**

**RECOMMENDATION:** Adopt the resolution

**BACKGROUND:** On May 3, 2018 the Transportation Authority of Marin (TAM) issued a call for projects for Transportation Development Act (TDA) Article 3 funding. The City submitted an application requesting \$340,000 for engineering and construction related to the Francisco Blvd West Multi-Use Pathway (MUP). This project includes Phase-1 from Rice Drive to Andersen Drive, and Phase-2 from 2<sup>nd</sup> Street to Rice Drive. Construction for Phase-1 was approved by City Council on [June 4, 2018](#).

On July 26, 2018, the TAM Board of Commissioners approved \$184,043 in TDA funds for the MUP. Funding is pending approval by the Metropolitan Transportation Commission (MTC), which requires City Council to adopt a resolution accepting the funds. Funds would be available to reimburse any cost associated with Phase-1 or Phase-2 incurred after July 1, 2018.

**ANALYSIS:** The TDA funds will allow the City to continue work on phase-2 of the Multi-Use Path so that design work is ready should construction funds become available. Splitting the project into two phases requires additional design and preparation in order to prepare the project for future grant consideration and eventual construction. Funding for this work was not included in the Phase-1 budget. Any balance beyond the design work can be used to support the phase-2 construction work.

TDA funds may also serve an important role in providing matching funding for previous and future grants the City has and continues to apply for. In addition to this funding award, the City is awaiting response on \$1.83 million in funding request from the California Natural Resources Agency Urban Greening Grant and \$3.19 million in funding request from the Active Transportation Program Cycle 4.

**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_



## **SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2**

**FISCAL IMPACT:** The City will have an additional \$184,043 in funds to spend on the MUP. No matching funds are required to receive these funds.

**OPTIONS:** The City Council may choose to:

1. Approve the Resolution as presented, authorizing the request to the Metropolitan Transportation Commission for the allocation of fiscal year 2018-2019 Transportation Development Act Article 3 pedestrian/bicycle project funding.
2. The Council may choose to not authorize the request to the Metropolitan Transportation Commission for the allocation of fiscal year 2018-2019 Transportation Development Act Article 3 pedestrian/bicycle project funding, which would reduce funding for the MUP project.

**RECOMMENDED ACTION:** Approve the Resolution to authorize the request to the Metropolitan Transportation Commission for the allocation of fiscal year 2018-2019 Transportation Development Act Article 3 pedestrian/bicycle project funding.

**ATTACHMENTS:**

1. Resolution
2. Attachment A to Resolution: Findings
3. Attachment B to Resolution: TDA Article 3 Project Application Form

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
REQUESTING THE METROPOLITAN TRANSPORTATION COMMISSION FOR  
THE ALLOCATION OF FISCAL YEAR 2018-19 TRANSPORTATION  
DEVELOPMENT ACT ARTICLE 3 PEDESTRIAN/BICYCLE PROJECT FUNDING**

**WHEREAS**, Article 3 of the Transportation Development Act (TDA), Public Utilities Code (PUC) Section 99200 et seq., authorizes the submission of claims to a regional transportation planning agency for the funding of projects exclusively for the benefit and/or use of pedestrians and bicyclists; and

**WHEREAS**, the Metropolitan Transportation Commission (MTC), as the regional transportation planning agency for the San Francisco Bay region, has adopted MTC Resolution No.4108, entitled “Transportation Development Act, Article 3, Pedestrian and Bicycle Projects,” which delineates procedures and criteria for submission of requests for the allocation of “TDA Article 3” funding; and

**WHEREAS**, MTC Resolution No. 4108 requires that requests for the allocation of TDA Article 3 funding be submitted as part of a single, countywide coordinated claim from each county in the San Francisco Bay region; and

**WHEREAS**, the City of San Rafael desires to submit a request to MTC for the allocation of TDA Article 3 funds to support the projects described in Attachment B to this resolution, which are for the exclusive benefit and/or use of pedestrians and/or bicyclists;

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

1. That the City of San Rafael declares it is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the Public Utilities Code.
2. That there is no pending or threatened litigation that might adversely affect the project or projects described in Attachment B to this resolution, or that might impair the ability of the City of San Rafael to carry out the project.

3. That the project has been reviewed by the City of San Rafael Bicycle Pedestrian Advisory Committee.
4. That the City Council of San Rafael attests to the accuracy of and approves the statements in Attachment A to this resolution.
5. That a certified copy of this resolution and its attachments, and any accompanying supporting materials shall be forwarded to the congestion management agency, countywide transportation planning agency, or county association of governments, as the case may be, of the County of Marin for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

**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 17<sup>th</sup> day of September, 2018 by the following vote, to wit:

**AYES: COUNCILMEMBERS:**

**NOES: COUNCILMEMBERS:**

**ABSENT: COUNCILMEMBERS:**

---

**LINDSAY LARA, City Clerk**

**RESOLUTION NO. \_\_\_\_\_**

**Attachment A**

Re: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
REQUESTING THE METROPOLITAN TRANSPORTATION COMMISSION FOR  
THE ALLOCATION OF FISCAL YEAR 2018-19 TRANSPORTATION  
DEVELOPMENT ACT ARTICLE 3 PEDESTRIAN/BICYCLE PROJECT FUNDING

**Findings**

Page 1 of 1

1. That the City of San Rafael is not legally impeded from submitting a request to the Metropolitan Transportation Commission for the allocation of Transportation Development Act (TDA) Article 3 funds, nor is the City of San Rafael legally impeded from undertaking the project(s) described in “Attachment B” of this resolution.
2. That the City of San Rafael has committed adequate staffing resources to complete the project(s) described in Attachment B.
3. A review of the project(s) described in Attachment B has resulted in the consideration of all pertinent matters, including those related to environmental and right-of-way permits and clearances, attendant to the successful completion of the project(s).
4. Issues attendant to securing environmental and right-of-way permits and clearances for the projects described in Attachment B have been reviewed and will be concluded in a manner and on a schedule that will not jeopardize the deadline for the use of the TDA funds being requested.
5. That the project(s) described in Attachment B comply with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.).
6. That as portrayed in the budgetary description(s) of the project(s) in Attachment B, the sources of funding other than TDA are assured and adequate for completion of the project(s).
7. That the project(s) described in Attachment B are for capital construction and/or design engineering; and/or for the maintenance of a Class I bikeway which is closed to motorized traffic; and/or for the purposes of restriping Class II bicycle lanes; and/or for the development or support of a bicycle safety education program; and/or for the development of a comprehensive bicycle and/or pedestrian facilities plan, and an allocation of TDA Article 3 funding for such a plan has not been received by the City of San Rafael within the prior five fiscal years.
8. That the project(s) described in Attachment B is included in a locally approved bicycle, pedestrian, transit, multimodal, complete streets, or other relevant plan.
9. That any project described in Attachment B that is a bikeway meets the mandatory minimum safety design criteria published in Chapter 1000 of the California Highway Design Manual.
10. That the project(s) described in Attachment B will be completed before the funds expire.
11. That the City of San Rafael agrees to maintain, or provide for the maintenance of, the project(s) and facilities described in Attachment B, for the benefit of and use by the public.

**RESOLUTION NO. \_\_\_\_\_****Attachment B**

Page 1 of 1

**TDA Article 3 Project Application Form**

Fiscal Year of this Claim: 2018-2019

Applicant: City of San Rafael

Contact person: Kevin McGowan

Mailing Address: 111 Morphew St, San Rafael CA 94901

E-Mail Address: kevin.mcgowan@cityofsanrafael.org

Telephone: 415-485-3389

Secondary Contact (in event primary not available) Thomas Wong

E-Mail Address: thomas.wong@cityofsanrafael.org

Telephone: 415-458-5360

**Short Title Description of Project:** Francisco Blvd. West Andersen Dr. to Second St. Multi-Use Pathway

Amount of claim: \$184,043

**Functional Description of Project:**

The City is constructing a Class 1 bicycle and pedestrian multi-use pathway on existing right of way from Andersen Dr to Second St. This pathway will run parallel to the Sonoma Marin Area Rail Transit (SMART) Larkspur Station Extension. The pathway will close the gap between the Cal Park Multi-Use Pathway and the Downtown San Rafael Transit Center.

List the project elements for which TDA funding is being requested (e.g., planning, engineering, construction, contingency). Use the table below to show the project budget for the phase being funded or total project. Include prior and proposed future funding of the project. Planning funds may only be used for comprehensive bicycle and pedestrian plans. Project level planning is not an eligible use of TDA Article 3.

**Project Elements:** TDA funding will be used for engineering and construction.

Funding Source	All Prior FYs	Application FY	Next FY	Following FYs	Totals
TDA Article 3	0	184,043	0	0	184,043
list all other sources:					
1. MTC	2,950,000				2,950,000
2. TAM	2,520,026				2,520,026
3. Local Funds	450,000				450,000
4. BAAQMD	248,400				248,400
<b>Totals</b>	6,168,426	184,043	0	0	6,352,469

Project Eligibility:	YES?/NO?
<b>A.</b> Has the project been approved by the claimant's governing body? (If "NO," provide the approximate date approval is anticipated).	YES
<b>B.</b> Has this project previously received TDA Article 3 funding? If "YES," provide an explanation on a separate page.	NO
<b>C.</b> For "bikeways," does the project meet Caltrans minimum safety design criteria pursuant to Chapter 1000 of the California Highway Design Manual? (Available on the internet via: <a href="http://www.dot.ca.gov">http://www.dot.ca.gov</a> ).	YES
<b>D.</b> Has the project been reviewed by a Bicycle Advisory Committee (BAC)? (If "NO," provide an explanation). Enter date the project was reviewed by the BAC: June 6, 2018	YES
<b>E.</b> Has the public availability of the environmental compliance documentation for the project (pursuant to CEQA) been evidenced by the dated stamping of the document by the county clerk or county recorder? (required only for projects that include construction).	YES
<b>F.</b> Will the project be completed before the allocation expires? Enter the anticipated completion date of project (month and year) 12/2019	YES
<b>G.</b> Have provisions been made by the claimant to maintain the project or facility, or has the claimant arranged for such maintenance by another agency? (If an agency other than the Claimant is to maintain the facility provide its name: _____)	YES



**SAN RAFAEL**  
THE CITY WITH A MISSION

**Agenda Item No.: 4.h**

**Meeting Date: September 17, 2018**

## **SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Public Works**

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

**City Manager Approval:** 

File No.: 01.14.16

**TOPIC: FY 2018-19 FLEET VEHICLE PURCHASES: POLICE AND FIRE DEPARTMENTS**

**SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE FIVE FLEET VEHICLES FOR THE POLICE AND FIRE DEPARTMENTS FOR A NOT TO EXCEED AMOUNT OF \$298,000.**

**RECOMMENDATION:** Adopt the resolution.

**BACKGROUND:** The City of San Rafael's vehicle fleet consists of 185 vehicles. This includes passenger cars and trucks, as well as the City's specialty vehicles supporting the Fire Department, Police Department, Public Works, and others. In addition to the street-legal vehicles maintained in the City fleet, the Public Works Vehicle Maintenance and Replacement Program maintains 66 heavy equipment vehicles, including a backhoe, paint striper, tractors, and street sweepers. The majority of City vehicles are utilized by public safety (Police and Fire), followed by Public Works.

The Department of Public Works annually proposes a list of vehicles that are recommended for replacement during that fiscal year. The annual budget for vehicle replacement is set in the Vehicle Replacement Fund (Fund #600). In FY 2017-18, the following fleet purchases were made:

<b>Council Meeting Date</b>	<b>Vehicles/Equipment Purchased</b>
<b><u>June 5, 2017</u></b>	3 Fire Command Vehicles 3 Public Works Equipment Vehicles (Backhoe, Sweeper, Vacuum Truck) 1 Parking Enforcement vehicle
<b><u>October 2, 2017</u></b>	2 Fire Ambulances
<b><u>December 18, 2017</u></b>	3 Public Works Commercial Work Trucks 1 Public Works Utility Truck 1 Police Department Utility Truck 1 Parking Services Utility Truck 1 Fire Department Ambulance

**FOR CITY CLERK ONLY**

**File No.:**

**Council Meeting:**

**Disposition:**



The City's Fleet Management Policy and Procedures (Attachment 3) outlines the role of the Fleet Manager and various policies around replacement and repairs (including a commitment to purchase "green" (e.g. hybrid or electric vehicles) whenever possible). In addition, the Policy and Procedures document suggests a useable life for fleet vehicles by type. Although the usable life schedule outlined in the Fleet Policy and Procedures serves as a guide for estimating when replacement should occur, vehicles are not necessarily replaced in the number of years dictated by this schedule. Ultimately, the decision to replace a vehicle or other piece of equipment is based on its safety, mechanical condition, repair history and cost, the department's operational needs, and available finances. This results in some vehicle replacements made well after a vehicle's original anticipated replacement date, and at times vehicles may also be recommended for replacement before their scheduled replacement date.

**ANALYSIS:** Due to concurrent strategic initiatives happening around opportunities to further green the City's fleet with the integration of more electric vehicles, at this time, Public Works is recommending going forward with the purchase of the standard FY 2018-19 fleet replacements for the Police Department and Fire Department. All the vehicles recommended for replacement in those departments at this time do not have comparable electric alternatives. Prior to going forward with recommendations for the remainder of non-public safety fleet vehicles for FY 2018-19, Public Works will be finishing an analysis of its fleet and facilities capacity for more electric vehicles. The purchase of the public safety fleet vehicles is also being brought forward at this time since the dealership which provides pricing under the state contract for police patrol units will only be able to hold the supply and pricing for the current units through the end of September 2018. After that date, the model will be changed significantly for the following year, and the pricing will increase as well.

There are five vehicles that Public Works is currently recommending replacing: three standard Police patrol vehicles, one investigation vehicle (Police Department), and one utility truck (Fire Department).

With the exception of the Fire Department utility truck (purchased via competitive bid), all of the vehicles will be purchased utilizing the prices set forth in the State Contract. Negotiated and administered by the State of California General Services Agency, the State Contract is a cooperative purchasing program that local governments (and other government agencies) are able to "piggyback" on with their own purchases. The prices for vehicles and equipment in the statewide contract are awarded to the dealership which bids the lowest price for that make/model. The Municipal code for Procurement allows for the utilization of cooperative purchasing programs:

Municipal Code 2.55.260 - Cooperative purchasing programs.

"Purchases of supplies, material, equipment or services and sales of surplus property made under a cooperative purchasing program, utilizing purchasing agreements maintained by the state, county or other public agencies are exempt from the requirements of this chapter. To the extent possible, cooperative purchases joined will be competitively awarded, and documentation as to the advantage of the cooperative purchase will be retained."

**Summary of Proposed Vehicle/Equipment Purchases**

Dept	Vehicle to be replaced	Last year replaced	Replace with (Make/Model)	Price	Outfitting	Purchase Strategy
Police	Patrol Car (#226)	2013	Ford Explorer Interceptor	\$41,000	\$16,000	State Contract
Police	Patrol Car (#241)	2013	Ford Explorer Interceptor	\$41,000	\$16,000	State Contract
Police	Patrol Car (#229)	2014	Ford Explorer Interceptor	\$41,000	\$16,000	State Contract
Police	Investigation vehicle (#279)	2014	Ford Taurus	\$31,000	\$5,000	State Contract
Fire	Utility Truck (#250)	1999	Dodge Ram 5500 Chassis Cab	\$55,000	\$36,000	Competitive Bid
<b>Total</b>				<b>\$209,000</b>	<b>\$89,000</b>	
				<b>Grand Total</b>	<b>\$298,000</b>	

**Police Department**

*3 Patrol Vehicles (\$57,000 each including outfitting)*

The City's most highly utilized fleet vehicles on a mileage per year basis, police patrol cars are replaced on a 5-year schedule. Due to not only the high mileage police patrol units experience (they are in an almost constant state of use when officers are on shift during 24/7 patrol operations), but also the intensity from accelerated speeds and frequent braking puts considerably more wear and tear on these vehicles than any non-emergency vehicles in the City fleet. Officer safety and ensuring effective response capabilities are of the utmost importance to the Garage and Police Department, and these can be compromised in older units. As stated, police patrol units are on a five-year replacement schedule as a general guideline – though replacement is only recommended after a thorough evaluation of the vehicle by our Garage maintenance staff. The replacement vehicles will be put into service in 2019, therefore two of the patrol cars being replaced will have been in service for six years and one will have been in service for the regularly anticipated five years.

The make/model selected is the Ford Explorer Interceptor, the black and white police SUV's consistent with the department's existing fleet. Outfitting costs (\$16,000 each) include standard code 3 lights and siren capabilities, light bars, and ballistic door panels.

*1 Investigation Vehicle (\$36,000 including outfitting)*

The Department is also recommending replacement of one of its 2014 unmarked, investigation vehicles. This vehicle is not only a high mileage vehicle (avg. 20,000 miles/year) but has experienced a host of mechanical electrical issues, including water breach and damage in the dashboard and corrosion of electrical components of the vehicle. While numerous repairs have been performed by Garage staff, the vehicle continues to frequently experience mechanical and electrical issues. After evaluation of the current mechanical state, continuing costly repairs to this vehicle are not cost effective nor recommended by Garage staff at this time since the vehicle is close to its scheduled replacement. This vehicle was put into service in 2013, and while typically unmarked vehicles are on an 8-year replacement schedule, for reasons stated above staff is recommending replacement after six years for this vehicle (the new vehicle will be put into service in 2019).

**Fire Department**

***1 Large Utility Truck – 1 Ton (\$91,000 including outfitting)***

The current 1999 Dodge Ram service truck is utilized by the Fire Department Mechanic to transport tools, parts and equipment for repair and maintenance of fire department apparatus and equipment. Currently, the mechanic oversees repair and maintenance of the 41-vehicle Fire fleet, which includes 8 ambulances and 14 firefighting apparatuses. The 1-ton service truck not only provides repair on location at the City's seven fire stations, but also reports on-scene in the event of an emergency, providing technical mechanic support and repair to emergency vehicles and personnel on the front lines of a fire. A pre-millennium vehicle, the existing truck is currently well-past its life expectancy. This vehicle will also no longer pass smog inspections without further retrofits.

The outfitting costs for this vehicle (\$36,000) are considerably higher than for typical since the truck will be serving as a full service mobile repair shop. Outfitting includes not only standard emergency lights and sirens for an emergency vehicle, but also a full build out of the chassis for storage for a full-set of shop tools and parts, a lift-gate, trailer capabilities, and fuel dispensing.

The make/model was selected (Dodge) because of the departments past experience, its known reliability and an effort to maintain consistency within the fleet. It is also important to note that due to the size and utility of the vehicle, the new truck will be on a 15-year replacement schedule going forward. This current 1999 vehicle (a ½ ton utility truck) has served well beyond its expected useful life of 10 years.

**FISCAL IMPACT:** There are sufficient funds available in the Vehicle Replacement Fund (#600) for the purchases totaling \$298,000.

All City departments pay into the Vehicle Replacement Fund each year as an internal service charge. The amount they pay is based on the number and dollar value of vehicles/equipment the Department utilizes and is amortized over the anticipated useful life.

Per the City's purchasing policy, all retired City vehicles will be competitively bid and sold at auction or to other agencies. Any income received from the sale of the vehicles will be deposited back into the Vehicle Replacement Fund towards for future vehicle purchases.

**OPTIONS:**

1. Approve the resolution authorizing the City Manager to purchase the proposed list of five vehicles for the Police Department and Fire Department for a not to exceed amount of \$298,000.
2. Direct the Department of Public Works to modify the proposed purchases.
3. Direct the Department of Public Works to withhold the proposed purchases. This option may have additional costs associated with vehicle/equipment rentals in the event that the current vehicles or equipment experience mechanical failure.

**RECOMMENDED ACTION:** Adopt the resolution.

**ATTACHMENTS:**

1. Resolution
2. Police Department - 3 Patrol Vehicles Quote (Downtown Ford Sales)
3. Police Department - 1 Investigation Vehicle (Wondries Fleet Group)

**SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 5**

4. Fire Department – 1 Large Utility Truck (McPeek's Chrysler Dodge)
5. Fire Department – Contracted Outfitting for Utility Truck (Highway Products)
6. City of San Rafael Fleet Management Policy and Procedures

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY  
MANAGER TO PURCHASE FIVE FLEET VEHICLES FOR THE POLICE AND FIRE  
DEPARTMENTS FOR A NOT-TO-EXCEED AMOUNT OF \$298,000.**

**WHEREAS**, San Rafael's various departments operate a fleet of 185 vehicles; and

**WHEREAS**, the management and replacement of the City's fleet of vehicles and equipment is governed by the guidelines set forth in San Rafael's Fleet Management Policies and Procedures document issued September 6, 2012; and

**WHEREAS**, the Department of Public Works is recommending the replacement of five vehicles: three Police patrol cars, one investigation vehicle (Police), and one utility truck (Fire Department); and

**WHEREAS**, all of the said vehicles to be replaced have reached the end of their useful life and their term set forth on the replacement schedule in the City's Fleet Management Policies and Procedures, and several are notably costing the City more to repair and maintain than to replace; and

**WHEREAS**, all of the said vehicles serve vital functions to City services; from Police Patrol operations to providing mobile mechanical support to the City's 14 firefighting apparatuses; and

**WHEREAS**, the City Vehicle Maintenance program also purchases, installs, and maintains equipment on City fleet vehicles; and

**WHEREAS**, there are sufficient funds in the City's Vehicle Replacement Fund (#600); and funds shall be appropriated in each budget accordingly in order to support these purchases totaling \$298,000;

**NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of San Rafael authorizes the City Manager to execute the purchase of five vehicles for Police and Fire Departments, as described in the Staff Report submitted to the City Council and incorporated herein, in accordance with the guidelines set forth in San Rafael's Fleet Management Policies and Procedures, issued on September 6, 2012.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 17<sup>th</sup> day of September, 2018 by the following vote, to wit:

AYES:           COUNCILMEMBERS:  
NOES:           COUNCILMEMBERS:  
ABSENT:        COUNCILMEMBERS:

---

LINDSAY LARA, City Clerk

# THIS IS YOUR QUOTE

DOWNTOWN FORD SALES  
525 N16th Street, Sacramento, CA. 95811  
916-442-6931 fax 916-491-3138

RJM083020181655

## QUOTATION

### Customer

Address CITY OF SAN RAFAEL  
City 3 X POLICE UTILITY INTERCEPTORS  
Phone BLACK/PAINT ROOF & FRONT DOORS WHITE  
ATTN: SCOTT EBERLE

Date 8/30/2018  
REP BOB MILLOY  
Phone  
FOB

Qty	Description	Unit Price	TOTAL
3	City of Sacramento Contract C2016-0531 NEW FORD POLICE INTERCEPTOR UTILITY AWD AWD, 3.7L V6 Engine, 6-Speed Auto Trans, 112.6" WB 6,300# GVWR, 19 Gal. Fuel Tank, Cloth Front Seat, Vinyl Rear, Power Driver Seat, 2-Way Manual Pass Seat, Vinyl Flooring Surfaces, 18" Steel Wheels, Power Adjust Pedals Full Size Spare, A/C, Power Adjust Mirrors, Power Window Solid Color (Select Base Color Below), Incl 5 yr/100,000 Mi Powertrain Warranty w/ \$0.00 Deductible	\$25,126.00	\$75,378.00
3	Auto Headlamps	\$122.00	\$366.00
3	Auxiliary Air Conditioning	\$637.00	\$1,911.00
3	Badge Delete	\$0.00	\$0.00
3	Ballistic Door Panels (Level IV)	\$5,138.00	\$15,414.00
3	Cargo Storage Vault	\$260.00	\$780.00
3	Dome Lamp Red/White in Cargo Area	\$54.00	\$162.00
3	Front Headlamp Lighting Solution	\$1,000.00	\$3,000.00
3	Front Warning Auxiliary Lights	\$586.00	\$1,758.00
3	Hidden Door-Lock Plunger with Rear Door Handles InOP	\$168.00	\$504.00
3	Keyed Alike (YOU CHOOSE WHICH CODE)	\$54.00	\$162.00
3	Noise Supression Bonds	\$105.00	\$315.00
3	Wheel Covers	\$61.00	\$183.00
3	Police Wire Harness Connector Kit - Front	\$97.00	\$291.00
3	Police Wire Harness Connector Kit - Rear	\$121.00	\$363.00
3	Rear View Camera Display in Rear View Mirror	\$0.00	\$0.00
3	Rear Quarter Side Marker Lights	\$612.00	\$1,836.00
3	Rear Window Power Delete	\$26.00	\$78.00
3	Reverse Sensing System	\$285.00	\$855.00
3	Scuff Guards	\$96.00	\$288.00
3	Spot Lamps (LED)	\$708.00	\$2,124.00
3	SYNC - Factory Blue Tooth	\$421.00	\$1,263.00
3	Paint Roof and Two Front Doors	\$1,275.00	\$3,825.00
3	Document Fee	\$80.00	\$240.00

QUOTE GOOD UNTIL 9-18-2018 -MUST HAVE PO BY THEN

Terms 2% for payment in 20 days

Subtotal	\$111,096.00
Delivery	\$750.00
Sales Tax	\$9,998.64
Tire Tax	\$26.25
<b>TOTAL</b>	<b>\$121,870.89</b>



20+2

# NEW FORD POLICE INTERCEPTOR UTILITY AWD

CITY OF SACRAMENTO CONTRACT C2016-0531

TERMS: 2% DISCOUNT WITH PAYMENT IN 20 DAYS

## MAJOR STANDARD EQUIPMENT:

AWD, 3.7L V6 ENGINE, 6-SPEED AUTOMATIC TRANSMISSION, 112.6" WB, 8,300# GVWR, 19 GALLON FUEL TANK, CLOTH FRONT SEAT, K&A VINYL REAR, POWER DRIVER SEAT, 2-WAY MANUAL PASS SEAT, VINYL FLOORING SURFACES, 18" STEEL WHEELS, POWER ADJUSTABLE PEDALS, REAR VIEW CAMERA DISPLAYED IN REAR VIEW MIRROR, FULL-SIZE SPARE, A/C, POWER ADJUSTABLE MIRRORS, POWER WINDOWS, SOLID COLOR (SELECT "BASE COLOR" BELOW), INCLUDES 5YR / 100,000 MILE POWERTRAIN WARRANTY WITH \$0.00 DEDUCTABLE

25,126.00

ITEM #	PRICE
BASE COLOR	
OXFORD WHITE	0.00
SHADOW BLACK	0.00
INGOT SILVER METALLIC	0.00
STERLING GREY METALLIC	0.00
POWERTRAIN OPTIONS	
CHANGE TO 3.5L ECOBOOST ENGINE AWD	3,900.00
FACTORY-INSTALLED OPTIONS	
100W SIREN/ SPEAKER - INCLUDES BRACKET & PIGTAIL	313.00
18" PAINTED ALUMINUM WHEELS	505.00
1ST / 2ND ROW CARPET FLOOR COVERING - INCLUDES FRONT / REAR FLOORMATS	133.00
2ND ROW CLOTH SEATS	85.00
AUTO HEADLAMPS	122.00
AUXILIARY AIR CONDITIONING	637.00
BADGE DELETE (DELETES POLICE INTERCEPTOR BADGING)	0.00
BALLASTIC DOOR PANELS - DRIVER & PASSENGER (LVL 4)	5,138.00
BALLASTIC DOOR PANELS - DRIVER & PASSENGER (LVL 3)	3,313.00
BLIND SPOT INFORMATION SYSTEM - BLIS WITH CROSS TRAFFIC ALERT	579.00
CARGO STORAGE VAULT	280.00
DARK CAR / SILENT MODE	21.00
DAYTIME RUNNING LIGHTS	45.00
DEFLECTOR PLATE	356.00
DOME LAMP RED / WHITE IN CARGO AREA	54.00
FORWARD INDICATOR POCKET WARNING LIGHT - WARN, PARK, TURN WITH DRIVER SIDE RED/ PASSENGER SIDE BLUE (REQUIRED PRE-WIRE)	679.00
FRONT HEADLAMP LIGHTING SOLUTION - INCLUDES LED LOW BEAM / HALOGEN HIGH BEAM WIG-WAG FUNCTION AND TWO (2) WHITE RECTANGULAR LED SIDE WARNING LIGHTS, INCLUDED PRE-WIRE FOR GRILLE LED LIGHTS, SIREN, SPEAKER, LED LIGHTS INCLUDED (CONTROLLER NOT INCLUDED)	1,000.00
FRONT INTERIOR WINDSHIELD WARNING LIGHTS	1,186.00
FRONT WARNING AUX. LIGHTS - DRIVER SIDE RED / PASSAGER SIDE BLUE ( REQUIRED PRE-WIRE)	586.00
HEATED SIDEVIEW MIRRORS	64.00
HIDDEN DOOR-LOCK PLUNGER WITH REAR-DOOR HANDLES INOPERABLE	166.00
INTERIOR UPGRADE PACKAGE	415.00
KEYED ALIKE	54.00
LOCKABLE GAS CAP	21.00
NOISE SUPPRESSION BONDS (GROUND STRAPS)	105.00
PERIMETER ANTI-THEFT ALARM (REQUIRED FOR REMOTE KEYLESS ENTRY KEY FOB)	128.00
POLICE ENGINE IDLE FEATURE	277.00
POLICE WIRE CONNECTOR KIT - FRONT	97.00
POLICE WIRE CONNECTOR KIT - REAR	121.00
POWER PASSENGER SEAT	346.00
PRE-WIRE FOR GRILLE LED LIGHTS, SIREN & SPEAKER	54.00
READY FOR THE ROAD PACKAGE	3,632.00
REAR CONSOLE PLATE	37.00
REAR VIEW CAMERA, MIRROR DISPLAY, NO CHARGE	0.00
REAR QUARTER SIDE MARKER LIGHTS	612.00
REAR WINDOW POWER DELETE, OPERABLE FROM FRONT DRIVE SIDE SWITCHES	26.00
REMOTE KEYLESS ENTRY	277.00
REVERSE SENSING SYSTEM	285.00
ROOF RACK SIDE RAILS	166.00
SCUFF GUARDS	96.00
SPOT LAMPS - INCANDESCENT	374.00
SPOT LAMPS - LED	708.00
SYNC, FACTORY BLUETOOTH	421.00
TUTONE WRAP ALL DOORS/ROOF, FACTORY	892.00
ULTIMATE WIRING OPACKAGE	577.00
WHEEL COVERS	61.00
DEALER UPGIT	
UNDERSEAL CHASSIS	395.00
PRIVACY GLASS	375.00
TUTONE PAINT - ALL DOORS / ROOF WHITE	1,795.00

PRICING GOOD THRU MAY 2019

MAKE SURE TO STATE, 2 FRONT DOORS AND ROOF WHITE



## Fleet Group

Quote Date: 6/27/18

Agency: Talia Smith

Contact: City of San Rafael

Address: 111 Morphew Street

Address: San Rafael, CA 94901

Phone: 415-485-3354

Email: [talia.smith@cityofsanrafael.org](mailto:talia.smith@cityofsanrafael.org)

Wondries Fleet Group is pleased to submit the following quotation for your consideration:

Qty	Line Item	Option #	Description	Unit Price	Extended
1	23		2018 Ford Taurus	\$ 21,511.00	\$ 21,511.00
		97C	Cargo Organizer	\$ 200.00	\$ 200.00
		97M	All-Weather Floor Mats	\$ 90.00	\$ 90.00
		942	Daytime Running Lights	\$ 50.00	\$ 50.00
		62S	SiriusXM Radio	\$ 190.00	\$ 190.00
		P2E	Upgrade to SEL Model	\$ 2,430.00	\$ 2,430.00
		20N	Navigation	\$ 795.00	\$ 795.00
			Sub Total	\$ 25,266.00	\$ 25,266.00
			Sales Tax 9.00%	\$ 2,273.94	\$ 2,273.94
			Delivery Fee	\$ 220.00	\$ 220.00
			Tire Tax	\$ 8.75	\$ 8.75
			<b>TOTAL PURCHASE ORDER AMOUNT</b>	<b>\$ 27,768.69</b>	<b>\$ 27,768.69</b>

### Notes:

Please refer to attached specifications.

This price is available under the State of California Contract Number 1-18-23-10

Terms: Net 30

Quoted by:

Clarke Cooper, Fleet Manager (626) 457-5590  
1247 W. Main St., Alhambra, CA. 91801



MCPEEK'S CHRYSLER DODGE JEEP RAM OF  
1221 S AUTO CENTER DR  
ANAHEIM, CA 928065634

Priced Order Confirmation (POC)

Date Printed: 2018-07-26 1:23 PM VIN: 3C7WRMBL8JG128856 Quantity: 01  
Estimated Ship Date: 2017-10-31 12:58 AM VON: 39572036 Status: KZ - Released by plant and invoiced  
Date Ordered: 2017-07-12 9:37 PM Ordered By: S58945L

Sold to:

MCPEEK'S CHRYSLER DODGE JEEP RAM OF  
ANAHEIM (61595)  
1221 S AUTO CENTER DR  
ANAHEIM, CA 928065634

Ship to:

MCPEEK'S CHRYSLER DODGE JEEP RAM OF ANAHEIM (61595)  
1221 S AUTO CENTER DR  
ANAHEIM, CA 928065634

Vehicle:

2018 5500 REG CAB CHASSIS 4X2 (168.5 in WB - CA of 84 in) (DP5L64)

	Sales Code	Description	MSRP(USD)	FWP(USD)
Model:	DP5L64	5500 REG CAB CHASSIS 4X2 (168.5 in WB - CA of 84 in)	38,495	35,563
Package:	29G	Customer Preferred Package 29G	3,350	2,965
	ETK	6.7L I6 Cummins Turbo Diesel Engine	7,345	6,684
	DF2	6-Spd Auto Aisin AS69RC HD Trans	1,600	1,456
Paint/Seat/Trim:	PW7	Bright White Clear Coat	0	0
	APA	Monotone Paint	0	0
	*V9	Cloth 40/20/40 Bench Seat	0	0
	-X8	Black/Diesel Gray	0	0
Options:	NLL	52 & 22 Gallon Dual Fuel Tanks	695	632
	NAS	50 State Emissions	0	0
	MRT	Chrome Tubular Side Steps	495	450
	LSA	Security Alarm	165	150
	LNJ	Front Fog Lamps	145	132
	YEP	Manuf Statement of Origin	0	0
	CLY	Front Rubber Floor Mats	95	86
	XHC	Trailer Brake Control	295	268
	AZB	Heavy Duty Front Suspension Group	125	114
	WP4	19.5X6.0 Forged Alum Polished Wheels	1,095	996
	AHQ	Max Tow Package	395	359
	UAQ	Uconnect 4C NAV with 8.4" Display	1,570	1,429
	ADA	Luxury Group	570	519
	RCK	Premium I Speakers	295	268
	5N6	Easy Order	0	0
	4EX	Sales Tracking	0	0
Destination Fees:			1,395	1,395

HB: 1,702 Total Price: **58,125** **53,466**  
FFP: 53,006  
EP: 50,993

Order Type: Retail PSP Month/Week:  
Scheduling Priority: 4-Dealer Order Build Priority: 99  
Customer Name:  
Customer Address:

Instructions:

Note: This is not an invoice. The prices and equipment shown on this priced order confirmation are tentative and subject to change or correction without prior notice. No claims against the content listed or prices quoted will be accepted. Refer to the vehicle invoice for final vehicle content and pricing. Orders are accepted only when the vehicle is shipped by the factory.



2018 MODEL YEAR

## RAM 5500 CHASSIS SLT REG CAB 84"C/A 4X2

THIS VEHICLE IS MANUFACTURED TO MEET SPECIFIC UNITED STATES REQUIREMENTS. THIS VEHICLE IS NOT MANUFACTURED FOR SALE OR REGISTRATION OUTSIDE OF THE UNITED STATES.

MANUFACTURER'S SUGGESTED RETAIL PRICE OF THIS MODEL INCLUDING DEALER PREPARATION

Base Price: **\$38,495**

**RAM 5500 REG CAB CHASSIS**  
Exterior Color: Bright White Clear Coat Exterior Paint  
Interior Color: Black / Diesel Gray Interior Colors  
Interior: Cloth 40 / 20 / 40 Bench Seat  
Engine: 6.7-Liter 16 Cummins® Turbo Diesel Engine  
Transmission: AISIN Heavy Duty 6-Speed Automatic Transmission  
**STANDARD EQUIPMENT** (UNLESS REPLACED BY OPTIONAL EQUIPMENT)

**FUNCTIONAL SAFETY FEATURES**  
Advanced Multistage Front Airbags  
Ram Chassis Cabs are Job-Rated®  
Anti-Spin Differential Rear Axle  
Rear Heavy Duty Stabilizer Bar  
Electronic Stability Control  
Anti-Lock 4-Wheel Disc Brakes  
730-Amp Maintenance Free Battery  
Sentry Key® Theft Deterrent System  
Speed Control  
Power Accessory Delay  
Automatic Headlamps  
Tip Start  
Delete Spare Tire  
Delete Pickup Box  
52-Gallon Rear Fuel Tank

**INTERIOR FEATURES**  
Radio 3.0  
Media Hub (USB, Aux)  
Remote USB Port - Charge-Only  
2 Speakers

### OPTIONAL EQUIPMENT (May Replace Standard Equipment)

Customer Preferred Package 29G **\$3,350**  
SiriusXM® Sat Radio w/ 1-Yr Radio Subscription  
6 Speakers  
Bright Front Bumper  
Bright Grille  
Cloth 40 / 20 / 40 Bench Seat  
Exterior Mirrors with Turn Signals  
Exterior Mirrors with Courtesy Lamps  
Exterior Mirrors with Heating Element  
Carpet Floor Covering  
For More Info, Call 800-643-2112  
Front Armrest with Cup Holders  
Front Floor Mats  
Instrument Panel Color Keyed Bezel  
Power Black Trailer Tow Mirrors w/Manual Fold Away  
Power Door Locks  
Premium Door Trim with Map Pocket  
Power Windows with Front One-Touch-Down Feature  
Remote Keyless Entry  
SiriusXM® Sat Radio w/ 1-Yr Radio Subscription  
Traveler / Mini Trip Computer  
Luxury Group **\$570**  
7-Inch Multi-View Cluster  
Leather-Wrapped Steering Wheel  
Overhead Console with Garage Door Opener  
Steering Wheel Mounted Audio Controls  
Max Tow Package (Increases Axle Ratio) **\$395**

4.88 Axle Ratio  
Underbody Thermal Protection  
Heavy Duty Front Suspension Group **\$125**  
Front Rubber Floor Mats **\$95**  
AISIN Heavy Duty 6-Speed Automatic Transmission **\$1,600**  
GVW Rating - 19,500 Pounds  
6.7-Liter 16 Cummins® Turbo Diesel Engine **\$7,345**  
Ram Active Air™  
Smart Diesel Exhaust Brake  
Fog Lamps **\$145**  
Security Alarm **\$165**  
Chrome Tubular Side Steps **\$495**  
52 and 22-Gallon Dual Fuel Tanks **\$695**  
Premium 1 Speakers **\$295**  
Uconnect® 4C NAV with 8.4-Inch Display **\$1,570**  
Apple CarPlay® Capable  
For Details, Visit [www.DriveUconnect.com](http://www.DriveUconnect.com)  
Google Android Auto™ Capable  
Integrated Voice Command with Bluetooth®  
Media Hub (2 USB, Aux)  
1-Year SiriusXM® Guardian Service  
SiriusXM® Traffic Plus  
SiriusXM® Travel Link 5-Year Travel Link Sub  
19.5-Inch x 8-Inch Forged Aluminum Polished Wheels **\$1,095**  
Trailer Brake Control **\$295**  
Destination Charge **\$1,395**

**TOTAL PRICE: \* \$58,125**

### WARRANTY COVERAGE

5-year or 100,000-mile Powertrain Limited Warranty  
3-year or 36,000-mile Basic Limited Warranty.  
Ask Dealer for a copy of the limited warranties or see your owner's manual for details.

**5 YEAR / 100,000 MILE**  
**POWERTRAIN WARRANTY**

Assembly Point/Port of Entry: SALTILLO, MEXICO

vin: 3C7-WRMBL6JG-128856

LA-VON 2036

1032

S.L. SHIP TO:

SOLOTO:



THIS LABEL IS ADDED TO THIS VEHICLE TO COMPLY WITH FEDERAL LAW. THE LABEL CANNOT BE REMOVED OR ALTERED PRIOR TO DELIVERY TO THE ULTIMATE PURCHASER.

\* STATE AND/OR LOCAL TAXES IF ANY, LICENSE AND TITLE FEES AND DEALER SUPPLIED AND INSTALLED OPTIONS AND ACCESSORIES ARE NOT INCLUDED IN THIS PRICE. DISCOUNT, IF ANY, IS BASED ON PRICE OF OPTIONS IF PURCHASED SEPARATELY.

For more information visit: [www.ramtrucks.com](http://www.ramtrucks.com)  
or call 1-866-RAMINFO

FCA US LLC

EPA  
DOT

## Fuel Economy and Environment



### Fuel Economy

**N/A**  
combined city/hwy city highway  
N/A gallons per 100 miles

Heavy duty vehicle,  
no label required.

You spend  
**N/A**  
in fuel costs  
over 5 years  
compared to the  
average new vehicle.

Annual fuel cost  
**N/A**

Fuel Economy & Greenhouse Gas Rating (tailpipe only)



Smog Rating (tailpipe only)



**fuelconomy.gov**

Calculate personalized estimates and compare vehicles



## GOVERNMENT 5-STAR SAFETY RATINGS

### Overall Vehicle Score

Not Rated

Based on the combined ratings of frontal, side, and rollover.  
Should ONLY be compared to other vehicles of similar size and weight.

Frontal  
Crash

Driver  
Passenger

Not Rated  
Not Rated

Based on the risk of injury in a frontal impact.  
Should ONLY be compared to other vehicles of similar size and weight.

Side  
Crash

Front seat  
Rear seat

Not Rated

Based on the risk of injury in a side impact.

Rollover

Not Rated

Based on the risk of rollover in a single-vehicle crash.

Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.  
Source: National Highway Traffic Safety Administration (NHTSA)  
[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4236

The safety ratings above are based on Federal Government tests of particular vehicles equipped with certain features and options. The performance of this vehicle may differ.

# Sales Quote 31133



Date: 7/9/2018

Description: Salesman JD Martin ext. 123

Quote Date: 7/6/2018

Expires On: 8/5/2018

Sales Person: JD Martin

**Highway Products, Inc**

7905 Agate Rd

White City OR 97503

541-826-3551 Fax: 541-826-3607

**PLEASE REVIEW INFORMATION FOR ACCURACY****BILL TO:**

San Rafael Fire Department

Steve Ferrario

111 Morphew St

San Rafael, CA 94901

415-720-8964

**CUSTOMER PO:****SHIP TO:**

San Rafael Fire Department

Steve Ferrario

111 Morphew St

San Rafael, CA 94901

415-720-8964

**SHIP VIA:** WILL CALL- HPI - CUSTOMER PICKUP**FOB:** WILL CALL**CONTACT:** Steve Ferrario**EMAIL:** steve.ferrario@cityofsanrafael.org**PHONE:** 415-720-8964

LINE #	QTY	Description	Unit Price	Total
1	1	<b>SB03 Dually Chassis Cab (84" Cab to Axle Length)</b> Price Includes:  -1/8" Military Grade 5052 Aluminum Compartments -1/8" Military Grade 6061 Aluminum Diamond Plate Deck -3/16" Military Grade 6061 Aluminum Channel Long Sills -3/16" Military Grade 6061 Aluminum Cross Members on 12" Centers -6 Compartment Doors with Welded Hat Stiffeners -Adjustable Aluminum Shelves in Compartments -Diesel Fill in Lockable Driver Side Middle Compartment -Heavy Duty Locking Tailgate with Slam Latches -Custom Mudflaps -Flexible Rubber Tubing to Relocate Fuel Fill -Truck Specific Mounting Kit -Modular Design -Lifetime Transferable Warranty on all Components	21,500.00	21500.00
2	1	<b>G2-54-1642 EA 48 Lift Gate (1,600lb Capacity)</b>	3,500.00	3500.00
3	1	<b>SBO6 4" Channel Cab Guard</b>	849.00	849.00
4	1	<b>SBO11 E-Track Tie Down Rails (Inside Bed)</b>	250.00	250.00
5	1	<b>SBO16 Class IV Receiver Hitch</b>	399.00	399.00
6	1	<b>SBO17 Inside Compartment Lighting (LED Lights)</b>	1,000.00	1000.00
7	1	<b>SBO21 Custom Diesel Transfer Tank (GPI 15GPM \$500 additional)</b>	1,649.00	1649.00
8	1	<b>SBO23 Powder Coat Interior, Exterior of Compartment Doors and Rear Overlays</b>	925.00	925.00
9	1	<b>SBO28 Mounting Kit for Backup Camera and Sensors</b>	100.00	100.00
10	1	<b>SBO29 Installation of Service Body</b>	1,400.00	1400.00
11	6	<b>SBO30 Compartment Drawers</b>	250.00	1500.00
12	1	<b>SBO31 Installation of Customer Provided Power Inverter, Air Compressor &amp; Associate Jump Start</b>	1,000.00	1000.00
13	1	<b>SBO32 Installation of Lift Gate</b>	880.00	880.00
14	1	<b>SBO33 Lift Gate Freight</b>	375.00	375.00

# Sales Quote 31133



Date: 7/9/2018

Description: Salesman JD Martin ext. 123

Quote Date: 7/6/2018

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Sales Person: JD Martin

**Highway Products, Inc**

7905 Agate Rd

White City OR 97503

541-826-3551 Fax: 541-826-3607

LINE #	QTY	Description	Unit Price	Total
15	1	SBO34 3-Light Kit For Lift Gate (T-57L) (Two Red, One White Each Side)	396.00	396.00
16	1	SBO35 Installation of 3-Light Kit (T-57L) (Two Red, One White each Side)	120.00	120.00

\*All Prices Shown in US Dollar

Quotes are valid for 30 days, unless otherwise noted. Please sign and return to sales representative.  
Customer becomes responsible for full retail value, and payment, of any project 7 days prior to project start date.  
Custom Projects - in the event of cancellation, customer is liable for engineering and setup costs.

**Sub Total:** 35,843.00

**Freight:** \$0.00

**Grand Total:** **\$35,843.00**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Customer Truck Information:

MODEL YEAR	2018
VEHICLE MAKE	DODGE / RAM
VEHICLE MODEL	5500
CAB STYLE	EXTENDED CAB / DOUBLE CAB
BED LENGTH	CAB AND CHASSIS
CAB TO AXLE	84





## CITY OF SAN RAFAEL POLICIES AND PROCEDURES

Policy No.	
Subject:	Fleet Management Policy
Resolution No.	
Issue Date:	September 6, 2012
Revision Date:	
Prepared By	Richard Landis
Approved By:	<i>Nancy Markle</i>

### FLEET MANAGEMENT POLICY AND PROCEDURES

**PURPOSE:** The City of San Rafael establishes this policy to govern the management of the City's vehicle fleet.

**SCOPE:** The acquisition, outfitting and replacement of all City vehicles.

**DEFINITIONS:** "City vehicle" shall include all automobiles, trucks, motorcycles, or any other equipment registered with the Department of Motor Vehicles and owned, leased, or rented by the City. "Fleet Manager" shall be the Director of Public Works or his/her designee.

#### POLICY:

##### General Provisions

##### Fleet Manager

The role of the Fleet Manager is to advise the City Manager and City Council on matters relating to the City's vehicle fleet. The Fleet Manager shall communicate with all department directors regarding vehicle needs and submit timely reports to the City Manager. The Fleet Manager is committed to the following principles:

1. The size and nature of the City's fleet is governed primarily by need and function, i.e., the number of vehicles should be no greater than what is necessary to provide public services in an efficient manner. Each vehicle within the fleet should be minimally specified to fulfill its intended function, providing operators with a comfortable and modestly-appointed vehicle with which to deliver services in a cost-effective manner.
2. Vehicles should be selected with a strong preference for fuel efficiency and hybrid and alternative fuel technology. The City will strive to reduce the negative impact of its fleet upon the environment by reducing greenhouse gas emissions.
3. Vehicles with the lowest long-term maintenance and repair costs and occupant safety are preferable.

##### Department Budgeting for Additional Vehicle Acquisition

Before a department determines the need to add a vehicle to its inventory, it shall first check with the Fleet Manager and the Finance Department to determine whether an existing vehicle is available elsewhere in the fleet that may meet the department's needs. If none is available, the requesting



department shall submit a vehicle addition request to the Fleet Manager with the following information:

- The purpose for which the vehicle is needed
- The type of vehicle requested and the total estimated purchase price
- The estimated total cost of any special auxiliary equipment or equipment packages above what might be considered standard equipment. The cost of adding a new vehicle to the fleet shall be paid by the requesting department. Internal service charges to that department's budget shall be established at the time of vehicle purchase to ensure adequate future funding for the vehicle's eventual replacement.

### **Vehicle Acquisition**

All departments shall submit vehicle purchase requests to the Fleet Manager. The Fleet Manager will consider requests, consult with the Finance Department to ensure that there are sufficient funds for the new vehicle request, and review vehicle specifications for conformance with the provisions and intent of the Fleet Policies and Procedures. All vehicle purchases shall be administered by the Fleet Manager and shall comply with bidding procedures, when applicable, to ensure competitive pricing. Invoices for new vehicle purchases and equipment installation shall be administered by the Fleet Manager with pre-approved departmental account codes established to meet the invoice totals.

### **Vehicle Replacement Funding**

Funding for vehicle acquisition and supplemental equipment shall be established through monthly internal service charges to the department operating the vehicle, over the projected useable life of that vehicle. An annual inflation factor is applied to the department's internal service charge to account for anticipated increases in future vehicle costs.

### **Vehicle Replacement Schedule**

City vehicles are eligible for replacement on the basis of the following established useable life recommendations:

<b>Vehicle Description</b>	<b>Useable Life</b>
Sedans, SUV's, vans, light and medium duty trucks (up to 8,600 gross vehicle weight)	10 years
Heavy duty trucks (over 8,600 gross vehicle weight)	15 years
Police patrol/traffic vehicles	5 years
Police unmarked vehicles	8 years
Police motorcycles	4 years
Parking enforcement buggies	5 years
Fire command vehicles	7 years
Fire pumper engines	15 years
Fire ladder trucks	20 years
Ambulances	5 years

Off-road maintenance and construction equipment shall be replaced when economically or operationally justified. When a vehicle in this group approaches the end of its anticipated life cycle, a cost/benefit analysis shall be performed to justify vehicle replacement.

These useable life standards are for vehicle replacement financial estimating purposes only. When a vehicle reaches the end of its established useable life and the department operating the vehicle requests replacement, each vehicle shall be assessed by the Fleet Manager and Vehicle Maintenance Division to determine if replacement is justified, given general vehicle condition, mileage, maintenance and repair history, safety considerations, etc. Extension of the useable life of any vehicle shall be at the discretion of the Fleet Manager and the requesting department. Likewise, a department may request a vehicle replacement prior to the end of its established useable life. The Fleet Manager shall review all such requests in consultation with the Finance Department and Vehicle Maintenance Division. Requests for early replacement shall be accompanied by a thorough justification, including objective criteria supporting the request. The cost of early replacement, if any, shall be borne by the requesting department.

If a department determines that an assigned vehicle is no longer needed, the vehicle shall be returned to the Vehicle Maintenance Division for re-allocation within the fleet or disposition as surplus.

### **Disposition of Surplus Vehicles**

All vehicles accepted by the Vehicle Maintenance Division for replacement or permanent elimination from the fleet shall be consigned to public auction with the City's designated auction service. Departments shall deliver vehicles being replaced to the Vehicle Maintenance Division prior to accepting the new replacement vehicle.

### **Maintenance and Repair of Vehicles**

#### *Preventive and Routine Maintenance and Repairs*

The Vehicle Maintenance Division shall notify departments of upcoming scheduled maintenance for vehicles operated by that department and will schedule the date and anticipated duration of the scheduled maintenance. If possible, the department operating the vehicle shall deliver it to the Vehicle Maintenance Division. If necessary, Vehicle Maintenance will pick up the vehicle at its customary parking location and return it when scheduled maintenance is complete.

#### *Unscheduled Repairs*

In the event a vehicle requires immediate or unscheduled repair during normal work hours, operators should call the Vehicle Maintenance Division (458-5345), or take the vehicle to the Public Works facility at 111 Morphew Street for assessment. If the vehicle cannot be operated or is unsafe to operate, the driver should call the Vehicle Maintenance Division for road service, towing, or advice. After normal working hours, vehicle operators should call the non-emergency Police Department dispatch number (485-3000) for towing or road assistance. Vehicle operators must notify their supervisors, as well as the Fleet Maintenance Division, in the event of a vehicle failure.

#### *Reimbursement for Personal Expense for City Vehicle Repair*

Certain emergencies may occur during non-working hours that can be easily remedied at a service station (for example, a flat tire or radiator hose). Department Directors whose employees routinely work outside of normal working hours shall develop appropriate policies governing the authority of vehicle operators to affect emergency repairs during non-working hours with the intended goal of delivering uninterrupted public service. These departmental policies shall be forwarded to the Fleet Manager for reference.



**SAN RAFAEL**  
THE CITY WITH A MISSION

**Agenda Item No: 4.i**

**Meeting Date: September 17, 2018**

## **SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Public Works**

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

**City Manager Approval:**

File No.: 22.04.45

**TOPIC: ALBERT PARK PLAY AREA IMPROVEMENTS PROJECT**

**SUBJECT: RESOLUTION OF THE CITY COUNCIL OF SAN RAFAEL AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A \$598,020 CONSTRUCTION CONTRACT TO M3 INTEGRATED SERVICES, INC. AND AUTHORIZING A TOTAL APPROPRIATED AMOUNT OF \$614,300, FOR THE ALBERT PARK PLAY AREA IMPROVEMENTS PROJECT, PROJECT NO. 11299.**

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**RECOMMENDATION:** Adopt the resolution awarding the construction contract for the Albert Park Play Area Improvement Project.

**BACKGROUND:** In 1937, Jacob and Annie Albert conveyed nine acres of property by deed to the City of San Rafael for use as a neighborhood park. Over the years, Albert Park has been improved and added to, including: two ball fields, a stadium, four tennis courts, two playgrounds, a picnic area, the San Rafael Community Center, a formal park entry, the Marin Bocce Complex, Parkside Children's Center, and parking facilities.

In 2015, the San Rafael Park and Recreation Commission held nine months of outreach meetings asking residents to identify their priorities for neighborhood parks. More than 60 suggestions were made for Albert Park, but the highest priority was recognized as the need for the replacement of equipment for the small children's play area.

From December 2016 to March 2017, the City hosted three community meetings and collected feedback through an online and phone-based platform. Meetings were led by local landscape architect, Phil Abey, supported by City staff and members of the B-Team (a group of residents and business owners in the area) and the Gerstle Park Neighborhood Association.

On August 7, 2017 the City Council authorized the City Manager to execute a professional services agreement with Abey Arnold Associates for the design and construction support

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**FOR CITY CLERK ONLY**

**File No.:** \_\_\_\_\_

**Council Meeting:** \_\_\_\_\_

**Disposition:** \_\_\_\_\_

services. Abey Arnold Associates have since developed construction documents for the play area improvements.

In addition to their effort of gathering consensus to influence the design of the play area the B-Team has been instrumental in the public outreach process and has helped raise more than \$40,000 in donations for Albert Park Playground Improvements. This element of community participation, including all those who donated funds, has been extremely important to this project.

**ANALYSIS:** The construction project was advertised in accordance with San Rafael's Municipal Code on July 9, 2018. On August 23, 2018 at 10:00 AM the following bids were received and read aloud:

<b>NAME OF BIDDER</b>	<b>BASE BID AMOUNT</b>
<b>M3 Integrated Services Inc.</b>	\$513,220
<b>CF Contracting Inc.</b>	\$567,940
<b>ERA Construction Inc.</b>	\$571,402
<b>Ghilotti Bros., Inc.</b>	\$594,368
<b>EF Brett</b>	\$637,080
<b>CWS Contracting Inc.</b>	\$692,918

M3 Integrated Services Inc. with a base bid proposal in the amount of \$513,220 is the apparent low bidder. The Department of Public Works reviewed the bid documents and found them to be complete and in compliance with the contract documents.

The final bid includes a new ADA-compliant playground structure to replace the bench seating area adjacent to B Street and the Bocce courts. In addition to the playground structure, the bid includes concrete flatwork, installation of resilient surfacing in the area around the new play area, and new landscaping and perimeter fencing. The base bid for the project also includes a line item for the installation of fibar (engineered wood fiber) surfacing and concrete ramps in the area of the existing play structure.

The City also asked bidders to provide price proposals for two bid alternatives (optional, not included in the base bid) for the project and each alternate has two parts. Bid Alternate #1 includes installation of a prefabricated restroom facility (A) as well as installation of a sanitary and water line to the proposed restroom location (B). Bid Alternate #2 includes installation of resilient surfacing in the area of the existing play structure (A) and replacement of the existing play structure with a new play structure (B). The existing play structure is located to the south of the B Street Community Center.

<b>NAME OF BIDDER</b>	<b>BASE BID AMOUNT</b>	<b>BID ALTERNATE 1</b>		<b>BID ALTERNATE 2</b>	
		<b>A</b>	<b>B</b>	<b>A</b>	<b>B</b>
		Prefabricated restroom	Sanitary and water line only	Resilient surfacing	Play structure
<b>M3 Integrated Services Inc.</b>	\$513,220	\$120,000	\$18,500	\$36,300	\$30,000

Following evaluation of the base bid and Bid Alternates, and feedback and input from community members involved with the effort, staff is recommending that the contract be awarded with the addition of the following bid alternate work:

- Bid Alternate 1B: installation of a sanitary and water line to the proposed restroom location (\$18,500)
- Bid Alternate 2A: installation of resilient surfacing in the area of the existing play structure (\$36,300)
- Bid Alternate 2B: replacement of the existing play structure with a new steel play structure (\$30,000)

Staff does not recommend awarding Bid Alternate 1A, installing a new restroom (\$120,000) at this time due to funding constraints. The proposed award amount is \$598,020 as shown below:

Base Bid	\$513,220
Bid Alternate 1B	+ \$18,500
Bid Alternate 2A	+ \$36,300
Bid Alternate 2B	+ \$30,000
<b>M3 Contract Award Amount</b>	<b>\$598,020</b>

As noted above, the base bid for the project (\$513,220) includes a line item for the installation of fibar surfacing and concrete ramps in the area of the existing play structure. With the addition of Bid Alternate 2A, the cost of that line item in the base bid (priced at \$39,600) will be eliminated as Bid Alternate 2A provides a more cost-effective option for resilient surfacing of the existing play area.

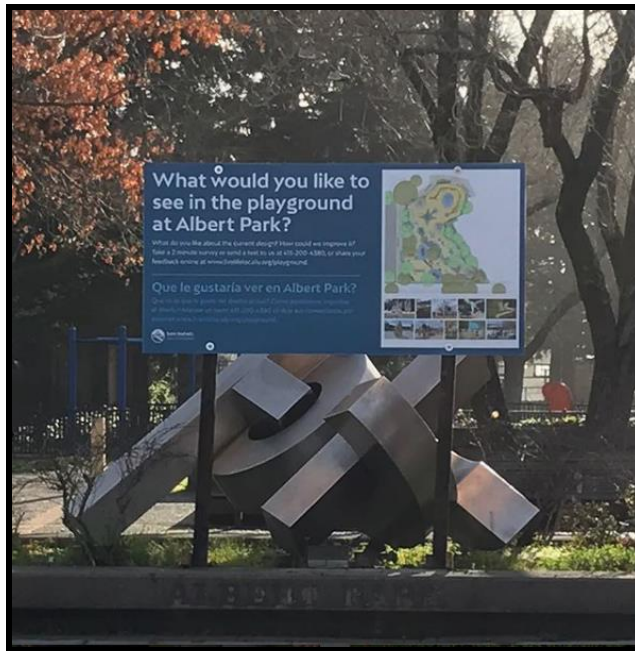
The City's public procurement process requires that the construction contract with M3 Integrated Services, Inc. be awarded for the original base bid amount, plus any bid alternates. Therefore, the project will be awarded with the \$39,600 line item, and that item will be eliminated from the contract following execution of the contract by execution of a deductive change order. The addition of bid alternate work will increase the project cost by \$84,800: Once the base bid item is removed, the total project cost will increase by a net \$45,200 over the original base bid:

Base Bid	\$513,220
Base Bid Deductive Change Order	- \$39,600
Bid Alternate 1B	+ \$18,500
Bid Alternate 2A	+ \$36,300
Bid Alternate 2B	+ \$30,000
<b>Total Construction Cost</b>	<b>\$558,420</b>

A 10% contingency (\$55,880) will be applied to the anticipated construction cost amount of \$558,420, bringing the total construction budget, and appropriation amount to \$614,300.

Staff has determined that this project is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA"), as it falls under the categorical exemption for the restoration or rehabilitation of deteriorated or damaged structures and facilities. ("CEQA", 14 Cal Code Regs §15301(d)).

**PUBLIC OUTREACH:** The project was designed based on feedback collected through multiple community meetings and surveys conducted by the B-Team from 2015 to 2017. In [partnership with the B-Team and the Gerstle Park Neighborhood Association](#), outreach efforts were promoted through social media, the City Manager's newsletter, word-of-mouth, and a large sign placed in the playground area itself.



The City held three community meetings for this project attended by more than 90 residents and business owners. General feedback favored the use of natural materials, clear lines of sight through the playground area for safety considerations, and two points of entry away from the street. In May 2018, the City project team and the B-Team met to finalize the design plan that reflected a realistic balance of priorities identified through community input with budget limitations.

The City also collected feedback via an online platform called Neighborland garnering over 368 participants. Residents were able to visit the project website, call in via phone or text their feedback on the playground design.

**FISCAL IMPACT:** This project is identified in the City's Capital Improvement Program. Parkland Dedication Funds, Measure A – Open Space Funds and donations from the public support the majority of the construction expense. Staff recommends allocating an additional \$64,025 from Fund #603 (Building Fund) to allow the construction to move forward with the recommended bid alternates.

**Construction Summary:**

	Amount
<b>Construction Funding Sources</b>	
Measure A – Open Space	\$204,140
Parkland Dedication	\$306,135
Donations	\$40,000
Additional Allocation from Building Fund*	\$64,025
<b>Total Construction Funding Sources</b>	<b>\$614,300</b>
<b>Construction Expenses</b>	
Construction Cost	\$558,420**
10% Construction Contingency (Rounded)	\$55,880
<b>Total Construction Cost</b>	<b>\$614,300</b>

**Complete Project Summary (Year to Date):**

	Amount	Notes
<b>Total Project Funding Sources</b>		
Measure A – Open Space	\$310,000	\$105,860 used for Design/Planning
Parkland Dedication	\$306,135	
Donations	\$40,000	
Additional Allocation from Building Fund*	\$64,025	
<b>Total Project Funding Sources</b>	<b>\$720,160</b>	
<b>Total Project Expenses</b>		
Design (expended to date)	\$105,860	Abey Arnold Design Contract, BKF Topographic Survey, Public Outreach
Construction Cost	\$558,420**	M3 Integrated Services Inc.
10% Construction Contingency	\$55,880	
<b>Total Project Expenses</b>	<b>\$720,160</b>	

\*An additional \$64,025 will be allocated to this project from the Building Fund (#603) to indemnify the higher than projected construction bid.

\*\*\$558,420 reflects total construction cost after the deductive change order is made to remove a \$39,600 cost from the base bid. As explained in the Analysis section, the actual contract award with M3 Integrated Services, Inc. will be for \$598,020 (\$513,220 base bid + \$84,800 bid alternates selected)

**OPTIONS:**

1. Adopt the resolution awarding the contract to M3 Integrated Services Inc. in the amount of \$598,020 with a contingency in the amount of \$55,880
2. Reject all bids and direct staff to rebid the project;
3. Reject all bids and instruct staff to stop work on this project.

**ACTION REQUIRED:** Staff recommends the City Council adopt the resolution awarding the construction contract and authorizing the City Manager to execute the contract with M3 Integrated Services Inc. for the Albert Park Play Area Improvement Project.

**ATTACHMENTS:**

1. Resolution
2. Exhibit 1 to Resolution: Agreement



**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF SAN RAFAEL AWARDING AND  
AUTHORIZING THE CITY MANAGER TO EXECUTE A \$598,020 CONSTRUCTION  
CONTRACT TO M3 INTEGRATED SERVICES, INC. AND AUTHORIZING A TOTAL  
APPROPRIATED AMOUNT OF \$614,300 FOR THE ALBERT PARK PLAY AREA  
IMPROVEMENTS PROJECT, PROJECT NO. 11299.**

**WHEREAS**, on the 23<sup>rd</sup> day of August, 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:

**“ALBERT PARK PLAY AREA IMPROVEMENTS PROJECT”**

**PROJECT NO. 11299**

in accordance with the plans and specifications therefore on file in the Department of Public Works, 111 Morpew Street, San Rafael; and

**WHEREAS**, six bids were received; and

**WHEREAS**, the base bid of \$513,220 from M3 Integrated Services, Inc., at the unit prices stated in its bid, was and is the lowest responsive bid for said work and the bidder is the lowest responsible bidder; and

**WHEREAS**, the City of San Rafael does not have sufficient funds to fully support bid Alternate #1; and

**WHEREAS**, City staff recommends that utilities necessary to support future construction of a new restroom facility in Albert Park be installed at this time at a cost of \$18,500, per M3 Integrated Services, Inc.’s bid for Bid Alternate #1B; and

**WHEREAS**, City staff recommends that Bid Alternates #2A and 2B be awarded at a cost of \$36,300 and \$30,000, respectively, per M3 Integrated Services, Inc.’s bid for bid Alternate #2; and

**WHEREAS**, upon execution of the contract, staff will immediately pursue a deductive change order with M3 Integrated Services, Inc. to eliminate base bid item 8A thereby reducing the contract value by \$39,600; and

**WHEREAS**, staff recommends that the project budget include a contingency amount of \$55,880; and

**WHEREAS**, the Council finds that this project is for the restoration or rehabilitation of deteriorated or damaged playground structures and facilities and is categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”, 14 Cal Code Regs §15301(d));

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of San Rafael as follows:

1. The plans and specifications for the Albert Park Play Area Improvements Project, City Project No. 11299, on file in Department of Public Works, 111 Morphew Street, San Rafael, are hereby approved; and
2. The contract for the Albert Park Play Area Improvements Project is awarded to M3 Integrated Services, Inc. at the unit prices stated in its base bid, including Bid Alternate Items 1B, 2A, and 2B for a total contract award amount of \$598,020; and
3. The City Manager is authorized to execute a contract with M3 Integrated Services, Inc. for said 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; and
4. Funds for the project totaling \$614,300, which includes the construction award amount and contingency, will be appropriated for City Project No. 11299 from the Parkland Dedication Funds, Measure A – Open Space Funds, and Fund #603 (Building Fund); and
5. The Director of the Department of Public Works is authorized to issue a deductive change order in the amount of \$39,600 prior to issuing a notice to proceed with construction, bringing the total cost of the project to \$614,300.

**I, Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 17th day of September, 2018 by the following vote, to wit:

**AYES: COUNCILMEMBERS:**

**NOES: COUNCILMEMBERS:**

**ABSENT: COUNCILMEMBERS:**

---

**Lindsay Lara, City Clerk**

# City of San Rafael ♦ California

## Form of Agreement for

### Albert Park Play Area Improvements

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the City of San Rafael (hereinafter called City) and M3 Integrated Services Inc. (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: **Albert Park Play Area Improvements, City Project No. 11299**, all in accordance with the requirements and provisions of the "Specifications and Contract Documents for Albert Park Play Area Improvements" dated July 2018, which are hereby made a part of this Agreement. The liability insurance provided to City by Contractor under this contract shall be primary and excess of any other insurance available to the City.

#### 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 **Eighty (80) 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 **\$500** 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; provided that the total compensation under this Contract shall not exceed Five Hundred and Ninety Eight Thousand and Twenty Dollars and 00/100 (\$598,020.00) unless a written amendment is executed by the City and the Contractor.

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1	Mobilization (3% Maximum of Base Bid)	1	LS @	\$12,000.00 =	\$12,000
2	Signs and Traffic Control	1	LS @	\$14,000.00 =	\$14,000
3	Demolition				
	a. AC Paving Removal	700	SF @	\$10.00 =	\$7,000
	b. Clear and Grubb	7,000	SF @	\$2.00 =	\$14,000

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
	c. Tree Removal	4	EA	@ \$1,500.00 =	\$6,000
	d. Remove and Dispose Play Equip.	1	LS	@ \$2,000.00 =	\$2,000
	e. Grading	170	CY	@ \$125.00 =	\$21,250
4	Storm Drainage				
	a. Storm drainage play area pipe	200	LF	@ \$70.00 =	\$14,000
	b. Storm drainage play area drain inlets	10	EA	@ \$1,500.00 =	\$15,000
5	Paving				
	a. Decomposed Granite	255	SF	@ \$22.00 =	\$5,610
	b. Concrete Paths and Walkways	1,440	SF	@ \$22.00 =	\$31,680
	c. Concrete Sidewalk at B Street	360	SF	@ \$25.00 =	\$9,000
6	Planting and Irrigation				
	a. Soil Preparation (horticultural)	2,400	SF	@ \$4.50 =	\$10,800
	b. Irrigation	2,400	SF	@ \$10.00 =	\$24,000
	c. 5 gallon shrubs	23	EA	@ \$400.00 =	\$9,200
	d. 1 gallon shrubs	44	EA	@ \$180.00 =	\$7,920
	e. Bark mulch	31	CY	@ \$200.00 =	\$6,200
7	Site Furnishings				
	a. 4' High Black Vinyl Coated Chainlink Fence	280	LF	@ \$118.00 =	\$33,040
	b. Concrete curb	60	LF	@ \$75.00 =	\$4,500
	c. Concrete mow band at fence	230	LF	@ \$30.00 =	\$6,900
8	Play Equipment and Surfacing (installed)				
	a. Resilient Fibar Surfacing and Concrete Ramps @ existing play area	1,650	SF	@ \$24.00 =	\$39,600
	b. Foreverlawn Safety Surfacing	500	SF	@ \$22.00 =	\$11,000
	c. Class II base under safety surfacing	2,520	SF	@ \$6.50 =	\$16,380
	d. Kompan Wizards Hideaway NRO409	1	LS	@ \$45,000.00 =	\$45,000
	e. Kompan Ship (NRO524-1001)	1	LS	@ \$35,000.00 =	\$35,000
	f. Kompan Playhouse (NRO407-0621)	1	LS	@ \$25,000.00 =	\$25,000
	g. Kompan Bucket Swings (NRO910-1101)	1	LS	@ \$10,000.00 =	\$10,000
	h. Picnic Table with 3 seats	1	EA	@ \$4,700.00 =	\$4,700

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
	i. Resilient Poured in Place Safety Surfacing	2,020	SF	@ \$22.00 =	\$44,440
9	Electrical				
	a. Service and Connection	1	LS	@ \$20,000.00 =	\$20,000
	b. Light Standard	1	EA	@ \$8,000.00 =	\$8,000
B1	Bid Alternate #1				
	b. Restroom Water and Sewer Utilities	1	EA	@ \$18,500.00 =	\$18,500.00
B2	Bid Alternative #2				
	a. Resilient Poured in Place Safety Surfacing @ existing play area	1,650	SF	@ \$22.00 =	\$36,300
	b. Kompan Parcour 004 NRO854	1	LS	@ \$30,000 =	\$30,000
<b>GRAND TOTAL BID</b>					<b>\$598,020.00</b>

#### 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 City 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 City 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 City Engineer so certifies, the City shall, upon certificate of the City 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.

## **VII - Assignment of Warranties; Waiver of Subrogation**

- (a) Contractor hereby assigns to City all warranties, guarantees, or similar benefits such as insurance, provided by or reasonably obtainable from the manufacturers or suppliers of equipment, material or fixtures that Contractor has installed or provided in connection with the work performed under this Agreement.
- (b) Contractor hereby agrees to waive and arrange by contract for its subcontractors to waive any subrogation rights which any insurer of Contractor or its subcontractors might otherwise acquire in connection with the insurer's payment to Contractor or its subcontractors of any insured loss with respect to work performed under this Agreement. Contractor further agrees to obtain and to arrange for its subcontractors to obtain for City's benefit any endorsements from insurers that may be necessary to effect such waiver of subrogation. Specifically, any worker's compensation insurance policies of the Contractor or its subcontractors shall be endorsed with a waiver of subrogation in favor of City for any work performed by Contractor or its subcontractors under this Agreement, and copies of such endorsements shall be provided to City.



**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:**

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*Jim Schutz*  
**City Manager**

**ATTEST:**

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*Lindsay Lara*  
**City Clerk**

**APPROVED AS TO FORM:**

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*Robert F. Epstein*  
**City Attorney**  
File No. 22.04.45

**M3 Integrated Services Inc.**  
**By:**

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Printed Name Officer:  
Title of Corporate Officer:

**and,**

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Printed Name of Officer:  
Title of Corporate Officer:



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Community Development Department

*Paul A. Jensen*

Prepared by: Paul A. Jensen, AICP [SK]  
Community Development Director

City Manager Approval:

*AS*

**TOPIC: 1650 LOS GAMOS ROAD – KAISER-PERMANENTE OFFICE BUILDING**

**SUBJECT: 1650 Los Gamos Drive (Kaiser Permanente Medical Office Building) – Request for:**  
1) Certification of a Final Environmental Impact Report (FEIR) (SCH # 2017062019);  
2) Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program; and 3) Planning Applications including a Planned District (PD) Rezoning, Use Permit, an Environmental, Design Review Permit, and a Sign Program Amendment for the proposed conversion of an existing administrative/general office building to medical office uses and construction of new 433-space, three-level, parking structure on the western parcel and off-site transportation infrastructure improvements.

**RECOMMENDATION:**

It is recommended that the City Council:

1. Open the public hearing and accept public testimony on the Final EIR and the project;
2. Close the public hearing;
3. Review and consider the Final EIR and project applications;
4. Take the following actions in order:
  - a) Adopt resolution certifying the Kaiser Permanente 1650 Los Gamos Medical Office Building Project Final Environmental Impact Report (FEIR) (Attachment 1)
  - b) Adopt resolution adopting CEQA Findings, a Statement of Overriding Considerations, and approval of a Mitigation Monitoring and Reporting Program (MMRP) (Attachment 2)
  - c) Pass an Ordinance to print amending the current Planned Development District (PD 1590), for the Kaiser Permanente 1650 Los Gamos Drive Medical Office Building Project. (ZC 17-001). (Attachment 3)
  - d) Pass an Ordinance to print amending the current Planned Development District (PD 1590), for the Marin Commons 1600 Los Gamos Drive property. (ZC 17-001). (Attachment 4)
  - e) Adopt resolution approving a Master Use Permit (UP17-005), Environmental and Design Review Permit (ED17-011), and Sign Program Amendment (SP17-001) for the Kaiser Permanente 1650 Los Gamos Drive Medical Office Building Project. (Attachment 5)

**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

**EXECUTIVE SUMMARY:**

The project proposes: a) the conversion of an existing, 148,000 sq. ft. office building at 1650 Los Gamos Drive from general office uses to medical office uses; and b) the construction of a new 433-space, three-level parking structure for Kaiser Permanente. As the current Planned Development (PD) zoning district adopted for this property does not allow medical office uses, the applicant has requested a PD Rezoning and Master Use Permit Amendment to allow the medical office use of the site.

The project's potential environmental impacts have been assessed. Consistent with the provisions of the California Environmental Quality Act (CEQA) Guidelines, a Final Environmental Impact Report has been prepared (FEIR). The FEIR concludes that the project will result in significant, unavoidable traffic impacts. Therefore, in addition to a recommendation that the City Council certify the FEIR, it is recommended and required that the City Council adopt a Statement of Overriding Considerations to approve the project. The public benefits offered by the applicant outweigh the unavoidable traffic impacts of the project.

As discussed below, the Planning Commission and staff conclude that the project, as proposed and as conditioned, is consistent with the San Rafael General Plan 2020 and all applicable zoning development standards as revised and complies with all applicable review criteria and guidelines. The project would, generally, further long-term goals of the City by promoting the continued employment of over 300 local workers, redevelopment of an infill property, and feature a modern, centralized, fully sustainable, office facility in a transit-oriented location with nearby freeway access. Draft resolutions and draft Ordinances have been prepared (see attached Attachments 1-5) outlining findings that support the approval of this project.

**BACKGROUND:**

A complete and detailed **Background** and **Project Description** discussion can be found in the [August 28, 2018 Planning Commission staff report](#). The Planning Commission meeting can also be viewed on the Meeting Agendas & Videos page, online at: <http://www.cityofsanrafael.org/meetings>. Referenced application material exhibits are also included within FEIR attachments, also online at: <https://www.cityofsanrafael.org/kaiser-losgamos>.

**Site Description/Setting:**

The main site is currently developed with a three-story commercial office building, surface parking lots and associated landscaping including mature trees. There is also a developed parking lot on the parcel across Los Gamos containing 209 parking spaces and associated landscaping. The site consists of two parcels, approximately 11.1-acres, and is bordered by Lucas Valley Road to the northeast and US Highway 101 to the east.

Los Gamos Drive bisects the subject property into two separate parcels, the 4.09-acre eastern parcel, which contains the existing three-story 150,000 +/- square foot office building and associated surface parking, and the 7.02-acre western parcel, which includes the existing terraced surface parking lot and the remaining undeveloped woodland hillside areas. Immediately adjacent and east of the project site is US Highway 101, a major eight lane north/south freeway. To the east of US 101 is the North San Rafael Commercial District which is characterized with low one and two-story office, commercial and light industrial buildings. To the north of the project site is Lucas Valley Road, a major east-west arterial road connecting central Marin County with west Marin County. To the north of Lucas Valley Road is the undeveloped open space of the Oakview Master Plan property located in the County of Marin. West, and uphill, of the parking structure project site is an undeveloped, open area buffer zone. Further west are single family residences along Salvador Way in the Mont Marin San Rafael Park

neighborhood. South of the project site is the 1600 Los Gamos Drive office building and associated surface parking. Further south on Los Gamos Drive is the YMCA.

The parking structure site slopes from the west to the east with a high elevation of approximately 52' NAVD 88 and a low point of 36' NAVD 88.

**History:**

In 1972, the Lucas Green Phase I development was approved for construction of a computer center building at 1600 Los Gamos Drive for Fireman's Fund. In 1979, the project site was rezoned PD 1350 to allow for a general office building and computer center to be constructed on the subject site (1650 Los Gamos Drive). In addition, the new PD required a Transportation Supply Management (TSM) Plan for both buildings. In 1990, PD 1350 was rezoned to PD 1590 to incorporate the TSM as previously required. Since that time, both properties, 1600 and 1650 Los Gamos Dr have been part of one PD District and commonly owned.

In 2012, the County of Marin purchased 1600 Los Gamos Dr office building and parking lot site across Los Gamos Dr Marin and converted the site into an Emergency Office Center, Sheriff's office and other county related office uses. There are still a few non-county tenants that lease general office space within the building. In the summer of 2015, Kaiser Permanente purchased 1650 Los Gamos Drive for use as a new Medical Office Building (MOB). This was done to better serve the needs of members, as well as to make the existing medical center at 99 Monticello Rd less crowded. The 1650 building has remained mostly vacant since Kaiser's purchase, as City entitlements were needed prior to conversion to their medical office use.

**Project Description:**

The project proposes the conversion of an existing 148,000 sq. ft. office building from general office uses to medical office uses for Kaiser Permanente. Since the current PD zoning does not allow medical office uses, the applicant has requested a PD Rezoning and Master Use Permit Amendment to allow the medical office use of the site. The project also proposes the construction of a 433-space, three-level parking structure on the existing surface parking lot located to the west of 1650 Los Gamos Drive that will primarily serve the Kaiser Permanente employees working at the property. The proposed project also includes the continued use of existing 42 parking spaces located on the adjacent 1600 Los Gamos Drive property. Kaiser Permanente has legal access to the use of those parking spaces through an easement and is not proposing any changes to the parking spaces.

The project requires a Planned Development (PD) Rezoning to establish new PD standards for this site and remove reference to this site from the current PD, an Environmental and Design Review Permit for the design of the new parking structure, a Master Use Permit to allow medical office uses in the PD District), and a Sign Program Amendment to allow Kaiser Permanente signage as part of overall Marin Commons Sign Program. A complete project description is included on [page 7 of the 8/28 Planning Commission Staff Report](#).

**ANALYSIS:**

A detailed analysis of the project is provided in the August 28, 2018 report to the Planning Commission (Attachment 5, pages 91-96 of that report, link above). A summary of this analysis is provided as follows:

**San Rafael General Plan 2020 Consistency:**

The site is designated as "Office (O) 15-32 units/acre" on the General Plan 2020 Land Use Map. Medical office uses are an allowable use within this designation, although medical office is not currently allowed in the existing Planned Development (PD 1590) District. Overall, staff recommends that the

project and design of the new parking structure appears to comply with all applicable General Plan policies. Based on staff review, the proposed project would be consistent with all applicable General Plan policies in the Land Use, Neighborhoods, Economic Vitality and Circulation Elements. A General Plan consistency table is included in [Exhibit 3 of the 8/28 Staff Report to Planning Commission](#).

**Zoning Ordinance Consistency:**

Planned Development (PD1590) District Amendment

The site is currently designated as Planned Development (PD-1590) Zoning District. To allow medical office uses in the existing office building, the current PD district will require an amendment. In general, the proposed project would be consistent with the zoning standards in that it continues the office use on the project site and provides additional parking for medical office uses.

The project site is currently regulated by the Planned Development (PD-1590) zoning district that is adopted for the Marin Commons office district, originally established as the Lucas Green Master Plan in the early 1970's that approved the existing development on the site including two office buildings, a computer center, and associated surface parking. Attachment 3 is a proposed ordinance that would amend the PD-1590 District to separate the two buildings and create a new PD district for the building at 1650 Los Gamos that would expand the allowable uses to include the medical office uses and construction of the parking structure to accommodate the increased parking requirement for medical office.

The PD amendment would also necessitate further modifications to the PD-1590 district governing the 1600 Los Gamos Drive property which is currently owned and operated by the County of Marin, and the City has initiated these further required amendments in the proposed ordinance attached as Attachment 4. This city-initiated PD rezoning would eliminate references to the 1650 Los Gamos Drive property but will otherwise leave the PD unchanged. (See Attachment 4 – Exhibit B)

Environmental and Design Review Permit

The proposed 1650 Los Gamos Drive Medical Office Building and the construction of a new parking structure would create a new physical development on a surface parking lot. The Design Review Board (DRB) reviewed and recommended approval by the Planning Commission that the site plan, architecture, colors, materials, landscaping and other site design features are appropriate for the site and its surroundings. The design of the parking structure and new office building were evaluated in the Draft Environmental Impact Report (DEIR) and it was determined that the proposed project would not block significant views and is consistent with mass and scale and within the maximum height and intensity established by the General Plan for this site. At the August 28, 2018 Planning Commission hearing, the Commission agreed with comments made by the DRB and found that the site plan, architecture, colors, materials, landscaping and other site design features are appropriate for the site and its surroundings. The findings, approving the proposed project, can be found in the Resolution to adopt Master Use Permit and Design Review and Sign Program Amendment (Attachment 5).

Master Use Permit

The site currently operates under a Master Use Permit (UP08-029), which regulates the types of allowable uses and administrative functions for the Marin Commons. Currently, the Master Use Permit allows for general office use and a computer center. As amended, the Use Permit proposes to allow for medical office uses and the additional parking requirements for medical office uses. The Use Permit requires a parking ratio of 4.4 parking spaces per 1,000 sq. ft. of gross office building areas medical office uses. The Use Permit also establishes a parking ratio of 4.6/1,000 gsf as proposed by Kaiser Permanente.



**Sign Program Amendment**

The Marin Commons PD district (PD-1590) includes an approved Sign Program (SR07-097) which includes signage guidelines for building monument signs, building entry signs, and directional and wayfinding signage. Kaiser included a Sign Program Amendment as part of the application package that was reviewed and recommended for approval by the DRB at the July 17, 2017 hearing. The Sign Program Amendment includes Kaiser Permanente branding signage for building monument signs, entry and wayfinding signs consistent with location and sizes of the existing Sign Program.

**ENVIRONMENTAL REVIEW:**

A detailed discussion of the environmental review process can be found on [pages 15-30 of the 8/28 Staff Report to Planning Commission](#). The following is a summary of the environmental review process for this project.

**Initial Study/Notice of Preparation (NOP):**

An Initial Study was prepared for the project in June 2017. On June 6, 2017, a Notice of Preparation (NOP) was mailed and published for a 30-day public review and comment period. The Initial Study/NOP evaluated the full range of potential environmental impacts of the project. The Initial Study concluded that the effects upon Land Use and Planning, Air Quality, Greenhouse Gas Emissions, Noise, and Transportation and Circulation would be significant and unavoidable, requiring preparation of an Environmental Impact Report (EIR).

On July 27, 2017, the Commission held a scoping meeting during the 30-day comment period and requested that Aesthetics be added to the EIR analysis to understand the project design with the addition of solar arrays and approved a list of project alternatives to be analyzed in the EIR, including a "No project/No Development" alternative, a Reduced Medical Office use alternative, an Alternate Parking Structure Location alternative, and an Applicant-Implemented Traffic Improvement alternative.

**Notice of Completion (NOC) and Publication of Draft EIR (DEIR):**

The DEIR was completed, and a NOC was distributed on March 8, 2018, pursuant to Section 15372 of the CEQA Guidelines. The DEIR was mailed to the State Clearinghouse (SCH# 2017062019) and responsible State agencies at the start of the 45-day public review period. The DEIR was also made available for review online at the City of San Rafael website (<http://www.cityofsanrafael.org/kaiser-losgamos/>), at the San Rafael Public Library, and at San Rafael City Hall Planning Division offices.

The City accepted written comments on the DEIR until the Commission hearing on April 24, 2018, which extended the 45-day public comment period an additional one day. The City received 13 written comments during this review period. Twelve (12) total individuals, including the members of the Planning Commission, also provided verbal comments at the Commission hearing. Many of these comments focused on the merits of the project though some comments were specific to the scope and adequacy of the DEIR. Many of the comments provided were duplicative. Some individuals provided both written and oral comments.

**DEIR Summary and Conclusions:**

CEQA requires that all impacts be mitigated to the extent feasible. The City is required to adopt a Statement of Overriding Considerations pursuant to Section 15093(a) of the CEQA Guidelines before approving any project having unavoidable significant effects. In this case, the DEIR concludes that the project would result in potentially significant and unavoidable impacts to Transportation and Circulation. Recommended mitigation measures are proposed to reduce Transportation and Circulation impacts to a less-than-significant level. However, the impacts to the Los Gamos Drive / Lucas Valley Road and Las Gallinas Avenue / Lucas Valley Road intersections require an outside agency, the County of Marin,

to review and approve the identified improvements. Thus, the proposed project requires adoption of a Statement of Overriding Considerations if the project is to be approved.

Preferred Alternative:

After review of the EIR and the project merits, the Planning Commission recommended, in their review of the Final EIR/Response to Comments (FEIR), consideration of the Applicant-Implemented Traffic Improvement Alternative as preferable to the project as proposed because it would best achieve the goal of reducing the identified significant adverse impacts to Transportation and Circulation. [Exhibit 6 of the 8/28 Planning Commission Staff Report](#) illustrates the traffic improvement to signalize the Lucas Valley Rd/Los Gamos Rd intersection.

Final EIR (FEIR):

The Final EIR (FEIR) provides an opportunity to respond to written comments on the DEIR for the project received during the 45-day comment period (March 8, 2018 to April 24, 2018) and oral comments provided during the April 24, 2018 Planning Commission public hearing. The FEIR also provides an opportunity to make clarifications, corrections or revisions to the DEIR, as needed, based on the comments received.

The City received 13 written comments on the DEIR and 12 individuals (including the members of the Planning Commission) provided oral comments during the comment period and the Planning Commission hearing. In some cases, the comments provided either in writing or orally focused on the merits of the project rather than the environmental impacts discussed in the DEIR. In those cases, the comment is included in the FEIR with a note stating "comment is noted" next to the individual comment. Concerns raised in relation to the project merits are further addressed under the "Neighborhood Meeting/Correspondence" section below.

In addition, the FEIR includes a Mitigation Monitoring and Reporting Program (MMRP) table that incorporates the Mitigation Measures recommended in the DEIR and provides implementation methods to fulfill these requirements, and a copy of the Planning Commission staff report on the DEIR. Based on the comments provided during the public review period on the DEIR, the FEIR provides responses to these comments only. No clarifications, corrections or revisions to the DEIR, were warranted, based on the comments received.

The FEIR was prepared and released on August 10, 2018 for public review. The City responded to all the environmental comments that were submitted on the DEIR during the public review period and a FEIR was completed. On August 10, 2018, a Notice of Availability for the FEIR/Response to Comments was mailed to interested persons and property owners and occupants within 500 feet of the property. A notice of availability was also published in the Marin Independent Journal on August 11, 2018. A copy of the FEIR/Response was also distributed to the Commission and Council on August 10, 2018 and is also available at <https://www.cityofsanrafael.org/kaiser-losgamos/>.

Public Benefits and Statement of Overriding Considerations:

Given that the EIR concludes that the project would result in significant, unavoidable impacts to Transportation and Circulation related to level of service impacts at the Los Gamos Drive / Lucas Valley Road and Las Gallinas Avenue / Lucas Valley Road intersections, in order to approve the project, the Council would have to adopt a Statement of Overriding Considerations (Attachment 2), in order to approve the project.

A Statement of Overriding Considerations reflects the ultimate balancing of competing public objectives (including environmental, legal, technical, social, and economic factors). Adopting a Statement of

Overriding Considerations would mean that the Commission finds that on balance, the benefits of the project outweigh the significant unavoidable environmental impact(s).

The applicant provided a letter to the City on July 25, 2108 stating the public benefits as result of the project. These included the following seven main points summarized below:

1. Furtherance of City Goals and Policies

The proposed project will implement, and is consistent with, City goals, objectives, policies and programs for the Project Site described in the following City General Plan Elements: Land Use, Neighborhood, Sustainability, Circulation, Economic Vitality, and Safety.

2. Development of an Existing Infill Site

The project will facilitate the development of an infill site in an existing urbanized area in San Rafael and will result in regional environmental benefits.

3. Significant Community Benefits and Traffic/Infrastructure Investments

Kaiser will voluntarily construct identified traffic and infrastructure improvements at Los Gamos Dr. and Lucas Valley Rd. above and beyond what is required by the City's General Plan and the project's identified fair-share contribution in order to improve intersection operations and reduce Project impacts to less than significant. Intersection improvements include grading and restriping, traffic signal installation, new sidewalks and curbs, pedestrian level lighting, and an extension of a Class II bicycle lane.

In addition, as an additional community benefit and voluntary project contribution, Kaiser offers to fully fund these identified intersection improvements—at an approximate cost of \$1,050,000—with no expectation of reimbursement by the City and County as initially contemplated in the DEIR.

This voluntary contribution is in addition to \$1,855,502 as Traffic Mitigation Fee which would be used toward future citywide circulation and improvement projects identified in the City's General Plan.

4. Increased Economic Impacts to the City of San Rafael

The project will positively contribute to the City's local economy through new capital investment, as well as through retaining Kaiser's approximately 315 employees in the City and adding an additional 174 construction and trades jobs at peak construction.

5. Enhanced Public Safety and Public Health

The proposed project will provide a major medical care facility to serve existing and future demand in the City of San Rafael and greater Marin region, which will in turn result in an increase in the quality and efficiency of medical care delivery to patients.

6. Implementation of Sustainable Development Strategies

The proposed project will implement a comprehensive environmental sustainability strategy, including complying with Title 24 (California Energy Efficiency Standards) and seeking to achieve a Certified Leadership in Energy and Environmental Design (LEED) Gold certification or equivalent.

7. Greenhouse Gas Emissions Reduction and Congestion Relief

The project incorporates a TDM plan that will encourage alternate modes of transportation other than single-occupancy vehicles.

The applicant's public benefit proposal is included as [Exhibit 5 of the 8/28 Staff report to Planning Commission](#).

Both the Planning Commission and staff finds the benefits of the project to the community outweigh the significant unavoidable environmental impact: the implementation timing of intersection improvements. Staff finds that these mitigation measures are feasible from an enforcement condition, but the City cannot require the County of Marin to approve the improvements. However, this condition is alleviated by the environmentally superior alternative (Applicant-Implemented Traffic Improvements), as determined by the DEIR. The project merits are compelling:

- The project by itself, consistent with the General Plan, redevelopment of an infill property,
- Voluntary construction of the Los Gamos Dr. / Lucas Valley Rd. intersection improvements as well as other pedestrian and bicycle improvements, and
- Sustainable development located near transit and the freeway, and
- The project sponsor contends that complying with the mitigation measures (\$1,105,000 estimated total costs) and payment of the development impact fees (\$1,800,000 estimated total costs), as required by the project, are also public benefits to the community.
- Construction of an identified infrastructure need in the San Rafael General Plan 2020

A more detailed discussion on the merits of the public benefits and overriding considerations is discussed on [Page 23 of the Planning Commission Staff Report](#).

#### **DESIGN REVIEW BOARD RECOMMENDATIONS:**

As required for all Major Design Review Permit applications, the proposed project was reviewed by the Design Review Board for site design, bulk/mass, architecture, color and materials, landscaping, and other site improvements and recommendations were forwarded to the Planning Commission. The detailed discussion of the DRB review can be found on [page 14 in the August 28, 2018 report to the Planning Commission](#). The DRB reviewed the project three times, first as conceptual on September 6, 2017, and two formal hearings, May 22, 2018 and July 17, 2018.

Following the conceptual DRB review, the applicant resubmitted a revised project plan set in April 2018, and again on June 2, 2018 after the first formal review and comment from the DRB. On July 17, 2018 the DRB (Commission Liaison Schoppert) provided Final Review of the revised project. In general, the Board was pleased with the overall project in terms of design, mass and scale. The DRB unanimously voted to approve the design as proposed but suggested a few minor requests with regards to details on the parking garage components of the project.

#### **PLANNING COMMISSION RECOMMENDATIONS:**

On August 28, 2018, the Planning Commission considered the project and ultimately recommended unanimous approval (5-0 vote, 1 absent, 1 recusal) for certification of the EIR, adoption of the PD Rezoning for both 1600 and 1650 Los Gamos Drive, and approval of the Design Review, Master Use Permit, and Sign Program Amendment for the project.

Many members of the public spoke in support and opposition to the project. 12 commenters expressed support for the project highlighting benefits such as jobs for local workers, and access to medical services near a major highway with ease of access, including ease of access during times of natural

disasters. Eight members of the community spoke in opposition with concerns about added GHG emissions and excess parking as a result of the parking structure development. The Planning Commission, with Vice Chair Loughran acting as interim chair (Chair Davidson was recused), voted unanimously (5-0 vote, 1 absent, 1 recusal) for all five resolutions. The Commission had a brief discussion about the Design Review and Use Permit resolution, generally agreeing with the Design Review Board's recommendation about the parking structure design. The Commission also considered the concerns of the community members who spoke in opposition to the parking structure and the amount of parking provided in the parking structure, but ultimately agreed that approving the medical office building in this location would most likely reduce greenhouse gas emissions and provide a much-needed regional serving medical use close to freeway access. In addition, members of the commission agreed that this location would provide added benefit of immediate access to the freeway in times of natural disasters and emergency services. Video from this meeting can be viewed here ([www.cityofsanrafael.org/meetings](http://www.cityofsanrafael.org/meetings))

Since the Planning Commission meeting, there have been two minor changes to the draft Resolutions. First, the Resolution approving the Use Permit and Design Review Permit (Attachment 5) was modified to move the condition of approval requiring the TDM from a Design Review Permit condition to Use Permit condition and modify the text to match the mitigation measure and provide more enforceability. Second, the Resolution granting the override (Attachment 2) was modified to clarify that the impact to the Las Gallinas Ave/Lucas Valley Rd intersection was also being granted an override.

#### **PUBLIC NOTICING AND OUTREACH:**

Representatives for Kaiser facilitated a Neighborhood Meeting early in the planning process for the project in December of 2016. At the meeting, approximately 12 members of the community attended and listened to Kaiser present the basic framework of the proposed project including basic design concepts for the three-level parking garage and the potential for an off-site intersection improvement.

Notice of the project has been provided by posting, mail, distribution and publication in the newspaper in accordance with the noticing requirements contained in Chapter 14.29 of the City of San Rafael Municipal code and in accordance with the CEQA Guidelines for this City Council meeting (and all prior to hearings). A copy of the public hearing notice for the City Council meeting is attached (Attachment 6).

Most public correspondence on the project was received during review of the DEIR. The FEIR lists those public comments received on both the DEIR and on the project merits (total of 13 commenters). Responses to comments on the DEIR were provided in the FEIR, a copy of which has been distributed to the Commission in advance. Public comments regarding the proposed Project have been received at various intervals, including comments during the DEIR review, and DRB review process. Most of the public comments have been in opposition to the project for, essentially, the following concerns:

- The proposed parking structure is unsightly and will create a new visual impact to residents west and uphill from the project site; and
- The construction of the proposed parking structure will create unnecessary air quality, GHG emissions, and noise impacts.
- The proposed project will generate excessive traffic that will create unnecessary traffic congestion.
- The project is over-parked, resulting in the parking structure requirement, creating unnecessary environmental impacts and creating a new structure that will be obsolete in the near future.



Several letters were submitted to the City prior to the Planning Commission hearing, including letters of support from the San Rafael Chamber of Commerce, two letters from PG&E acknowledging the project and alerting the applicant to permit review, a letter from Caltrans acknowledging the preferred alternative in the DEIR, and finally a letter from the County of Marin DPW confirming their comments on the DEIR had been addressed. A letter from a concerned neighbor was provided prior to the Commission hearing which reiterated the points of opposition and included a link to a Move.org petition. Staff's responses to comments of opposition are noted below:

Comment on Design Character of parking structure. The proposed parking structure design is consistent with the Non-residential Design Guidelines and is consistent with the San Rafael General Plan 2020. The DRB has recommended approval of the project design, subject to the minor suggested modifications, finding it consistent with the applicable review criteria for Environmental and Design Review Permits and non-residential design guidelines.

Comment on Traffic Impacts. The DEIR concluded that traffic impacts of the project (125 AM and 312 PM peak trips) can be reduced to a less-than-significant level through the identified mitigation measures (MM TRAF-1, MM TRAF-2, MM TRAF-3, MM TRAF-4) and the payment of the City's Traffic Mitigation Fees. As documented in the DEIR, although the identified mitigation measures would reduce potentially significant impacts to a less-than-significant level, the review and permitting process for identified improvements would require the authorization from the County of Marin. Mitigation for these impacts are consistent with the San Rafael General Plan 2020.

Comment on Parking Impacts. The proposed project site includes 455 parking spaces in surface parking lots adjacent to the project site. Conversion to medical office uses requires the project to provide on-site parking at the following rates: 4.4 spaces per 1,000 gross square feet, or 651 total spaces. Kaiser has stated consistently throughout the planning process, that a 5:1,000 gsf parking ratio is preferred for patient and staffing needs to reduce queuing and to facilitate shift changes. As proposed, the 433-space parking structure will provide a 4.6:1,000 gsf parking ratio for a total of 679 spaces as part of the project.

Since the August 28, 2018 Planning Commission hearing, no new public comments have been received due to the advanced date of this staff report. Any public comments received will be compiled and delivered to the Commission prior to the public hearing.

**FISCAL IMPACT:**

This project is a private development and does not have a negative impact on the City budget given that the planning review and processing of these applications are subject to 100% cost recovery fees, paid for by the applicant, including the contracts for preparation of the EIR and contract planner services.

Furthermore, the identified intersection improvements would be fully funded by the applicant in addition to traffic mitigation fees in the amount of (\$1.8 million) as well as building permit and improvement plan fees. Lastly, the additional development on this site would generate an increase to local property tax revenues, which would fund/offset costs of providing additional public services to the site occupants.

**OPTIONS:**

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

1. Adopt resolutions to certify the EIR and Statements of Overriding Considerations with MMRP, pass the PD Ordinances to print and adopt the resolution approving the Zoning Entitlements (Use Permit and Design Review) *(staff recommendation)*.
2. Adopt Resolutions and Ordinances with modifications.
3. Continue the public hearing and require additional information, study, or environmental analysis.
4. Refer the applications back to the Planning Commission
5. Deny the project and direct staff to return with revision Resolutions.

**ATTACHMENTS:**

1. Draft City Council Resolution to Certify EIR and Mitigation Monitoring and Reporting Program
2. Draft City Council Resolution to adopt Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program
3. Draft Ordinance to create new Planned Development Zoning District for 1650 Los Gamos Drive
4. Draft Ordinance to Amend Planned Development (PD1590) Zoning District for 1600 Los Gamos Dr.
5. Draft City Council Resolution to adopt Master Use Permit and Design Review and Sign Program Amendment
6. City Council Public Hearing Notice

*(any comments received after publication of this report will be forwarded separately)*

**OTHER MATERIALS**

Draft EIR and Final EIR available at: <https://www.cityofsanrafael.org/kaiser-losgamos/>

Project Plans *(provided separately)* and available at: <https://www.cityofsanrafael.org/kaiser-losgamos/>

Planning Commission August 28, 2018 staff report available at: [Planning Commission Staff Report](#)

**RESOLUTION NO. \_\_\_\_**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL  
CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) (SCH  
#2017062019) PREPARED FOR THE 1650 LOS GAMOS MEDICAL OFFICE  
BUILDING PROJECT TO ALLOW THE CONVERSION OF AN EXISTING GENERAL  
OFFICE BUILDING TO MEDICAL OFFICE USES AND CONSTRUCTION OF A NEW,  
433-SPACE, THREE-LEVEL PARKING STRUCTURE  
(APNS: 165-220-12 and 165-220-13)**

**WHEREAS**, on February 21, 2017, Kaiser Foundation Health Plan (Kaiser or Kaiser Permanente) submitted project applications to the City of San Rafael Community Development Department for a Use Permit (UP17-005), an Environmental and Design Review Permit (ED17-001), a Zone Change (ZC17-001) to amend the existing Planned Development (PD1590) District for the Marin Commons, and a Sign Program Amendment (SP17-002) for the conversion of an existing approximately 148,000-square-foot office building to medical office uses and the construction of an up to 511-space parking structure on the western parcel of a 11.2-acre property at 1650 Los Gamos Drive; and

**WHEREAS**, on June 27, 2017, the Planning Commission (Commission) held an appropriately noticed public scoping hearing on the Notice of Preparation (NOP) for the preparation of an Environmental Impact Report (EIR) to assess the impacts of the project. The Planning Commission directed staff to prepare an EIR for the project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to address the following issues: Aesthetics, Air Quality, Greenhouse Gas Emissions, Land Use and Planning, Noise, Traffic and Transportation, and project Alternatives, per the Initial Study previously prepared for the project on June 9, 2017; and

**WHEREAS**, on October 27, 2017, Kaiser Permanente submitted a Final Traffic Impact Analysis (FTIA), prepared by Fehr and Peers for the proposed project. The FTIA evaluated the project's impacts on the local circulation network and identified a potential mitigation measure requiring signalization and other improvements to the Lucas Valley Rd/Los Gamos Drive intersection; and

**WHEREAS**, the Draft EIR (DEIR) was circulated for a 45-day public review period beginning March 8, 2018 and ending April 24, 2018 (SCH # 2017062019). On April 24, 2018, the Planning Commission held a duly-noticed public hearing to consider and accept comments on the DEIR. The DEIR concluded that the project would result in significant, unavoidable impacts associated with Transportation and Circulation. All other significant impacts identified in the DEIR could be mitigated to less-than-significant levels with implementation of mitigation measures recommended in the DEIR; and

**WHEREAS**, based on written and oral comments received from the public on the DEIR and its own review of the DEIR, the Planning Commission directed staff to prepare a Final Environmental Impact Report (FEIR) and respond to comments received on the DEIR; and

**WHEREAS**, pursuant to Public Resources Code Section 21091(d)(2)(A) and CEQA Guidelines Sections 15088, 15089 and 15132, the City responded to all the environmental comments that were submitted on the DEIR during the public review period and a FEIR was completed. On August 10, 2018, a Notice of Availability for the FEIR/Response to Comments and the August 28, 2018 Planning Commission hearing was mailed to interested persons and property

owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR. A notice of availability was also published in the Marin Independent Journal on Saturday, August 11, 2018; and

**WHEREAS**, the City intends that the FEIR, and all applicable mitigation measures therein, shall be used as the environmental documentation required by CEQA for subsequent discretionary actions required for this project; and

**WHEREAS**, on August 28, 2018, the Planning Commission held a duly-noticed public hearing on the FEIR and project merits, accepting all public testimony and the written report of the Community Development Department staff. On a 5-0 vote (one absent, one recused), the Planning Commission recommended to the City Council certification of the FEIR; and

**WHEREAS**, on August 31, 2018, a Public Notice for the City Council hearing, which includes the Notice of Availability of the FEIR/Response to Comments, was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR, informing them of the City Council hearing for final action. A notice of availability was also published in the Marin Independent Journal on Saturday, September 1, 2018; and

**WHEREAS**, on September 17, 2018, the City Council held a duly-noticed public hearing to review the FEIR/Response to Comments for the proposed amendment to the Kaiser Permanente 1650 Los Gatos Drive Medical Office Building Project and considered all oral and written public testimony and the written report of the Community Development Department; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby certifies the project's Final EIR, based upon the following findings required by CEQA Guidelines Section 15090:

### **FINDINGS**

1. The Final Environmental Impact Report (FEIR), which consists of the DEIR dated March 8, 2018, the Response to Comments Document dated August 10, 2018, and all documents incorporated therein, has been prepared in accordance with CEQA, including Public Resources Code Section 21083.3, and the provisions of the City of San Rafael Environmental Assessment Procedures Manual.
2. The FEIR has been prepared and completed in compliance with the CEQA Guidelines and the City of San Rafael Environmental Assessment Procedures Manual by following the appropriate format, content, technical analysis of the potential impact areas and project alternatives identified in the initially-authorized scope of work. Further, all prescribed public review periods and duly-noticed hearings were held for the project Notice of Preparation (NOP), Notice of Completion (NOC) for public review of the DEIR and Notice of Availability following publication of the FEIR.
3. The FEIR has been prepared using the City's independent judgment and analysis, and the FEIR:
  - a) Appropriately analyzes and presents conclusions regarding impacts;

- b) Analyzes a reasonable range of alternatives to the project that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any significant effect of the project; and
- c) Recommends mitigation measures to substantially lessen or avoid the otherwise significant adverse environmental impacts of the project.

The findings and recommendations in the document are supported by technical studies prepared by professionals experienced in the specific areas of study.

- 4. The City Council exercised its independent judgment in evaluating the FEIR and has considered the comments received during the public review period on the DEIR.
- 5. The FEIR reflects the independent judgment and analysis of the City of San Rafael Community Development Department and the City Council. The City Council has reviewed and considered all information contained in the FEIR prior to making its decision on the project, and concludes that the FEIR:
  - a) Appropriately analyzes and presents conclusions on the impacts of the project;
  - b) Analyzes a reasonable range of alternatives to the project that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any significant effect of the project;
  - c) Identifies or recommends mitigation measures to substantially lessen, eliminate or avoid the otherwise significant adverse environmental impacts of the project; and
  - d) Includes findings and recommendations supported by technical studies prepared by professionals experienced in the specific areas of study, and which are contained within the document and/or made available within the project file maintained by the City of San Rafael Community Development Department, the custodian of all project documents.
- 6. The information contained in the FEIR is current, correct and complete for document certification. As a result of comments submitted on the DEIR, the FEIR provided responses to comments received on the DEIR and provided clarification to those comments. No new information has been added to the DEIR and it does not deprive the public of meaningful opportunity to comment upon the substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project's proponents have declined to implement. In particular, no new information was presented in the FEIR and it does not disclose or result in:
  - a) A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented;
  - b) A substantial increase in the severity of the impacts that were disclosed and analyzed in the DEIR;
  - c) Any new feasible project alternatives or mitigation measures considerably different from others previously analyzed that would clearly lessen significant environmental impacts of the project, but which the project's proponents refuse to adopt.
  - d) A finding that the DEIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.
- 7. The FEIR presents factual, quantitative and qualitative data and studies, which find and support the conclusion that the project will result in several potentially significant impacts that necessitate mitigation. At the time the City considers action on the project's merits, it will be necessary to make complete and detailed findings pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a). For each significant effect identified in the EIR, the City will be required to make one or more of the following findings:



- a) That changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR; that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and that such changes have been adopted by such other agency or can and should be adopted by such other agency;
  - b) That specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR; and
  - c) As the project would result in several significant, unavoidable impacts, findings of overriding consideration will be required. Such findings will require that the City weigh the benefits of the project with the environmental impacts that cannot be mitigated.
8. The City Council is taking action to certify the FEIR for the project, recognizing it as an informational document for assessment of the project. The CEQA Guidelines recognize that an environmental document is prepared for public disclosure of potential project impacts and that it is used as an informational document to guide decision-makers in considering project merits. Certification of the FEIR, as presented, would not result in a land use entitlement or right of development for the project site. The FEIR document must be reviewed to determine whether it adequately assesses the impacts of the project, and whether the circumstances presented in Public Resources Code section 21166, as amplified by its corresponding CEQA Guidelines Sections 15162 to 15163, are present with respect to the project to determine whether a Subsequent EIR, a Supplement to the EIR, or Addendum to the EIR need be prepared or if further environmental review under CEQA is not required. Certification of the FEIR prior to consideration of and taking action on project entitlements does not prejudice or bias review or actions on the proposed development 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 City Council of the City of San Rafael, held on Monday, the 17th of September 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS

NOES: COUNCILMEMBERS

ABSENT: COUNCILMEMBERS

SAN RAFAEL CITY COUNCIL

BY: \_\_\_\_\_  
LINDSEY LARA, City Clerk

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL 1) ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS OF FACT, 2) ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND 3) APPROVING THE MITIGATION MONITORING PROGRAM (MMRP) FOR THE KAISER PERMANENTE 1650 LOS GAMOS MEDICAL OFFICE BUILDING PROJECT TO ALLOW THE CONVERSION OF AN EXISTING OFFICE BUILDING TO MEDICAL OFFICE USES AND CONSTRUCTION OF A NEW 433-SPACE PARKING STRUCTURE ON THE WESTERN PARCEL  
1650 LOS GAMOS DRIVE KAISER (MEDICAL OFFICES)  
APNs: 165-220-12 & 165-220-13)**

**WHEREAS**, on February 21, 2017, Kaiser Foundation Health Plan (Kaiser or Kaiser Permanente) submitted project applications to the City of San Rafael Community Development Department for a Use Permit (UP17-005), an Environmental and Design Review Permit (ED17-001), a Zone Change (ZC17-001) to amend the existing Planned Development (PD)-1590 District for the Marin Commons, and a Sign Program Amendment (SP17-002) for the conversion of an existing approximately 148,000-square-foot office building to medical office uses and the construction of an up to 511-space parking structure (Project) on the western parcel of a 11.2-acre property at 1650 Los Gamos Drive; and

**WHEREAS**, on June 27, 2017, the Planning Commission (Commission) held an appropriately noticed public scoping hearing on the Notice of Preparation (NOP) for the preparation of an Environmental Impact Report (EIR) to assess the impacts of the Project. The Planning Commission directed staff to prepare an EIR for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to address the following issues, Aesthetics, Air Quality, Greenhouse Gas Emissions, Land Use and Planning, Noise, Traffic and Transportation, and Project Alternatives, as per the Initial Study previously prepared for the Project on June 9, 2017; and

**WHEREAS**, on October 27, 2017, Kaiser Permanente submitted a Final Traffic Impact Analysis (FTIA), prepared by Fehr and Peers for the Project. The FTIA evaluated the Project's impacts on the local circulation network and identified a potential mitigation measure requiring signalization and other improvements to the Lucas Valley Rd/Los Gamos Drive intersection; and

**WHEREAS**, on April 13, 2018, Kaiser Permanente resubmitted a revised parking structure design proposing construction of a 473-space, three-level-plus-upper-ramp, parking structure at the same location as originally proposed; and

**WHEREAS**, the Draft EIR (DEIR) was prepared and circulated for a 45-day public review period beginning March 8, 2018 and ending April 23, 2018 (SCH # 2017062019). As part of this review, on April 24, 2018, the Planning Commission held a duly-noticed public hearing to consider and accept comments on the DEIR. The DEIR concluded that the Project would result in significant, unavoidable impacts associated with Transportation and Circulation. All other significant impacts identified in the DEIR were identified to be mitigated to less-than-significant levels with implementation of mitigation measures recommended in the DEIR; and

**WHEREAS**, based on written and oral comments received from the public on the DEIR and its own review of the DEIR, the Planning Commission directed staff to prepare a Final Environmental Impact Report (FEIR) and respond to comments received on the DEIR; and

**WHEREAS**, pursuant to Public Resources Code Section 21091(d)(2)(A) and CEQA Guidelines Sections 15088, 15089 and 15132, the City responded to all the environmental comments that were submitted on the DEIR during the public review period and a FEIR was completed. On August 10, 2018, a Notice of Availability for the FEIR/Response to Comments was mailed to interested persons and property owners and occupants within 500 feet of the Project property and to all responsible, trustee and other public agencies that commented on the DEIR; A notice of availability was also published in the Marin Independent Journal on August 11, 2018; and;

**WHEREAS**, consistent with the requirements of the CEQA Guidelines, a Mitigation Monitoring and Reporting Program (MMRP) has been prepared, which outlines the procedures and requirements for implementing all mitigation measures identified in the FEIR, and is provided in attached Exhibit A of this Resolution; and

**WHEREAS**, the FEIR concludes that all impacts identified in the FEIR have been or can be mitigated to a level of less-than-significant, except for four Transportation and Circulation impacts. The FEIR identifies significant and unavoidable Project-level impacts associated with the mitigation requirement to signalize and improve the intersections at Los Gamos Drive and Lucas Valley Road and mitigations to improve the intersection at Las Gallinas Drive and Lucas Valley Road. Although these impacts can be mitigated to less-than-significant levels through the implementation of identified mitigation measures, the intersections are outside of the City's jurisdiction and require authorization and permits by the County of Marin and the California Department of Transportation (CALTRANS). As such, since the City cannot legally implement mitigation measures outside of its jurisdiction, the impacts are identified in the FEIR as significant and unavoidable; and

**WHEREAS**, the FEIR identifies Alternative 4: "Applicant-Implemented Traffic Improvements" as the Environmentally Superior Alternative, which would commit Kaiser Permanente to providing upfront funding to the City above its fair-share contribution, to construct certain identified intersection improvements for the Los Gamos Drive/Lucas Valley Road intersection, as well as additional pacing and pedestrian and bicycle improvements. This Alternative would eliminate specific significant and unavoidable impacts, increase community benefits, and address transportation impacts not considered significant under CEQA thresholds by ensuring that suitable intersection/roadway improvements, or funding for such improvements are provided; and

**WHEREAS**, the FEIR concludes that implementation of Alternative 4, the Environmentally Superior Alternative, would further eliminate the Project's two significant and unavoidable impacts to the Los Gamos Drive / Lucas Valley Road intersection. However, adverse impacts to the Las Gallinas Avenue / Lucas Valley Road intersection would remain because the intersection is in the County's jurisdiction and there is thus far no known improvement planned for the intersection. Although Kaiser Permanente would be required to pay a fair-share contribution to the upgrade of this intersection, without a potential design solution, these impacts will remain significant; and

**WHEREAS**, CEQA Guidelines Section 15093 requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental impacts when determining whether to

approve a project. If these benefits outweigh the unavoidable adverse environmental effects, the adverse effects may be considered “acceptable” and a statement of overriding considerations may be adopted by the agency. The decision-making agency must state in writing the specific reasons to support its action based on the FEIR and/or other information in the record. The statement of overriding considerations must be supported by substantial evidence in the record; and

**WHEREAS**, on August 28, 2018, the Planning Commission held a duly-noticed public hearing on the FEIR and Project merits, accepting all public testimony and the written report of the Community Development Department staff. As part of this hearing process the Planning Commission considered draft CEQA Findings of Fact and a draft Statement of Overriding Considerations contained in this resolution, and a draft Mitigation Monitoring and Reporting Program (MMRP). On a 5-0 vote (one absent, one recused), the Planning Commission adopted Resolution No. 18-06 recommending to the City Council adoption of the Statement of Overriding Considerations and approval of the Mitigation Monitoring and Reporting Plan (MMRP); and

**WHEREAS**, on August 31, 2018, a Public Notice for the City Council hearing, which includes the Notice of Availability of the FEIR/Response to Comments, was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR, informing them of the City Council hearing for final action. A notice of availability was also published in the Marin Independent Journal on Saturday, September 1, 2018; and

**WHEREAS**, on September 17, 2018, the City Council held a duly-noticed public hearing to review the proposed amendment to the Kaiser Permanente 1650 Los Gatos Drive Medical Office Building Project and considered all oral and written public testimony and the written report of the Community Development Department; and

**WHEREAS**, on September 17, 2018, the City Council certified the FEIR by separate resolution; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of San Rafael does hereby: a) approve the following CEQA Findings of Fact; b) adopt the following Statement of Overriding Considerations; and c) approve of the MMRP presented in Exhibit A, finding that the MMRP has been prepared in accordance with the CEQA Guidelines:

## **FINDINGS OF FACT**

### **I. California Environmental Quality Act (CEQA)**

#### **A. Final EIR**

By separate City Council Resolution adopted concurrently with this resolution, the City Council reviewed and recommended certification of the Project's FEIR. As part of this action and as outlined in this separate resolution, the City Council: reaffirms the findings made in the separate City Council Resolution that: a) supported the certification of the FEIR; b) found that the FEIR has been prepared in accordance with the CEQA Guidelines and the City of San Rafael Environmental Assessment Procedures Manual; and c) found and concluded that the FEIR adequately assesses the environmental effects of the Project and represents the independent judgment of the City Council.

**B. Incorporated Documents/ Record of Proceedings**

1. The following information is incorporated by reference and made part of the record supporting these findings:
  - All Project plans and application materials, including supportive technical reports;
  - The DEIR and Appendices (March 2018) and FEIR (August 10, 2018), the Initial Study (June 2017) and all documents relied upon, cited therein or incorporated by reference;
  - The Mitigation Monitoring and Reporting Program (MMRP) prepared for the Project;
  - The City of San Rafael *General Plan 2020* and *General Plan 2020* FEIR;
  - Zoning Ordinance of the City of San Rafael (SRMC Title 14);
  - Subdivision Ordinance of the City of San Rafael (SRMC Title 15);
  - City Council Ordinance No. 1772, City Council Resolution No. 10980 and the City of San Rafael Archaeological Sensitivity map;
  - Kaiser Permanente's 1650 Los Gatos Drive Medical Office Building Project commitment/community benefits letter from Judy Coffey, Kaiser Permanente's SVP/Area Manager Marin/Sonoma Service Area to City Manager, Jim Schutz (July 25, 2018);
  - All records of decision, resolutions, staff reports, memoranda, maps, exhibits, letters, synopses of meetings, summaries, and other documents approved, reviewed, relied upon, or prepared by any City commissions, boards, officials, consultants, or staff relating to the Project;
  - Any documents expressly cited in these findings, in addition to those cited above; and
  - Any other materials required for the record of proceedings by caselaw and/or Public Resources Code section 21167.6, subdivision (e).
2. Pursuant to CEQA Guidelines Section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are in and may be obtained from the City's Department of Community Development, Planning Division, at 1400 Fifth Street, Third Floor, San Rafael, CA 94901.

**II. Findings of Fact in Support of Project Action**

The FEIR, prepared in compliance with CEQA, evaluates the potentially significant and significant adverse environmental impacts that could result from approval of the Project. Because the FEIR concludes that implementation of the Project would result in adverse impacts, the City is required by CEQA to make certain findings with respect to these impacts. (CEQA Guidelines Section 15091) These findings list and describe the following, as analyzed in the EIR: a) impacts determined to be insignificant or less-than-significant in the Initial Study/Notice of Preparation checklist; b) impacts found to be less than significant after individual analysis in the EIR; c) significant impacts that can be avoided or reduced with mitigation; d) significant impacts that cannot be avoided; and e) project alternatives that were developed and studied as provided in the CEQA Guidelines.

These findings are supported by substantial evidence in the entirety of the record of proceedings before the City, which is incorporated herein by this reference. Further explanation of these environmental findings and conclusions can be found, without limitation, in the DEIR and FEIR, and these findings hereby incorporate by reference the discussion and analysis in those documents supporting the FEIR determinations regarding mitigation measures and the Project's impacts and mitigation measures designed to address those impacts. In making these findings, the City Council ratifies, adopts and incorporates in these findings the determinations and conclusions of the DEIR and FEIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

**A. IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT AND NOT INDIVIDUALLY ANALYZED**

During the Project's Notice of Preparation (NOP) and scoping period, the City determined that a number of the Project's potential environmental effects would be insignificant, less-than-significant or would be adequately addressed through the City's environmental review process, including: Agriculture Resources, Biological Resources, Cultural/ Archaeological Resources, Geology/Soils, Hazards and Hazardous Materials, Hydrology/Water Quality, Mineral Resources, Population/Housing, Public Services, Recreation, Tribal Cultural Resources, and Utilities/Service Systems. For these topics, in accordance with CEQA Guidelines Section 15128, no need for further environmental assessment was required for the preparation of the FEIR.

Finding:

*The Project's DEIR, citing the Initial Study (IS), contains brief statements identifying possible impacts that were determined to be insignificant or less-than-significant, along with the reasons for those determinations. The City Council adopts those statements and concludes that the referenced environmental effects are insignificant or less than significant and no further analysis in the FEIR is required.*

**B. IMPACTS DETERMINED TO BE LESS-THAN-SIGNIFICANT AFTER INDIVIDUAL ANALYSIS.**

The NOP and scoping period identified a number of potential environmental impacts to be analyzed in the DEIR. Through that analysis, impacts relating to Land Use and Planning, Aesthetics, Air Quality, Greenhouse Gas (GHG) Emissions, and Noise were determined to be less-than-significant and, thus, no mitigation measures are necessary or required, as noted below.

Finding: *The City Council adopts these statements and concludes that the referenced environmental impacts would be less than significant for the reasons stated below and contained within the entirety of the record of proceedings.*

**(1) Land Use & Planning**

**a. Project Will Not Conflict with Applicable Land Use Plans, Goals, or Policies**



Facts in Support of Finding: As discussed on pages 4.1-6 to 4.1-7 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project is currently within an Office (O) land use designation per the *San Rafael General Plan 2020*. Medical office uses are typical and allowed in Office (O) General Plan designations. The Project is also within the PD-1590 (Planned Development) zoning district, which allows general office uses but not medical office uses. The Project is requesting an amendment to its zoning designation and Use Permit to allow "medical office" uses. The Project uses will be consistent with that amended zoning designation. The Project proposes colors and materials that are harmonious with the existing development on the site, as well as the surrounding hills in the background. Lastly, given the reuse of the existing on-site building and developing a parking structure within existing footprints on-site, the Project would not significantly impact any threatened, endangered or special status species in the surrounding area. This impact will therefore be less than significant.

**b. Project Will Not Result in a Cumulative Land Use Impact**

Facts in Support of Finding: As discussed on page 4.1-8 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project Site has been previously graded and developed with an office building and surface parking lots and is located within a commercially developed area; therefore, the Project would not result in significant impacts due to conflicting land uses. Furthermore, the site is assigned an Office (O) General Plan land use designation, which allows for medical office and associated parking. This impact will therefore be less than significant.

**(2) Aesthetics**

**a. The Project Will Not Result in Visual Character or Quality Impacts**

Facts in Support of Finding: As discussed on pages 4.2-14 to 4.2-16 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not substantially change the character of the Project site by constructing the new parking structure on an existing surface parking lot. Further, visual simulations show that the Project will largely be screened by existing and proposed mature vegetation from many viewpoints, will have less-than-significant impacts on views of Mt. Tamalpais from public vantage points, and the use is consistent and compatible with surrounding uses. In addition, the Project is consistent with design guidelines in the General Plan 2020 and non-residential design guidelines. This impact will therefore be less than significant.

**b. The Project Will Not Increase Light and Glare**

Facts in Support of Finding: As discussed on pages 4.2-16 to 4.2-17 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not increase light and glare due to existing presence of commercial lighting. Lighting on the Project site will be directed downward and angled to reduce spillover of ambient light onto adjacent properties. The potential PV system incorporated on the top level of the parking structures would have panels with standard low-glare glass with anti-reflective coatings and would be angled to minimize potential glare to nearby

residences. In sum, the Project's lighting will not be substantial in comparison to existing conditions (which includes the surface parking lot lighting) and will not affect nighttime views or cause potential "spillage" of lighting that may affect nearby residents. This impact will therefore be less than significant.

**c. The Project Will Not Result in Cumulative Aesthetic Impacts**

Facts in Support of Finding: As discussed on page 4.2-18 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not result in cumulative visual impacts. The Project is subject to City of San Rafael Design Guidelines and formal Design Review to ensure high-quality and compatible design. Lighting on the Project site will be directed downward and angled to reduce spillover of ambient light onto adjacent properties. The Project therefore will not make a cumulatively considerable contribution to a significant cumulative impact, and thus this impact will be less than significant.

**(3) Air Quality**

**a. The Project Will Not Violate Air Quality Standards or Substantially Contribute to Any Air Quality Violations**

Facts in Support of Finding: As discussed on pages 4.3-17 and 4.3-18 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not contribute substantially to existing or projected violations of Bay Area Air Quality Management District (BAAQMD) standards for impacts related to ozone and particulate matter. In addition, the Project will have emissions less than the BAAQMD screening size for evaluating such impacts. Further, intersections affected by the Project will have traffic volumes less than the BAAQMD screening criteria and, thus, will not cause a violation of an ambient air quality standard or have considerable contributions to cumulative violations of these standards. This impact will therefore be less than significant.

**(4) Greenhouse Gas (GHG) Emissions**

**a. The Project's GHG Emissions Will Be Less Than Significant**

Facts in Support of Finding: As discussed on pages 4.4-12 to 4.4-13 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, under CEQA, projects that are consistent with the City of San Rafael Climate Change Action Plan (CCAP) forecasts and implement applicable CCAP strategies are determined to result in less than significant GHG emissions. The Project is consistent with the City's *General Plan 2020* and, therefore, would be consistent with the applicable CCAP measures if it meets the standards included in the Qualified GHG Emissions Reduction Strategy. As shown in Table 4.4-1 on page 4.4-13 of the DEIR, the Project is consistent with these standards, and as result, the Project's GHG emissions will be less than significant.

**b. The Project Will Not Conflict or Interfere with Applicable GHG Plans, Policies or Regulations**

Facts in Support of Finding: As discussed on pages 4.4-13 to 4.4-14 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not conflict or otherwise interfere with the

statewide GHG reduction measures identified in the California Air Resources Board's (CARB) Scoping Plan. The Project will comply with requirements of the Green Building Code and the CCAP. For example, the parking structure and MOB tenant improvements will be constructed in conformance with CALGreen and California's Title 24 Building Code. This impact will therefore be less than significant.

**c. The Project Will Not Result in Significant Cumulative GHG Impacts**

Facts in Support of Finding: As discussed on page 4.4-15 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the completed Project will not exceed the BAAQMD's recommended threshold of significance for GHG emissions and is consistent with the adopted City of San Rafael CCAP, which serves as a Qualified GHG Reduction Strategy. The Project therefore will not make a cumulatively considerable contribution to a significant cumulative impact, and thus this impact will be less than significant.

**(5) Noise**

**a. Project Noise Levels Will Not Exceed City Standards or Increase Existing Ambient Noise**

Facts in Support of Finding: As discussed on pages 4.5-20 to 4.5-26 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, noise levels generated by Project construction and operational activities are not expected to exceed the City's 90 dBA threshold. In addition, all new mechanical equipment associated with the Project will be below the City's thresholds during daytime and nighttime hours and will not increase the day-night average noise level at the residential land uses. Further, intermittent noise from the parking structure will be less than the intermittent noise thresholds established in the City's Municipal Code and will not increase the ambient environment at the nearest residential property line by 3 dBA  $L_{dn}$ . Noise from refuse collection is not expected to differ from the existing land use and will be compatible with City noise limits. As such, the impact is considered less-than-significant.

**b. The Project Will Not Result in Excessive Groundborne Vibration Due to Construction**

Facts in Support of Finding: As discussed on pages 4.5-27 to 4.5-28 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, vibration levels as a result of construction activities for the Project will be up to 0.02 in/sec Peak Particle Velocity (PPV), which will not exceed the 0.3 in/sec PPV threshold for residences or commercial buildings adjacent and uphill from the Project. Construction of the Project will not generate vibration levels of 0.3 in/sec PPV or more at existing noise-sensitive land uses located off- and on-site. Therefore, the impact is considered less-than-significant.

**c. The Project Will Not Result in a Permanent Noise Level Increase to Surrounding Residential Receptors Due to Project-Generated Traffic**

Facts In Support of Finding: As discussed on pages 4.5-27 to 4.5-28 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, residential land uses to the west of the Project site will

experience an increase of up to 1 dBA Ldn, resulting in ambient noise levels below 60 dBA Ldn with the inclusion of the Project. While the traffic increase along Los Gamos Drive will result in a permanent noise increase of 3 dBA Ldn, this increase will only apply to the commercial office buildings to the south of the Project site. Therefore, the Project-generated traffic will not cause a permanent increase to noise at the surrounding residential receptors. This impact will therefore be less than significant.

**d. The Project Will Not Result in Cumulative Noise Increase Impacts to Noise-Sensitive Land Uses**

Facts In Support of Finding: As discussed on pages 4.5-33 to 4.5-34 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, although the Project will make a “cumulative considerable” contribution to the overall traffic noise increase along Los Gamos Drive, the office buildings located along this roadway are not considered noise-sensitive, and hence the overall cumulative impact will not be significant. Therefore, this impact will be considered less than significant since the Project’s cumulatively considerable contribution will be to a less than significant cumulative impact.

**C. SIGNIFICANT IMPACTS THAT CAN BE AVOIDED OR REDUCED WITH MITIGATION**

The City Council, as authorized by Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15092, identifies the following significant impacts that can be eliminated or reduced to a less-than-significant level with the implementation of mitigation measures recommended in the IS and EIR. As summarized in Chapter 2 (pages 2-5 – 2-28) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, these mitigation measures are hereby adopted and incorporated into the description of the Project and their implementation will be monitored through the MMRP.

**(1) Aesthetics**

**The Project could potentially create a new source of substantial light and glare which would adversely affect day or nighttime views in the area. The incorporation of a photometric lighting study demonstrating compliance with building code specifications as a Project mitigation measure will result in a less than significant impact.**

Significant Impact

As discussed on page 36 of the IS, summarized in Chapter 2 (page 2-21) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, the proposed usage of the existing office building will not introduce a new source of light and glare or affect nighttime views. However, development of the parking structure could potentially create a new source of substantial light or glare which would adversely affect day or nighttime views in the area. This potential impact can be mitigated to a less-than-significant level with the preparation of photometric lighting study demonstrating that outdoor lighting fixtures meet the requirements of the California Energy Code and are included in the Project’s building plan (Exhibit A; Mitigation Measure **MM AES-1**).

#### Finding

Specific Project lighting design is subject to Design Review Board review and approval and standard City conditions of approval. In addition, the City Council finds that implementation of MM AES-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

## **(2) Air Quality**

- a. Impact AIR-3: The Project would expose sensitive receptors to substantial pollutant concentrations. The incorporation of construction best management practices as Project conditions of approval would result in a less than significant temporary impact to sensitive receptors.**

#### Significant Impact

As discussed on pages 4.3-18 to 4.3-22 and summarized in Chapter 2 (pages 2-5 – 2-8) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, grading and construction activities on the Project site will create a temporary potentially-significant Air Quality impact, which can be mitigated to a less-than-significant level with the preparation, approval and implementation of a basic measures to control dust and exhaust during construction (Exhibit A; Mitigation Measure **MM AIR-1**).

#### Finding

The City Council finds that implementation of MM AIR-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- (b) Impact AIR-4: The Project would contribute to cumulative air quality degradation and to regional air quality cumulative impacts. The incorporation of construction best management practices as Project conditions of approval would result in a less than significant cumulative air quality impact.**

#### Significant Impact

As discussed on page 4.3-23 and summarized in Chapter 2 (pages 2-5 – 2-8) of the DEIR, and supported by evidence contained within the entirety of

the record of proceedings, grading and construction activities on the site related to the Project will create a cumulative potentially-significant Air Quality impact, which can be mitigated to a less-than-significant level with the preparation, approval and implementation of a basic measures to control dust and exhaust during construction (Exhibit A; Mitigation Measure **MM AIR-1**).

#### Finding

The City Council finds that implementation of MM AIR-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

### **(3) Biological Resources**

**The Project could potentially interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites. The incorporation of a preconstruction nesting bird and bat survey as a Project mitigation measure will result in a less than significant impact.**

#### Significant Impact

As discussed on page 44 of the IS, summarized in Chapter 2 (pages 2-21 –2-22) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, development of the parking structure requires removal of 63 trees, which could potentially impact nesting birds and roosting bats if these species are in the Project area. This potential Biological Resources impact can be mitigated to a less-than-significant level by conducting a preconstruction nesting bird and bat survey prior to issuance of a grading or building permit (Exhibit A; Mitigation Measure **MM BIO-1**).

#### Finding

The City Council finds that implementation of MM BIO-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.



#### **(4) Cultural Resources**

- (a) The Project could potentially cause a substantial adverse change in significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5. The incorporation of archeological resource protections as a Project mitigation measure will result in a less than significant impact.**

##### Significant Impact

As discussed on pages 47 to 48 of the IS, summarized in Chapter 2 (pages 2-22 – 2-23) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, although construction of the Project would have no impact on known archaeological resources, there is a possibility that previously unidentified archaeological resources and subsurface deposits are present within the project area, and Project construction could potentially disturb such resources and subsurface deposits within the Project area. This potential Cultural Resources impact can be mitigated to a less-than-significant level if archaeological resources are found during construction, construction is halted, and Kaiser Permanente retains a qualified archaeologist to assess the previously unrecorded discovery and provide recommendations. (Exhibit A; Mitigation Measure **MM CULT-1**).

##### Finding

The City Council finds that implementation of MM CULT-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- (b) The Project could potentially disturb human remains, including those interred outside of dedicated cemeteries. The incorporation of human remains protections as a Project mitigation measure will result in a less than significant impact.**

##### Significant Impact

As discussed on pages 48 to 49 of the IS, summarized in Chapter 2 (pages 2-23 – 2-24) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, there are no formal cemeteries or known interred human remains within the Project area and no evidence of human remains was identified within the Project area. However, the potential for their presence cannot be entirely ruled out, since construction-related excavation could expose and disturb, or damage previously undiscovered human remains. This Cultural Resources impact can be mitigated to a less-than-significant level if previously unknown human remains are found during construction, construction is halted, and Kaiser Permanente retains a

qualified archaeologist to assess the previously unrecorded discovery and providing immediate notification to the Marin County Coroner and the notification to the NAHC if the remains are Native American. (Exhibit A; Mitigation Measure **MM CULT-2**).

#### Finding

The City Council finds that implementation of MM CULT-2 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

### **(5) Noise - Temporary/Construction Related Noise**

**Impact NOISE-4: Existing noise-sensitive land uses will be exposed to a temporary increase in ambient noise levels due to Project construction activities. The incorporation of construction best management practices as Project conditions of approval will result in a less-than-significant temporary noise impact.**

#### Significant Impact

As discussed on pages 4.5-29 to 4.5-33 and summarized in Chapter 2 (pages 2-8 – 2-12) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, construction noise related to grading and construction activities on the site related to the Project will create a temporary, potentially-significant Noise impact by exposing sensitive receptors and adjacent residences to construction noise that exceeds limits allowed by the City's Noise Ordinance. This Noise impact can be mitigated to a less-than-significant level by implementing best management practices during construction activities, including, but not limited to, constructing temporary noise barriers, equipping all equipment with sound suppression features, limiting idling time on all equipment, preparing a detailed construction management plan and schedule for grading and construction activities, all to minimize exposure time, as further detailed in the MMRP (Exhibit A; Mitigation Measure **MM NOISE-1**).

#### Finding

The City Council finds that implementation of MM NOISE-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and

that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

## **(6) Transportation/Circulation**

Impact TRAF-2: Implementation of the Project would increase traffic volumes on freeway segments and affect levels of the regional network under Existing plus Project Conditions. The incorporation of a Transportation Demand Management (TDM) program and annual monitoring report as a Project mitigation measure will result in a less than significant impact.

### Significant Impact

As discussed on pages 4.6-39 to 4.6-43 and summarized in Chapter 2 (pages 2-14 – 2-15) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, the Project's contribution to AM and PM peak hour trips to the local freeway corridor will create a potentially-significant Transportation/Circulation impact to volume/capacity ratio on the freeway segment between the Miller Creek on- and off-ramps. The Project will contribute to the existing failing condition of LOS conditions on freeway segments in the Project study area. At the Miller Creek off-ramp to Miller Creek on-ramp segment, the Project's contribution would increase the corridor's volume to capacity (v/c) ratio by more than 0.01, which means the Project contributes at least 1-percent or more of the freeway segment capacity, resulting in a significant impact. The significant impact can be mitigated to a less-than-significant level with the implementation of the Project Transportation Demand Management Plan (Exhibit A; Mitigation Measure **MM TRAF-2**).

### Finding

The City Council finds that implementation of MM TRAF-2 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1), Title 14, and California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact would be less than significant.

## **(7) Tribal Cultural Resources**

**The Project could potentially cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is Geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe. The incorporation of tribal cultural protections as a Project mitigation measure will result in a less than significant impact.**

### Significant Impact

As discussed on pages 81 to 84 of the IS, summarized in Chapter 2 (pages 2-27 – 2-28) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, although construction of the Project will have no impact on known tribal cultural resources, there is a possibility that previously unidentified resources and subsurface deposits are present within the project and could be disturbed during Project construction. This Tribal Cultural Resources impact can be mitigated to a less-than-significant level if cultural resources are identified onsite during construction, all work stops immediately within 50 feet of the resource(s) and Kaiser Permanente complies with all relevant State and City policies and procedures prescribed under PRC Section 21074. (Exhibit A; Mitigation Measure **MM TRIBAL-1**). In addition, the implementation of **MM CULT-1** and **MM CULT-2** will also reduce any potentially significant impacts.

#### Finding

The City Council finds that implementation of MM TRIBAL-1, MM CULT-1 and MM CULT-2 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City Council finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The City Council further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

### **D. SIGNIFICANT IMPACTS THAT CANNOT BE FULLY MITIGATED TO A LEVEL OF LESS THAN SIGNIFICANT**

As authorized by Public Resources Code Section 21081(a)(1) and CEQA Guidelines Sections 15091 and 15092, the FEIR is required to identify the significant impacts that cannot be reduced to a less-than-significant level through the incorporation of mitigation measures. The FEIR concluded that although specific mitigation measures have been identified for the following Project Transportation and Circulation impacts, the impacts would nonetheless be considered significant and unavoidable, since the roadway intersections at issue are outside of the City's jurisdiction and require authorization and permits by other agencies. Although the Commission is recommending adoption of the identified mitigation measures as part of Project approval, since the City cannot legally implement mitigation measures outside of its jurisdiction, despite the incorporation of Mitigation Measures outlined in the EIR and in this Resolution, should the City wish to approve the Project notwithstanding these significant and unavoidable impacts, the City Council must adopt a statement of overriding considerations included herein:

#### **(1) Transportation/Circulation**

- a) Implementation of the Project will increase traffic volumes on area roadways and affect levels of service at the local intersections and freeways under Existing plus Project Conditions.**

#### Significant Impact.

The addition of Project traffic at the Lucas Valley Road/Los Gamos Drive side street stop-controlled (unsignalized) intersection will increase vehicle delay during the AM and PM peak hour. As a result of the Project, traffic will degrade the side street stop-controlled approach from LOS C to LOS E during the AM peak hour and LOS A to LOS F during the PM peak hour. As a result, the Project's contribution during the PM peak hour will result in a significant impact because the Project's contribution will worsen the intersection operations to an unacceptable LOS.

#### Finding

As discussed in Chapter 4.6 (pages 4.6-36 – 4.6-39) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the mitigation measures necessary to reduce this significant and unavoidable Transportation and Circulation impact to a less-than-significant level cannot be implemented/authorized by the City of San Rafael alone. Specifically, the identified mitigation measure requires review and approval from the County of Marin and CALTRANS to construct the intersection improvements at Los Gamos Drive and Lucas Valley Road. Therefore, ensuring the implementation of the mitigation for this impact is outside the power of City of San Rafael decision makers and the impact is therefore considered significant and unavoidable. (Exhibit A: Mitigation Measure **MM TRAF-1**). However, the Applicant-Implemented Traffic Improvements alternative (DEIR Alternative 4) would include construction of the necessary intersection signalization.

**b) The Project will contribute to deficient operations of the Lucas Valley Road/Las Gallinas Avenue intersection by increasing the average delay by more than five seconds under Baseline plus Project conditions.**

#### Significant Impact.

The Lucas Valley Road/Las Gallinas Avenue intersection is expected to operate below LOS D during the weekday AM and/or PM peak hour. The Project will contribute to deficient operations by increasing the average delay by more than five seconds.

#### Finding

As discussed in Chapter 4.6 (pages 4.6-46 – 4.6-58) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the mitigation measures necessary to reduce this significant and unavoidable impact to Transportation and Circulation to a less-than-significant level cannot be implemented/authorized by the City of San Rafael. Improvements at the Lucas Valley Road/Las Gallinas Avenue intersection have yet to be identified through the City of San Rafael's *General Plan 2020*. Specifically, since the Las Gallinas Avenue / Lucas Valley Road intersection is not within the City's jurisdiction and is not part of a traffic fee program, intersection improvements have yet to be identified, impacts to the intersection will remain significant and unavoidable.

A fair-share agreement would require Kaiser to contribute funding for future improvements even though there is no identified improvement from the County of Marin. Ultimately, the County of Marin will be responsible for the review, approval and construction of any identified improvements to the

intersection. Therefore, the mitigation for this impact is outside the jurisdiction of City of San Rafael decision makers and is considered significant and unavoidable. (Exhibit A: Mitigation Measure **MM TRAF-3**).

**c) The Project will contribute to deficient operations of the Lucas Valley Road/Las Gamos Drive intersection by increasing the average delay by more than five seconds under Baseline plus Project conditions.**

Significant Impact.

The Lucas Valley Road/Los Gamos Drive intersection is expected to operate at LOS F. The addition of Project traffic will increase vehicle delay during the AM peak hour and PM peak hour by more than five seconds, resulting in a significant impact.

Finding

As discussed in Chapter 4.6 (pages 4.6-36 – 4.6-51) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the mitigation measures necessary to reduce this significant and unavoidable Transportation and Circulation impact to a less-than-significant level cannot be implemented/authorized by the City of San Rafael. In coordination with the City of San Rafael Department of Public Works, the County of Marin Department of Public Works, and CALTRANS, Kaiser Permanente is required to pay a fair share contribution to the reconfiguring and signalization of the Lucas Valley Road/Los Gamos Drive Intersection. The San Rafael *General Plan 2020* Circulation Element Policy C-7 identifies improvements at this intersection, including signalizing the intersection, adding dual westbound left turn lanes, reconfiguring the northbound approach, and removing existing striped channelized islands. The new signal should include traffic signal interconnect and be coordinated with the adjacent interchange signals. Additionally, since most of the intersection is located within the County of Marin's jurisdiction, and part of CALTRANS purview, interagency coordination will be required during design, construction and maintenance of the new signal. Furthermore, a memorandum of understanding (MOU) will be required between the City of San Rafael and the County of Marin to document the future management and maintenance of the intersection and signals since the US 101/Lucas Valley interchange signals and the new Lucas Valley Road / Los Gamos Drive signal would be operated and maintained by one or multiple agencies. The City of San Rafael may also coordinate an MOU with CALTRANS for development and operation of the traffic signal in the CALTRANS right of way. (Exhibit A: Mitigation Measure **MM TRAF-4**).

Ultimately, the identified mitigation measure requires review and approval from the County of Marin and CALTRANS to construct the intersection improvements at Los Gamos Drive and Lucas Valley Road. Therefore, while the MM TRAF-4 will be adopted by the City, the City is unable to ensure that it will be implemented due to the involvement of other public agencies; consequently, this impact is determined to be significant and unavoidable despite the implementation of the cited mitigation.



- d) **The addition of Project-related traffic would exacerbate the Cumulative No Project condition and contribute more than 5 seconds of delay at the Lucas Valley Road/Las Gallinas Avenue intersection.**

Significant Impact.

The Project would contribute additional traffic to local intersections. Improvements to the Lucas Valley Road / Las Gallinas Avenue intersection have yet to be identified through the City of San Rafael's *General Plan 2020*. Although, several vehicle capacity improvements could be considered to mitigate poor operating conditions at the intersection, the feasibility of the potential improvement projects (such as reconfiguring the intersection to remove channelized turn islands or replacing the existing signal with a roundabout) and any potential adverse impacts will require further study and coordination with the City of San Rafael, County of Marin, and the local community.

Finding

As discussed in Chapter 4.6 (pages 4.6-58 – 4.6-62) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the mitigation measures necessary to reduce this significant and unavoidable Transportation and Circulation impact to a less-than-significant level cannot be implemented/authorized by the City of San Rafael. Specifically, since the Las Gallinas Avenue / Lucas Valley Road intersection is not part of a traffic fee program and intersection improvements have yet to be identified, impacts to the intersection will remain significant and unavoidable. A fair-share agreement will require Kaiser Permanente to contribute funding for future improvements even though there is no identified improvement from the County of Marin. Ultimately, the County of Marin will be responsible for the review, approval and construction of any identified improvements to the intersection. (Exhibit A: Mitigation Measure **MM TRAF-3**).

Therefore, while the MM TRAF-3 will be adopted by the City, the City is unable to ensure that it will be implemented due to the involvement of other public agencies; consequently, this impact is determined to be significant and unavoidable despite the implementation of the cited mitigation.

## **E. IMPACT OVERVIEW**

### **(a) Significant Irreversible Environmental Changes**

Pursuant to CEQA Guidelines Section 21100(b)(2)(B), an EIR shall include a discussion of significant irreversible environmental changes that would result from implementation of a project.

CEQA Guidelines Section 15126.2(c) describes irreversible environmental changes in the following manner: "Uses of nonrenewable resources during the initial and continued phases of the Project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also, irreversible damage can result from environmental accidents

associated with the Project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.”

As discussed in Chapter 6.2 (page 6-2) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, construction activities associated with the Project would result in an irretrievable and irreversible commitment of non-renewable resources through the use of construction materials. This would include the use of fossil fuels (such as gasoline, diesel and oil) during the construction period, and the use of earth minerals and ores (such as concrete and steel). The Project would construct a new parking structure and implement associated traffic infrastructure mitigation measure improvements in areas that have already been developed, as well as build out the existing building at 1650 Los Gamos Drive with new medical office uses. Although off-site roadway improvements are required, the overall scope of the improvements have been previously identified in the San Rafael *General Plan 2020*; therefore, the Project would not modify regional access or result in access to a previously inaccessible area. As a proposed medical office use, the Project is not characteristic of a land use type that would result in disturbance or land modifications that could lead to irreversible environmental damage.

Based on the preceding and on the entirety of the record of proceedings, the City Council consequently finds that no significant irreversible effects will result from implementation of the Project.

#### **(b) Growth Inducement**

Pursuant to CEQA Guidelines Section 15126.2(d), a project is considered growth-inducing if it would directly or indirectly foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Examples of projects likely to have significant growth-inducing impacts include extensions or expansions of infrastructure systems beyond what is needed to serve project-specific demand, and development of new residential subdivisions or industrial parks in areas that are currently only sparsely developed or are undeveloped. Typically, redevelopment projects on infill sites that are surrounded by existing urban uses are not considered growth-inducing because redevelopment by itself usually does not facilitate development intensification on adjacent sites.

As discussed in Chapter 6.4 (page 6-3) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project would feature a new use and intensity on the site (medical office) previously developed for a similar use (general office). This new type of use is consistent with the existing pattern of commercial uses in the surrounding area. The intensification of use, as defined, is consistent with the City of San Rafael *General Plan 2020* designation for the subject property and is generally allowed in the office land use designation, although not allowed by the current PD Zoning for the Project site. Therefore, the range of potential environmental impacts, including growth-inducing impacts, considered in the San Rafael *General Plan 2020* EIR for development in the North San Rafael Commercial Center have been evaluated. Furthermore, the Project includes the relocation of specific existing services from areas throughout the City of San Rafael and Marin County. As a result, the Project is not considered growth-inducing.

Based on the preceding and on the entirety of the record of proceedings, the City Council consequently finds that no significant growth-inducing effects will result from implementation of the Project.

## **F. REVIEW OF PROJECT ALTERNATIVES**

The CEQA Guidelines indicate that an EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives.” (Guidelines§ 15126.6[a].)

The Project Alternatives selected for this EIR were formulated considering the Objectives of the City of San Rafael and Kaiser Permanente’s Objectives outlined in Chapter 5 of the DEIR (pages 5-1 - 5-19). Alternatives provide a basis of comparison to the Project in terms of beneficial, significant, and unavoidable impacts. This comparative analysis is then used to consider reasonable, feasible options for minimizing environmental consequences of a project.

The Project Alternatives analyzed in the following sections include:

- No Project/No Medical Office Uses
- Reduced Medical Office Use
- Alternate Parking Structure Location
- Applicant-Implemented Traffic Improvements

### **(1) Alternative 1: No Project/No Medical Office Uses (Status Quo)**

#### Description

The No Project Alternative, as required by CEQA, considers the potential impacts associated with the Project site assuming denial or withdrawal of the Project. As discussed in the DEIR (pages 5-9 through 5-12) and supported by evidence contained within the entirety of the record of proceedings, the No Project / No Medical Office Uses Alternative assumes there will be no new Kaiser Permanente MOB or medical uses at 1650 Los Gatos Drive and the existing commercial building will remain utilized for general office uses. The existing general office and surface parking lot uses will continue, and no new development will occur on the Project site, including a new parking structure or intersection improvements. Kaiser Permanente will continue to use its main medical campus at 99 Montecillo for medical office uses and will have limited ability for modernization of existing spaces.

#### Impacts

The No Project / No Medical Office Uses Alternative would maintain the existing office building on the Project site and no new parking structure or intersection improvements would be proposed. There would be no excavation/grading, tree removal, or change of use to the existing structures. No new short-term air quality, GHG emissions, noise, or traffic impacts would occur during construction at the Project site under this alternative and neither would any potential long-term impacts associated with Project operation. Although some environmental impacts would be avoided under the No Project / No Medical Office Uses Alternative, this alternative would not have the benefits of improved medical facility services for local residents, improved stormwater drainage, improved

pedestrian circulation and bicycle lanes on Lucas Valley Road, and roadway infrastructure improvements. In addition, since the medical services that would have been located at the Project site would need to be provided at other locations, there may be unknown environmental impacts at other locations.

#### Finding

The City Council (1) rejects this No Project / No Medical Office Uses Alternative on the basis that it fails to meet basic project objectives and is infeasible for social and policy reasons; and (2) finds that each and any of these grounds separately and independently provide sufficient justification for rejection of this Alternative.

#### Facts in Support of Finding

- The No Project / No Medical Office Uses Alternative fails to meet any of the Project objectives. For instance:
  - This Alternative would maintain the current uses on site, which would not allow for a new, modern, MOB nor would it relieve pressure on Kaiser Permanente's existing facilities.
  - No new infrastructure or traffic improvements would be included in this Alternative.
  - This Alternative would continue to contribute the same amount of vehicle trips at Kaiser Permanente's main campus at 99 Montecillo Road.
  - Use of the existing office building at 1650 Los Gamos Drive would continue as a general office with daily usage and vehicular trips consistent with a general office building.
- The No Project / No Medical Uses Alternative is also infeasible for policy reasons, as it fails to comply with the intent of the City's *General Plan 2020*, which promotes economic vitality (Policy EV-2 Seek, Retain, and Promote Businesses that Enhance San Rafael) and an overarching vision for the North San Rafael Commercial Center (NH-136. Design Excellence). For instance, an under-utilized Project site and larger geographic area would not be 're-activated' or re-energized along Los Gamos Drive and would not increase the economic vitality of the existing Marin Commons office park.
- From a policy and social perspective, without development of the proposed Project, redevelopment of the Project site would likely be postponed indefinitely, new MOB facilities development would not be created on-site, and Kaiser Permanente would be required to find an alternate location(s) for the Project. In addition, Kaiser Permanente's existing clinics and medical facilities in the North Bay region would not be supplemented or supported as a result of this No Project / No Medical Office Uses Alternative, and, therefore would continue to experience the same operational loads and space challenges with regard to future modernization.

## **(2) Alternative 2: Reduced Medical Office Use**

#### Description

As discussed in the DEIR (pages 5-9 through 5-12) and supported by evidence contained within the entirety of the record of proceedings, the Reduced Medical Office Use Alternative assumes Kaiser Permanente reduces the amount of proposed medical office uses in the existing 1650 Los Gamos Drive office

building. The Reduced Medical Office Use assumptions are based on the traffic analysis results for the proposed Project. The Reduced Medical Office Use Alternative reduces the Project's overall trip generation (thereby resulting in less than significant impacts) by decreasing the amount of medical office use at the Project site from 100 percent to approximately 70 percent and keeping the remaining 30 percent of use as general office. As a result, some of the planned services would no longer be relocated to 1650 Los Gamos Drive and would remain at other existing Kaiser Permanente facilities, primarily at the 99 Montecillo Road Kaiser Permanente San Rafael Medical Center or would be located at an undetermined alternative off-site location(s). The Reduced Medical Office Use Alternative would still require a new parking structure to provide adequate parking on site and meet City Zoning Code requirement, however, the parking structure contemplated by the Project could be reduced by approximately 100 parking spaces. The Reduced Medical Office Use Alternative would require the same entitlements that would be requested as part of the Project.

#### Impacts

Many of the same construction and operational impacts would occur under the Reduced Medical Office Use Alternative, including impacts to Air Quality and Noise. In addition, since Kaiser Permanente would need to find a secondary site(s) to accommodate the remaining 30 percent of uses that would not be located at 1650 Los Gamos, this site(s) may not be as centrally located or have ease of access or available parking. Thus, the Reduced Medical Office Use Alternative could result in the same or more overall trip generation and GHG estimates, though they will not all occur at this location.

#### Finding

The City Council (1) rejects this alternative on the basis that it fails to meet basic project objectives, is infeasible for social and policy reasons, and is not environmentally superior to the proposed project; and (2) finds that each and any of these grounds separately and independently provide sufficient justification for rejection of this Alternative.

#### Facts in Support of Finding

- This Alternative achieves some, but not all, of the Project objectives, including failing to achieve the primary Project objective for a single centralized MOB. In addition:
  - In order to address the remaining 30% of medical office space removed from this Alternative, Kaiser would be required to find alternative locations that may not be as centrally located or have ease of access or available parking.
  - General site improvements included as part of the Project would be included in this Alternative.
  - Kaiser Permanente would continue to require additional medical office space throughout San Rafael and Marin County and, therefore, would continue to experience the same operational loads and space challenges with regard to future modernization at the main hospital campus.

- From a social and policy perspective, Kaiser Permanente would continue to have multiple medical office locations and would therefore continue to impact local neighborhoods or other areas in San Rafael and Marin County with additional vehicle trips.

### **(3) Alternative 3: Alternative Parking Structure Location**

#### Description

As discussed in the DEIR (pages 5-8 through 5-9) and supported by evidence contained within the entirety of the record of proceedings, the Alternative Parking Structure Location Alternative assumes Kaiser Permanente will modify and relocate the Project's proposed parking structure to the surface parking lot to the north of the existing office building (southeast of Los Gamos Drive). This Alternative will result in an overall slightly smaller development footprint but will require additional height (i.e., greater than the three-level structure design included in the proposed Project) to achieve the City's Municipal Code minimum parking requirement for medical office use. The Alternative Parking Structure Alternative will displace the mature landscaping vegetation on the alternate site but will retain the mature landscaping vegetation currently growing around the existing western surface parking lot.

#### Impacts

The Alternate Parking Structure Location Alternative would still contribute the same amount of traffic trips as the Project. The Alternative Parking Structure Alternative would result in less short-term construction by eliminating excavation into the hillside to build the parking structure but would still require the same amount of overall construction disturbance and off-site improvements. Impacts to Air Quality, GHG Emissions, Noise, and Transportation/Circulation would continue to be potentially significant without mitigation implementation. Furthermore, the taller parking structure design, located closer to Lucas Valley Road and without the aid of existing screen trees could potentially present a new visual impact.

#### Finding

The City Council (1) rejects this alternative on the basis that it fails to meet basic Project objectives, does not sufficiently avoid or substantially reduce the Project's significant environmental impacts, and is infeasible for social and policy reasons; and (2) finds that each and any of these grounds separately and independently provide sufficient justification for rejection of this Alternative.

#### Facts in Support of Finding

- The Alternate Parking Structure Location Alternative will not meet Project Objective #7, in that it may create a structure that would be significantly more visibly prominent at the corner of Lucas Valley Road and Los Gamos Drive.
- The Alternative Parking Structure Alternative does not offer any significant environmental advantages in comparison with the Project. The Alternative will include the same amount of operational vehicle trips and result in similar environmental impacts and required mitigation measures. Thus, it does not avoid or substantially lessen the proposed Project's significant and unavoidable impacts.



- The Alternative Parking Structure Alternative is infeasible for policy reasons, as it fails to comply with the intent of the City's *General Plan 2020*, which protect views (Policy CD-5: Views), design consistency (CD-10: Nonresidential Guidelines) and unnecessary light and glare (CD-19: Lighting). Since locating the parking structure on the eastern parcel of the Project site would create a taller structure with impacts to local view corridors, the Alternative will create a new source of light and glare that will not be as effectively screened by existing landscaping as the Project.
- The Alternative Parking Structure Alternative is also infeasible for policy reasons because it will not be consistent with the existing PD 1590 or revised PD design standards or the San Rafael *General Plan 2020* height limits for this area of San Rafael in that it will require a modification to the allowable height restrictions for the District.

#### **(4) Alternative 4: Applicant-Implemented Traffic Improvements**

##### Description

As discussed in the DEIR (pages 5-15 through 5-18) and supported by evidence contained within the entirety of the record of proceedings, the Applicant-Implemented Traffic Improvements Alternative assumes Kaiser Permanente would voluntarily undertake the cost of specific traffic and infrastructure improvements above and beyond what is required by the City's General Plan and the Project's identified fair-share contribution to improve intersection operations at Lucas Valley Road and Los Gamos Drive and the US 101 southbound and northbound ramps.

Mitigation measures identified in Chapter 4.6 of the DEIR (MM TRAF1, MM TRAF-3, and MM TRAF-4) to improve impacted intersections and reduce potential adverse effects to less than significant levels require inter-agency coordination, review and approval of the intersection improvements. As mitigation measures, the impacts can be reduced pursuant to CEQA; however, until the improvements are completed, the potential traffic and circulation conflicts remain. Therefore, the Applicant-Implemented Traffic Improvements Alternative is premised on Kaiser Permanente developing intersection designs and coordinating the review and permitting approval of the improvements before the impact threshold is triggered. As such, the Applicant-Implemented Traffic Improvements Alternative would avoid the significant impacts related to traffic impacts identified with the project, including Impact TRAF-1 and Impact TRAF-4, by voluntarily gaining approvals and constructing the intersection improvements at the Lucas Valley Road and Los Gamos Drive intersection. Permitting and construction of the intersection would still require multi-agency coordination and entitlement review and approval.

A full list of intersection, roadway, and pedestrian improvements to be undertaken as part of this Applicant-Implemented Traffic Improvements Alternative is identified in Table 5-3 of the DEIR (pages 5-16 – 5-17).

##### Impacts

The Applicant-Implemented Traffic Improvements Alternative will contribute the same amount of traffic trips as the Project. However, impacts to Transportation / Circulation (TRAF-1 and TRAF-4) will be reduced to less than significant, while

impacts to Air Quality and GHG Emissions will continue to be potentially significant without mitigation implementation.

#### Finding

The City Council (1) adopts this alternative as the approved “Revised Project” for all of the specific economic, social and environmental considerations stated in the Project findings and in the entirety of the proceedings; and (2) finds that each and any of these grounds separately and independently provide sufficient justification for adoption of this Alternative.

#### Facts in Support of Finding

- The Applicant-Implemented Traffic Improvements Alternative would achieve all Project objectives. In addition, because this alternative would be providing up-front improvements that would improve the existing vehicular and pedestrian circulation network, some of the Project objectives would be further enhanced, including Objective #6.
- Since this Alternative would provide up-front improvements to improve the existing vehicular and pedestrian circulation network, it provides more efficient and improved intersection operations than as originally contemplated under the proposed Project.
- The Applicant-Implemented Traffic Improvements Alternative is identified in the DEIR as the Environmentally Superior Alternative. The Alternative would still contribute the same amount of traffic trips as the proposed Project, however, impacts to Transportation and Circulation would be reduced to less than significant, while impacts to Air Quality and GHG Emissions would continue to be potentially significant without mitigation implementation.
- The Applicant-Implemented Traffic Improvements Alternative creates a funding source and impetus to construct identified off-site improvements to alleviate potential traffic issues at the Los Gamos Drive / Lucas Valley Road intersection.
- The Applicant-Implemented Traffic Improvements Alternative would be consistent with and implement Policy C-6 of the San Rafael *General Plan 2020*.
- The City of San Rafael would benefit from a major monetary contribution of the intersection improvement and the intersection improvement itself, which is identified as an improvement required by the *General Plan 2020*.
- The Applicant-Implemented Traffic Improvements Alternative would commit Kaiser Permanente to funding the identified improvements in addition to paying its Traffic Mitigation Fees, the latter of which could be utilized for other traffic improvements throughout San Rafael.

#### **Approved Alternative for Adoption**

Consistent with CEQA Guidelines Section 15126.6(e), an environmentally superior alternative must be identified among the alternatives that were studied. The DEIR concludes (Chapter 5.9; page 5-18 – 5-19) that the Environmentally Superior Alternative is the Applicant-Implemented Traffic Improvements Alternative for the following reasons:

- The Alternative meets, and in some cases additionally enhances, all Project objectives, including furthering community support of improved highway access and circulation. Furthermore, this Alternative includes

additional circulation improvements, including upgrades to pedestrian sidewalks and bicycle lanes within the Project area.

- The Applicant-Implemented Traffic Improvements Alternative is feasible from policy, social, economic, and environmental standpoints.
- Although Impact TRAF-3 and TRAF-5 would remain significant and unavoidable under the Alternative for reasons discussed in DEIR Chapter 4.6 Transportation and Circulation due to the fact that the mitigation measures identified for the Los Gamos / Las Gallinas intersection are not proposed to be implemented by Marin County in the near future, the Applicant-Implemented Traffic Improvements Alternative would significantly reduce potential impacts to the local circulation network, and avoid significant impacts at the Los Gamos Drive / Lucas Valley Road intersection (Impacts TRAF-1 and TRAF-4). Environmental impacts associated with other potential areas of concern, including air quality and GHG emissions, will be mitigated to less than significant levels in this Alternative, as same under the proposed Project.
- The Applicant-Implemented Traffic Improvements Alternative mirrors the proposed Project in all instances, except for additionally providing up-front improvements to improve the existing vehicular and pedestrian circulation network. As such, the “Project” as proposed under the Applicant-Implemented Traffic Improvements Alternative is fully analyzed in the DEIR, and the findings of this resolution that address the proposed Project are adopted as similarly addressing the Applicant-Implemented Traffic Improvements Alternative.

The City Council, in its review of the Final EIR/Response to Comments (FEIR), considers this Applicant Implemented Traffic Improvements Alternative preferable to the originally proposed Project for all the reasons and evidence presented above and as included in these findings based on the entirety of the proceedings. As such, the City Council hereby approves of the Applicant-Implemented Traffic Improvements Alternative as the adopted “Revised Project.”

**BE IT FURTHER RESOLVED**, that the City Council adopts the following Statement of Overriding Considerations:

**G. STATEMENT OF OVERRIDING CONSIDERATIONS**

The City Council adopts the following Statement of Overriding Considerations based on information in the FEIR and all other information in the record, including the proposal of public benefits outlined in the July 25, 2018 letter from Judy Coffey, Kaiser Permanente’s SVP/Area Manager Marin/Sonoma Service Area to City Manager, Jim Schutz (on file with the Department of Community Development). The City Council recognizes that significant and unavoidable impacts would result from implementation of the Project.

Pursuant to Section F of this Resolution, the City Council approves of the Applicant-Implemented Traffic Improvements Alternative as the adopted “Revised Project.” The City Council hereby declares that, pursuant to State CEQA Guidelines Section 15093, the City Council has balanced the benefits of the Revised Project against any

unavoidable environmental impacts in determining whether to approve the Revised Project. Pursuant to the State CEQA Guidelines, if the benefits of the Revised Project outweigh the unavoidable adverse environmental impacts, those impacts may be considered “acceptable.”

The City Council hereby declares that the EIR has identified and discussed significant effects which may occur as a result of the Revised Project. With the implementation of the Mitigation Measures discussed in the EIR and adopted by this Resolution, these effects can be mitigated to a level of less than significant except for the two unavoidable significant impacts discussed in Section F of this Resolution.

The City Council hereby declares that it has made a reasonable and good faith effort to eliminate or substantially mitigate the potential impacts resulting from the Revised Project. The City Council hereby declares that to the extent any Mitigation Measures recommended in the EIR would not be incorporated, such Mitigation Measures are infeasible because they would impose restrictions on the Revised Project that would prohibit the realization of specific economic, social and other benefits that the City Council finds outweigh the unmitigated impacts.

The City Council further finds that except for the Applicant-Implemented Traffic Improvements Alternative, all other alternatives set forth in the EIR are rejected as being either inconsistent with project objectives, infeasible because they would prohibit the realization of specific policy, social and other benefits that this City Council finds outweigh any environmental benefits of the alternatives or are otherwise not environmentally superior.

The City Council further finds that the Applicant-Implemented Traffic Improvements Alternative and the Public Benefits provided by the Applicant (as listed below) off-set the potentially significant and unavoidable impacts identified in Impacts TRAF-3 and TRAF-5 to the Las Gallinas Ave/ Lucas Valley Rd intersection. Specifically, given that the intersection is outside the City’s jurisdiction and there is no current identified improvement for this County intersection, and any modifications would require public outreach prior to design approval, the City Council hereby finds that the Applicant’s public benefit offer outweighs its impacts.

The reasons discussed below summarize the benefits, goals and objectives of the Revised Project, and provide, in addition to the findings, the detailed rationale for adoption of the Revised Project. Collectively, these overriding considerations are sufficient to outweigh the adverse environmental impacts of the Revised Project.

The City Council hereby declares that, having reduced the adverse significant environmental effect of the Project to the extent feasible by recommending adoption of the Mitigation Measures contained in this Resolution, having considered the entire administrative record on the Project, and having weighed the benefits of the Revised Project against its unavoidable adverse impact after mitigation, the City Council finds that each of the following social, economic and environmental benefits of the Revised Project separately and individually outweigh the single potential unavoidable adverse impact and render that potential adverse environmental impact acceptable based upon the following overriding considerations:

**1. Furtherance of City Goals and Policies**

The Revised Project will implement, and is consistent with, City goals, objectives, policies and programs for the Project Site described in the following City General Plan Elements: Land Use, Neighborhood, Sustainability, Circulation, Economic Vitality, and Safety, as thoroughly analyzed in the Project DEIR. The Revised Project will also support San Rafael's Objectives and Design Guidelines for the North San Rafael Commercial Center Neighborhood by proposing a design that provides an entry and focal point off Los Gamos Drive, provides building and parking area setbacks improved with drought-tolerant landscaping, and screens mechanical and other roof top equipment from view. Further, building interiors will be accented with artwork created by local artists.

**2. Development of an Existing Infill Site**

The Revised Project will facilitate the development of an infill site in an existing urbanized area in San Rafael and will result in regional environmental benefits because it will not require the extension of utilities or roads into undeveloped areas, is convenient to major arterials, services and transit, including a SMART shuttle, and will not directly or indirectly lead to the development of greenfield sites in the San Francisco Bay Area.

**3. Significant Community Benefits and Traffic/Infrastructure Investments**

The Revised Project, as defined and detailed in the DEIR's Alternative 4: Applicant-Implemented Traffic Improvements, results in economic and community benefits to the City by providing more efficient and improved intersection operations. As explained in the DEIR, Kaiser Permanente will voluntarily construct identified traffic and infrastructure improvements at Los Gamos Drive and Lucas Valley Road above and beyond what is required by the City's General Plan and the Project's identified fair-share contribution in order to improve intersection operations and reduce Revised Project impacts to less than significant. Intersection improvements include grading and restriping, traffic signal installation, new sidewalks and curbs, pedestrian level lighting, and an extension of a Class II bicycle lane.

In addition, as an additional community benefit and voluntary Revised Project contribution, Kaiser Permanente offers to fully fund these identified intersection improvements—at an approximate cost of \$1,050,000—with no expectation of reimbursement by the City and County as initially contemplated in the DEIR.

This voluntary contribution is in addition to \$1,855,502 to be assessed by the City as a Project Development Impact Fee for Traffic Mitigation to be used toward future citywide circulation and improvement projects identified in the City's General Plan.

**4. Increased Economic Impacts to the City of San Rafael**

The Revised Project will positively contribute to the City's local economy through new capital investment, as well as through retaining Kaiser's approximately 315 employees in the City and adding an additional 174 construction and trades jobs at peak construction. These employees are a primary source of potential business as a result of their patronizing restaurants, shops and cafes.

**5. Enhanced Public Safety and Public Health**

The Revised Project will provide a major medical care facility to serve existing and future demand in the City of San Rafael and greater Marin region, which will in turn result in an increase in the quality and efficiency of medical care delivery to patients. The Revised Project will supplement and support existing Kaiser medical offices, hospitals, and other facilities in the region that are currently constrained in their ability to enhance existing services or to renovate clinical areas. The Revised Project will also provide integrated care options for local residents at a conveniently located facility with easy access to the freeway and proximity to public transit options.

As part of Kaiser Permanente's Transportation Demand Management (TDM) plan intended to reduce midday and peak hour vehicle trips, the MOB will include a small café serving healthy meals and snacks, and healthy cooking demonstrations and nutrition talks will be available to members, staff, and nonmembers. The café will operate Monday-Saturday between the hours of 8am and 6pm.

In addition, as an ancillary use to the Revised Project's proposed primary care medical uses, Kaiser Permanente will relocate and expand its Health Education Center—a free and a valuable resource for individuals to access current information on health and wellness and disease management and online tools to help manage health conditions. Although Kaiser Permanente's Health Education Center has always been open to the public, as part of the Project it will now be centrally located with greater accessibility to those who may be on campus or prescribed its use as medical follow up (e.g., smoking cessation, etc.). The expanded Health Education Center will provide:

- a. Health Education professionals available to assist with online health information searches, Monday-Friday, 9am- 5pm;
- b. Internet access to kp.org, My Doctor Online, the Kaiser Permanente Clinical Library, and other evidence-based health-related sites;
- c. Blood pressure self-check equipment;
- d. Body Mass Index scale and body fat composition analyzer;
- e. Health information tip sheets (electronic and soft copy); and
- f. Resting metabolic rate testing with weight management education, available to members and nonmembers for a nominal fee.

The Health Education Center also offers classes to community members, including a no-cost, six-week smoking cessation program and classes on creating an Advance Health Care Directive.

## **6. Implementation of Sustainable Development Strategies**

The Revised Project will implement a comprehensive environmental sustainability strategy, including complying with Title 24 (California Energy Efficiency Standards) and seeking to achieve a Certified Leadership in Energy and Environmental Design (LEED) Gold certification or equivalent. In order to achieve a high level of sustainability and a LEED Gold rating, Kaiser Permanente will also implement many of its current green strategies, such as:

- a. Solar panel distribution on the Project site is anticipated to provide much of the electrical needs at the building and parking structure;



- b. 39 Electric Vehicle charging stations will be installed at the MOB and parking structure, which exceeds the current local requirement and promotes Clean Vehicle use;
- c. Shuttles to transport members and staff from other local Kaiser Permanente facilities and the regional SMART rail service;
- d. Standard-55 American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) compliance, a 20% better energy performance than standard ASHRAE;
- e. Energy submetering for power, gas and water for optimal measurement and verification ability for post occupancy;
- f. Direct Digital Control HVAC system for maximum energy savings;
- g. High efficiency filtration for better indoor air quality;
- h. 100% LED lighting systems with occupancy sensors throughout building;
- i. High efficiency exterior that will reduce light pollution and save energy;
- j. Ultra-low flow water fixtures, including toilets and sinks;
- k. Photovoltaic thermal system that leverages the heat created in the photovoltaic system to heat the building water supply;
- l. Recycled water for landscaping irrigation, toilets, cooling towers and closed loop hydronic system;
- m. DIRT Walls, an innovative, modular wall system that allows for future flexibility and reduction in initial construction waste and duration;
- n. Bike storage and racks for physicians, staff, and members;
- o. On-site showers for staff and physicians; and,
- p. Use of PVC-free materials, low or no volatile organic compound (VOC) free paints, CFC-free refrigerants, formaldehyde-free casework, and use of recycled building materials.

## **7. Greenhouse Gas Emissions Reduction and Congestion Relief**

The Revised Project incorporates a TDM plan that will encourage alternate modes of transportation other than single-occupancy vehicles. The following TDM plan will be provided:

- a. A TDM manager who is responsible for, but not limited to, developing and disseminating transportation information, aiding employees in the selection of transportation options, and communicating available transit alternatives;
- b. An on-line transit information center, as part of the internal website that provides information on the Kaiser Permanente TDM, that describes current public transit, vanpools, carpools and shuttle services serving the area;
- c. A carpool and vanpool matching program;
- d. Commuter subsidy for bicycle, transit or car/vanpool use (current subsidy is \$60/month);
- e. Pre-tax commuter spending accounts;
- f. Guaranteed Ride Home program; and
- g. Local Kaiser Shuttle to shuttle employees to and from SMART Station and other Kaiser facilities in the City of San Rafael.

The Revised Project will also provide designated on-site bicycle parking, as well as dedicated parking for carpool/vanpools and electric charging stations for electric vehicles.

The Project at 1650 Los Gamos Drive would promote sustainability by providing a centralized medical office facility that is in close proximity for all Marin residents. As

noted above, patients currently visit several different Kaiser facilities throughout Marin County. The development of the MOB should eliminate current vehicle trips traveled through existing neighborhoods in San Rafael, which will, in turn reduce greenhouse gas emissions and other related hazards.

#### **H. ADOPTION OF MITIGATION MONITORING AND REPORTING PROGRAM**

Pursuant to Public Resources Code section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program attached to this Resolution as Exhibit A, to be made a condition of approval of the Revised Project. In the event of any inconsistencies between the Mitigation Measures as set forth herein and the Mitigation Monitoring and Reporting Program, the Mitigation Monitoring and Reporting Program shall control.

#### **I. STAFF DIRECTION**

A Notice of Determination shall be filed with the County of Marin and the State Clearinghouse within five (5) working days of final Project approval.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 17th of September 2018, by the following vote, to wit:

:

AYES: COUNCILMEMBERS

NOES: COUNCILMEMBERS

ABSENT: COUNCILMEMBERS

SAN RAFAEL CITY COUNCIL

BY: \_\_\_\_\_  
LINDSAY LARA, City Clerk

Exhibit A – Mitigation Monitoring and Reporting Program (MMRP)

**EXHIBIT A: MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<b>Aesthetics</b>					
<b>MM AES-1:</b> Prior to the issuance of any building permits, the Project applicant shall submit to the satisfaction of the Community Development Department Director, Project building plans that include a photometric lighting study demonstrating that outdoor lighting fixtures meet the requirements of the California Energy Code (known as Part 6, Title 24 of the California Code of Regulations).	Applicant/Contractor	Planning Department/ Building Division	City of San Rafael Planning Department to confirm photometric study and lighting plan.  City of San Rafael Building Department to review Plan for compliance with required lighting specifications	Prior to issuance of building permit.	Verified by:  Date:
<b>Air Quality</b>					
<b>MM AIR-1. Include basic measures to control dust and exhaust during construction.</b> During any construction period ground disturbance, Kaiser Permanente shall ensure that the Project contractor implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below would reduce the air quality impacts associated with grading and new construction to a less than significant level. The contractor shall implement the following best management practices that are required of all projects:	Applicant/Contractor	Planning Department/ Building Division	City of San Rafael Planning Department to confirm site and equipment specifications are identified on applicable construction plans and specifications.	Prior to issuance of building permit.	Verified by:  Date:

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<ol style="list-style-type: none"> <li>1) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.</li> <li>2) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.</li> <li>3) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.</li> <li>4) All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).</li> <li>5) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.</li> <li>6) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.</li> <li>7) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</li> <li>8) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.</li> </ol>			City of San Rafael Building Division to inspect site during construction to ensure compliance with Project construction plans.	During construction	
<b>Biological Resources</b>					
<b>MM BIO-1:</b> Prior to issuance of a grading or building permit, the Project sponsor shall conduct a preconstruction nesting bird and bat survey. Preconstruction surveys shall include the following: <ol style="list-style-type: none"> <li>1) Perform any vegetation trimming and/or removal outside of the</li> </ol>	Applicant/Biologist/ Contractor	Planning Department	City of San Rafael Planning to review and approve a qualified biologist.	Prior to issuance of building permit.	Verified by: Date:

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
bird nesting season (Sept. 1 – Feb. 14); 2) Provide a worker environmental awareness training for construction personnel; 3) Perform preconstruction surveys for nesting migratory birds by a qualified biologist no more than 72 hours prior to the start of construction for activities occurring during the breeding season (February 15 to August 31); and 4) If work is to occur within 300 feet of active raptor nests or 50 feet of active passerine nests, non-disturbance buffers will be established at a distance sufficient to minimize disturbance.			Conduct pre-construction survey per time frames described in Mitigation Measure BIO-1.  Follow protocol described in Mitigation Measure BIO-1 during construction.	Prior to construction  During construction	
<b>Hydrology and Water Quality</b>					
<b>MM HYDRO-1: Prior to grading activities, the Project applicant shall prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements of the statewide Construction General Permit.</b> The SWPPP shall be prepared by a Qualified SWPPP Developer (QSD). The SWPPP shall include the minimum Best Management Practices (BMPs) required for the identified risk level. The SWPPP shall be designed to address the following objectives:  1) All pollutants and their sources, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction activity are controlled;  2) Where not otherwise required to be under a Regional Water Quality Control Board permit, all non-stormwater discharges are identified and either eliminated, controlled, or treated;  3) Site BMPs are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity; and  4) Stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.  5) BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction or the Caltrans Stormwater Quality Handbook Construction Site BMPs Manual.	Applicant/Contractor	Building Department / Public Works/ RWQCB	City of San Rafael / RWQCB to review and approve SWPPP  Implement BMPs prior/during construction	Prior to issuance of building permit.  Field inspections during construction	<i>Verified by:</i> <i>Date:</i>

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<p><b>MM HYDRO-2:</b> Prior to a certificate of occupancy, the Project applicant shall verify that operational stormwater quality control measures that comply with the requirements of the current Phase II Small MS4 Permit have been implemented. Responsibilities include but are not limited to:</p> <ol style="list-style-type: none"> <li>1) Designing BMPs into Project features and operations to reduce potential impacts to surface water quality and to manage changes in the timing and quantity of runoff associated with operation of the Project. These features shall be included in the design-level drainage plan and final development drawings.</li> <li>2) The proposed Project shall incorporate site design measures and Low Impact Development design standards, including minimizing disturbed areas and impervious surfaces, infiltration, harvesting, evapotranspiration, and/or bio-treatment of stormwater runoff.</li> <li>3) The project applicant shall establish an Operation and Maintenance Plan. This plan shall specify a regular inspection schedule of stormwater treatment facilities in accordance with the requirements of the Phase II Small MS4 Permit.</li> <li>4) Funding for long-term maintenance of all BMPs shall be specified.</li> </ol>	Applicant/Engineer	Public Works/Planning Department/ RWQCB	<p>City of San Rafael DPW reviews Project Applicant Checklist for NPDES Permit Requirements and Post-Construction BMP Operation and Maintenance Plan</p> <p>Implement BMPs prior/during to construction</p> <p>Review annual monitoring report</p>	<p>Prior to certificate of occupancy</p> <p>Field inspections during construction</p> <p>Post-construction</p>	<p>Verified by:</p> <p>Date:</p>
<b>Noise</b>					
<p><b>MM NOISE-1. Incorporate best management practices during Project construction activities.</b> Reasonable regulation of the hours of construction, as well as regulation of the arrival and operation of heavy equipment and the delivery of construction material, are necessary to protect the health and safety of persons, promote the general welfare of the community, and maintain the quality of life. In compliance with the City's Municipal Code, the Project shall adhere to the allowable construction hours of 7:00 a.m. to 6:00 p.m. on weekdays and 9:00 a.m. to</p>	Applicant/Contractor	Planning Department/ Building Department	City of San Rafael Planning / Building to review and approve project specifications and grading and construction plans for inclusion of this measure into specifications.	Prior to issuance of building permit.	<p>Verified by:</p> <p>Date:</p>



Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<p>6:00 p.m. on Saturdays. Construction activities are prohibited on Sundays and national holidays. Additionally, the construction crew shall adhere to the following construction best management practices to reduce construction noise levels emanating from the site and minimize disruption and annoyance at existing noise-sensitive receptors in the Project vicinity. Construction Best Management Practices</p> <p>In order to reduce potential significant impacts from temporary construction activities, Kaiser Permanente shall be required to develop a construction noise control plan, including, but not limited to, the following available controls:</p> <ol style="list-style-type: none"> <li>1) Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment. Temporary noise barrier fences would provide a 5 dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps.</li> <li>2) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.</li> <li>3) Unnecessary idling of internal combustion engines should be strictly prohibited.</li> <li>4) Locate stationary noise-generating equipment, such as air compressors or portable power generators, as far as possible from sensitive receptors as feasible. If they must be located near receptors, adequate muffling (with enclosures where feasible and appropriate) shall be used to reduce noise levels at the adjacent sensitive receptors. Any enclosure openings or venting shall face away from sensitive receptors.</li> <li>5) Utilize "quiet" air compressors and other stationary noise sources where technology exists.</li> </ol>			Implement noise reduction measures during construction hours	Field inspections during construction	

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<p>6) Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the Project site during all Project construction.</p> <p>7) Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.</p> <p>8) Route construction-related traffic along major roadways and as far as feasible from sensitive receptors. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the Project site.</p> <p>9) The contractor shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.</p> <p>10) Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.</p> <p>11) The implementation of the reasonable and feasible controls outlined above would reduce construction noise levels emanating from the site by 5 to 10 dBA in order to minimize disruption. With the implementation of these controls, as well as the Municipal Code limits on allowable construction hours, and considering that construction is temporary, the impact would be reduced to a less-than-significant level.</p>					

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<b>Transportation and Circulation</b>					
<p><b>MM TRAF-1. Signalize Lucas Valley Road / Los Gamos Drive.</b> In coordination with the City of San Rafael, the County of Marin Department of Public Works, and Caltrans, Kaiser Permanente shall pay the fair share cost to signalize the Lucas Valley Road / Los Gamos Drive intersection to mitigate poor operating conditions. Signalizing the intersection is consistent with improvements identified in the San Rafael General Plan 2020. Due to its close proximity to the US-101 Ramp terminal intersections, the new signal should include traffic signal interconnect and be coordinated with the adjacent interchange signals. Additionally, interagency coordination will be required during design, construction and maintenance of the new signal. Therefore, a memorandum of understanding (MOU) will be required between the City of San Rafael and the County of Marin to document the management and maintenance of the new signal, since the US 101/Lucas Valley interchange signals and the new Lucas Valley Road / Los Gamos Drive signal would need to be operated and maintained by one or multiple agencies.</p> <p>Signalizing the intersection would mitigate the project impact to a <b>less than significant</b> impact. However, implementation of the mitigation measure requires the intersection improvements to be fully funded and constructed. Therefore, until and unless the MOU and fair-share contributions are finalized, and the design and construction of the intersection is permitted and approved, the Project will result in a <b>significant and unavoidable</b> impact.</p>	Applicant/Contractor	Public Works/ Planning Department/ County of Marin/ Caltrans	<p>City of San Rafael to prepare MOU prior to Project approval.</p> <p>Review MOU and project plans to ensure measure is implemented.</p> <p>Installation of signal / conduit</p>	<p>Prior to final occupancy</p> <p>Site inspection post-construction</p>	<p>Verified by:</p> <p>Date:</p>
<p><b>MM TRAF-2. Kaiser Permanente shall implement additional TDM measures.</b> Kaiser Permanente shall implement a TDM program, as described in Chapter 3: <i>Project Description</i> and Section 4.6.4.2: <i>Transportation Demand Management Considerations</i> of this traffic impact</p>	Applicant/Contractor	Public Works/ Planning Department	City of San Rafael Planning/DPW to review TDM to ensure measures are implemented.	Prior to final occupancy	<p>Verified by:</p> <p>Date:</p>

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<p>chapter (Section 3.1.1 of the 1650 Los Gamos Drive FTIA). Implementation of these TDM strategies would go beyond what is required as part of the PD District, with the goal of reducing employee vehicle trips, thereby reducing the Project's impact on the regional network.</p> <p>Based on a quantitative assessment of the TDM measures proposed in the <i>1650 Los Gamos Drive FTIA</i>, the TDM strategies may yield a Project vehicle trip generation reduction of up to 12-percent between the Miller Creek Off-Ramp and Miller Creek On-Ramp. If maximally effective, implementation of the Project's TDM strategies would result in a project trip reduction of up to 10-15 AM peak hour trips along this segment, which would result in a project contribution of less than a 0.01 increase in volume to capacity ratio. As presented in the 1650 Los Gamos Drive FTIA, implementation of the Project's TDM measures will achieve this reduction, however, Kaiser will annually quantitatively analyze and monitor employee vehicle trip generation data via comprehensive employee surveys and make adjustments to its TDM measures as needed to achieve the stated reduction.</p> <p>As described in the 4.6.4.2: <i>Transportation Demand Management Considerations</i> and the Fehr &amp; Peers <i>1650 Los Gamos Drive FTIA</i>, Kaiser Permanente shall conduct an annual employee survey and prepare a monitoring report that evaluates the effectiveness of the Project's TDM Plan. The TDM program will be submitted to the City of San Rafael for comment and review. Kaiser Permanente will coordinate with the City of San Rafael, as necessary. The annual survey shall demonstrate how the TDM measures reduce the Project's impact to peak-hour volume to capacity ratio for the Miller Creek on and Off Ramp.</p>				Applicant to submit report by December 1 <sup>st</sup> , annually.	

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<p><b>MM TRAF-3. Improve Intersection Operations at Lucas Valley Road/Las Gallinas Avenue.</b> Improvements at the Lucas Valley Road/Las Gallinas Avenue intersection have yet to be identified through the City of San Rafael's General Plan 2020; however, several vehicle capacity improvements (such as reconfiguring the intersection to remove channelized turn islands or replacing the existing signal with a roundabout) may be considered by the City of San Rafael to mitigate poor operating conditions at the intersection. Capacity increasing improvements include various trade-offs, however. For example, adding capacity could facilitate more vehicular traffic but this could also have an adverse impact to pedestrians and bicyclists and result in the diversion of more pass-through traffic along Las Gallinas Avenue and an increase in VMT. Although mitigation is possible at this intersection to address Project impacts, the intersection is outside of the City's jurisdiction and specific improvements have yet to be identified by either the City of San Rafael or the County of Marin. As such, the feasibility of potential mitigations will require further study and coordination with local neighborhood groups, the City of San Rafael, and the County of Marin, who operates and maintains the existing traffic signal. Since the City cannot legally implement mitigation measures outside of its jurisdiction, this potential mitigation is infeasible from both a legal and public policy standpoint. Ultimately, the City of San Rafael, in coordination with the County of Marin, would be responsible for implementing improvements, of which Kaiser Permanente would pay its fair share; however, as discussed above, since the intersection is not part of a traffic fee program and intersection improvements have yet to be identified, the Project would result in a <b>significant and unavoidable</b>.</p>	Applicant/Contractor	Public Works/ Planning Department/ County of Marin	Review MOU to ensure measure and fair-share contribution is implemented.	Prior to final occupancy	<p>Verified by:</p> <p>Date:</p>

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<p><b>MM TRAF-4. Signalize and Reconfigure the Lucas Valley Road/Los Gamos Drive Intersection.</b> In coordination with the City of San Rafael Department of Public Works, the County of Marin Department of Public Works, and Caltrans, Kaiser Permanente shall pay a fair share contribution to the reconfiguring and signalization of the Lucas Valley Road/Los Gamos Drive Intersection. The San Rafael <i>General Plan 2020</i> (Exhibit 21 #2) identifies improvements at this intersection, including signalizing the intersection, adding dual westbound left turn lanes, reconfiguring the northbound approach, and removing existing striped channelized islands, as illustrated in <b>Figure 4.6-13</b>. Due to its close proximity to the US-101 Ramp terminal intersections, the new signal should include traffic signal interconnect and be coordinated with the adjacent interchange signals. Additionally, since the majority of the intersection is located within the County of Marin jurisdiction, interagency coordination will be required during design, construction and maintenance of the new signal. Furthermore, a memorandum of understanding (MOU) will be required between the City of San Rafael and the County of Marin to document the management and maintenance of the intersection and signals since the US 101/Lucas Valley interchange signals and the new Lucas Valley Road / Los Gamos Drive signal would be operated and maintained by one or multiple agencies.</p> <p>Implementing these improvements would mitigate the Project's impact to <b>less than significant</b>. However, until the intersection is fully funded, approved by the referenced public agencies, and constructed, the impact to the level of service would remain. Therefore, until and unless the MOU and fair-share contributions are finalized, the design and construction of the intersection is permitted and approved by all parties, the Project will result in a <b>significant and unavoidable</b> impact.</p>	Applicant/Contractor	Public Works/ Planning Department/ County of Marin/ Caltrans	<p>Review MOU and project plans to ensure measure is implemented.</p> <p>Installation and construction of traffic signal and associated improvements</p>	Prior to final occupancy	<p>Verified by:</p> <p>Date:</p>

Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<b>Cultural Resources</b>					
<b>MM CULT-1: Protect Archaeological Resources Identified during Construction:</b> The Project sponsor shall ensure that construction crews stop all work within 100 feet of the discovery until a qualified archaeologist can assess the previously unrecorded discovery and provide recommendations. Resources could include subsurface historic features such as artifact-filled privies, wells, and refuse pits, and artifact deposits, along with concentrations of adobe, stone, or concrete walls or foundations, and concentrations of ceramic, glass, or metal materials. Native American archaeological materials could include obsidian and chert flaked stone tools (such as projectile and dart points), midden (culturally derived darkened soil containing heat-affected rock, artifacts, animal bones, and/or shellfish remains), and/or groundstone implements (such as mortars and pestles).	Applicant/Contractor	Planning Department	Applicant to retain qualified archaeologist to implement protocol described in Mitigation Measure CULT-1	Prior to and during construction	Verified by: Date:
<b>MM CULT-2: Protect Human Remains Identified During Construction:</b> The Project proponent shall treat any human remains and associated or unassociated funerary objects discovered during soil-disturbing activities according to applicable State laws. Such treatment includes work stoppage and immediate notification of the Marin County Coroner and qualified archaeologist, and in the event that the Coroner's determination that the human remains are Native American, notification of NAHC according to the requirements in PRC Section 5097.98. NAHC would appoint a Most Likely Descendant (MLD). A qualified archaeologist, Project proponent, County of Marin, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of any human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5[d]). The agreement would take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters.	Applicant/Contractor	Building Department/ Planning Department	City of San Rafael Planning to verify mitigation measure on construction plans.  Applicant to retain qualified archaeologist to implement protocol described in Mitigation Measure CULT-2	Prior to issuance of grading permit  During construction	Verified by: Date:



Mitigation Measures	Implementation Responsibility	Agency Responsible for Monitoring	Monitoring and Reporting Action	Monitoring Schedule	Compliance Verification
<b>MM TRIBAL-1:</b> Implementation of the unanticipated discovery measures outlined in Section V(b) and (d) above, address the potential discovery of previously unknown resources within the project area. If significant tribal cultural resources are identified onsite, all work would stop immediately within 50 feet of the resource(s) and the project applicant would comply with all relevant State and City policies and procedures prescribed under PRC Section 21074.	Applicant/Contractor	Planning Department/ Federated Indians of Graton Rancheria	Applicant to immediately retain Tribal Historic Preservation Officer (THPO) to implement protocol described in Mitigation Measure TRIBAL-1	During construction	<i>Verified by:</i> <i>Date:</i>

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE SAN RAFAEL CITY COUNCIL APPROVING AN  
AMENDMENT TO PLANNED DEVELOPMENT (PD-1590) ZONING TO: 1)  
SEPARATE 1650 LOS GAMOS DRIVE FROM EXISTING PD-1590 AND 2)  
CREATE A NEW PD ZONING DISTRICT FOR 1650 LOS GAMOS DRIVE WITH  
LAND USE REGULATIONS AND DEVELOPMENT STANDARDS TO ALLOW  
MEDICAL OFFICE USE IN ADDITION TO GENERAL OFFICE USES  
(KAISER MEDICAL OFFICE BUILDING AT 1650 LOS GAMOS DR  
- APN's 165-220-12 &13)**

**WHEREAS**, in 1972, the City of San Rafael adopted an Administrative Professional / Planned Unit Development Administrative Professional District (AP and PUD-AP District) establishing Lucas Green I for the 1600 Los Gamos Drive property. The 38.4-acre Lucas Green Master Plan was adopted to permit development of general office, administrative office, a computer center and associated parking and related uses for the specific parcels within the Plan Area.

**WHEREAS**, in 1979, the overlaying zoning district was amended (to PD-1350 District) to allow the construction of Lucas Green II at 1650 Los Gamos Drive with the condition requiring a Transportation Service Management (TSM) Plan. The PD District change was approved to allow two office buildings: a 340,000 sq. ft. computer center, and a 150,000 sq. ft. computer and office building with 1,296 parking spaces. In 1990, PD-1350 was further amended (to PD-1590) to include the TSM as a requirement; and

**WHEREAS**, On February 21, 2017, Kaiser Foundation Health Plan (Kaiser or Kaiser Permanente) submitted project applications to the City of San Rafael Community Development Department for a Use Permit (UP17-005), an Environmental and Design Review Permit (ED17-001), a Zone Change (ZC17-001) to amend the existing Planned Development (PD)-1590 District for the Marin Commons, and a Sign Program Amendment (SP17-002) for the conversion of an existing approximately 148,000-square-foot office building to medical office uses and the construction of an up to 511-space parking structure (Project) on the western parcel of a 11.2-acre property at 1650 Los Gamos Drive; and

**WHEREAS**, Kaiser Permanente's application for the PD rezoning proposes to sever the 1650 Los Gamos Drive property from the larger PD-1590 Zoning District that encompasses both the 1600 Los Gamos Drive and 1650 Los Gamos Drive properties, and create a new separate PD Zoning District for the 1650 Los Gamos Drive property only that would allow for medical office use, in addition to general office and other ancillary uses; and

**WHEREAS**, a proposed PD zoning for Kaiser Permanente (Development Plan) is presented in attached Exhibit B, incorporated herein by reference. The PD zone proposes to:

- a. Sever 1650 Los Gamos Drive from existing PD-1590;
- b. Create a new PD Zoning District for the 1650 Los Gamos Drive property;
- c. Establish permitted land uses in the new PD District, including medical office uses in addition to general office and other ancillary uses; and

- d. Establish development standards, including parking requirements for the new PD District; and

**WHEREAS**, upon review of the subject applications, an Initial Study was prepared on June 9, 2017, consistent with the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), which found that there could be potentially significant impacts to the environment in the following areas: Air Quality, Greenhouse Gas Emissions, Land Use, Noise, Transportation and Circulation, and Project Alternatives; and

**WHEREAS**, on June 27, 2017, the Planning Commission (Commission) held an appropriately-noticed public scoping hearing on the Notice of Preparation (NOP) for the preparation of an Environmental Impact Report (EIR) to assess the impacts of the Project. The Planning Commission directed staff to prepare an EIR for the Project pursuant to CEQA to address the following issues, Aesthetics, Air Quality, Greenhouse Gas Emissions, Land Use and Planning, Noise, Traffic and Transportation, and Project Alternatives, as per the Initial Study previously prepared for the Project; and

**WHEREAS**, on September 6, 2017, the City of San Rafael Design Review Board (DRB) conducted a duly-noticed public meeting and reviewed the conceptual plans submitted for the Project. The DRB generally expressed support for the proposed parking structure design but requested modifications to the façade to hide the “parking garage” look and requested that the structure be set back from the road; and

**WHEREAS**, on April 13, 2018, Kaiser Permanente resubmitted a revised parking structure design proposing construction of a 473-space, three-level-plus-upper ramp parking structure at the same location as originally proposed; and

**WHEREAS**, the Draft EIR (DEIR) was completed and a Notice of Completion (NOC) was filed and the DEIR was made available and circulated for a 45-day public comment period, beginning on March 8, 2018 and closing on April 23, 2018; and

**WHEREAS**, on April 24, 2018, the Planning Commission held a duly-noticed public hearing to accept comments on the DEIR and directed staff to prepare a Final Environmental Impact Report (FEIR); and

**WHEREAS**, on May 22, 2018, the DRB conducted a duly-noticed public meeting and reviewed the design of the formal applications. The Board reviewed the Project and voted unanimously to continue the matter to date uncertain, subject to specific consensus recommendations; and

**WHEREAS**, on July 2, 2018, based on feedback from the City of San Rafael Design Review Board and community input, Kaiser Permanente resubmitted a revised parking structure design proposing construction of a 433-space, three-level parking structure at the same location as originally proposed; and

**WHEREAS**, on July 17, 2018, the DRB conducted a duly-noticed public meeting and reviewed the plans revised in response to its May 22, 2018 comments, found that the revisions had adequately addressed their comments, and unanimously voted (5-0) to recommend approval of the Project design to the Planning Commission; and

**WHEREAS**, pursuant to Public Resources Code Section 21091(d)(2)(A) and CEQA Guidelines Sections 15088, 15089 and 15132, the City responded to all the environmental comments that were submitted on the DEIR during the public review period and a FEIR was completed. On August 10, 2018, a Notice of Availability for the FEIR/Response to Comments and the August 28, 2018 Planning Commission hearing was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR. A notice of availability and public hearing was also published in the Marin Independent Journal on Saturday, August 11, 2018; and

**WHEREAS**, on August 28, 2018, the Planning Commission held a duly-noticed public hearing on the Project, including environmental review, the PD Rezoning (ZC17-001), Use Permit Amendment (UP17-005), Environmental and Design Review Permit (ED17-011), and Sign Program Amendment (SP17-001), accepting all oral and written public testimony and the written report of the Community Development Department Planning staff and closed said hearing on that date; and

**WHEREAS**, following the public hearing, the Planning Commission adopted Resolution No.18-05 recommending adoption of the FEIR; and

**WHEREAS**, in considering the PD Rezoning, Master Use Permit, Environmental and Design Review Permit and Sign Program Amendment applications, the Planning Commission reviewed and considered the FEIR and all applicable mitigation measures therein. The FEIR concludes that the Project will result in significant and unavoidable adverse environmental traffic impacts to the Los Gamos Drive / Lucas Valley Road and Las Gallinas Drive / Lucas Valley Road intersections. Although these impacts could be mitigated to less-than-significant levels through the implementation of identified mitigation measures, the intersections are outside of the City's jurisdiction and require authorization and permits by the County of Marin and the California Department of Transportation (CALTRANS). As such, since the City cannot legally implement mitigation measures outside of its jurisdiction, the impacts are identified in the FEIR as significant and unavoidable. The FEIR also identifies Alternative 4: "Applicant-Implemented Traffic Improvements" as the Environmentally Superior Alternative and concludes that it would eliminate significant and unavoidable impacts to the Los Gamos Drive / Lucas Valley Road intersection. The Planning Commission weighed the Project benefits against the unavoidable, adverse environmental effects. By separate resolution (No. 18-06), consistent with CEQA Guidelines Section 15063 and consistent with San Rafael General Plan 2020 Circulation Element Policy C-6 (Proposed Improvements), the Planning Commission recommended adoption of a Statement of Overriding Considerations, which supports approval of the Project and the accompanying planning applications. This separate Resolution also recommended the approval of a Mitigation Monitoring and Reporting Program (MMRP) to ensure that required mitigation measures are incorporated into Project action; and

**WHEREAS** on August 28, 2018, the Planning Commission adopted Resolution No. 18-07 (5-0, 1 absent, 1 recused), recommending to the City Council adoption of the Planned Development (PD) Zone Change for 1650 Los Gamos Dr. to sever the property from the existing PD 1590 District and create a new PD District for the proposed medical office use;

**WHEREAS**, on August 31, 2018, a Public Notice for the City Council hearing, which includes the Notice of Availability of the FEIR/Response to Comments, was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR, informing them of the City Council hearing for final action. A notice of availability was also published in the Marin Independent Journal on Saturday, September 1, 2018; and

**WHEREAS**, on September 17, 2018, the City Council held a duly-noticed public hearing to review the proposed amendment to the PD-1590 zone and all applications for the Kaiser Permanente 1650 Los Gamos Drive Medical Office Building Project and considered all oral and written public testimony and the written report of the Community Development Department; and

**WHEREAS**, on September 17, 2018, by separate resolutions, (1) the City Council certified the FEIR, and (2) adopted CEQA findings of fact, adopted a statement of overriding consideration and approved the Mitigation Monitoring and Reporting Program (MMRP); and

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

**WHEREAS**, the City Council makes the following findings, as required under San Rafael Municipal Code Title 14 (Zoning Ordinance) Sections 14.27.060 and 14.07.090, approving the severance of the 1650 Los Gamos Road from PD-1590 and creating a new Zoning District for that property:

1. The proposed PD amendment to sever the 1650 Los Gamos Drive property and establish a new PD District for the Project would be consistent with the San Rafael *General Plan 2020* as follows:
  - a. The increase in traffic estimated for the change in use would impact and change level of service conditions at local intersections and would warrant new transportation improvements that have been identified in the Kaiser Permanente 1650 Los Gamos Drive Medical Office Building Project Final EIR, as well as included in the “Applicant-Implemented Traffic Improvements Alternative” that will be adopted for this Project. The transportation improvements include the signalization of Lucas Valley Rd/Los Gamos Dr, which is an identified improvement per *General Plan 2020* Circulation Policy C-6.
  - b. As proposed, the Project’s land uses are consistent with Land Use Element Policies LU-23 (Land Use Map and Categories), LU-10 (Planned Development), LU-9 (Intensity of Nonresidential Development), and LU-14 (Land Use Compatibility) in that these uses would be compatible with the current land uses allowed under the PD-1590 District and compatible with existing land uses found in the surrounding area.
  - c. As proposed, the Project’s land uses would be consistent with Circulation Element Policies C-5 (Traffic Level of Service Standards) C-6 (Proposed Improvements), C-7 (Circulation Improvements Funding) and C-12 (Transportation Demand Management) in that: the increase in traffic

estimated for these uses would not impact or change level of service conditions at local intersections nor would they warrant new transportation improvements; the medical office use component would be subject to the adopted citywide traffic mitigation fees which would be used to fund long-term transportation improvements; and the Project would implement transportation demand measures, such as encouraging employees through incentives to carpool and use public transit and other alternative means of transport.

- d. As proposed, the Project's land uses would be consistent with Neighborhood Element Policies NH-7 (Neighborhood Identity and Landmarks), NH-8 (Parking), NH-136 (Design Excellence), NH-138 (Industrial Uses and Design Improvement) in that they would: facilitate additional employment and future economic success in the North San Rafael area; allow compatible land uses that would fill current and long-term projected vacancies in general office space; and provide required amount of parking required for the proposed medical office use.
  - e. As proposed, the Project's land uses would be consistent with the Community Design Element Policy CD-21 (parking lot landscaping) in that: the uses proposed will have an approved landscaping plan and parking structure design that will provide shade cover and adequate screening of vehicles within parking lot areas.
  - f. As proposed, the Project's land uses would be consistent with the Economic Vitality Element Policy EV-1 (Economic Health and Quality of Life) and EV-2 (Policy EV-2. Seek, Retain, and Promote Businesses that Enhance San Rafael) in that: the uses proposed will ensure a local employer will continue to provide jobs and access to health services in a centrally located office building close to freeway access.
  - g. As proposed, the Project's land uses would be consistent with newly adopted Sustainability Element Policies SU-1 (Land Use) and SU-2 (Promote Alternative Transportation) and the adopted Climate Change Action Plan in that: the uses are proposed within an existing and approved development office park that is close to public transit (both bus stop on Highway 101 and SMART rail station at Civic Center);
  - h. As proposed, the Project's land uses would be consistent with the Conservation Element Policy CON-6 (setbacks) in that: the uses proposed will be located outside the 25-foot top-of-bank setback from the tributary to Gallinas Creek northwest of the Project site.
2. As proposed, the PD amendment to sever the 1650 Los Gamos Drive property and establish a new PD District for the Project is appropriate for the area, location and overall planning for the Project, and the design and development standards will promote the maintenance of an environment of sustainable desirability and stability and will not impact the amount of open space surrounding the property in that:
- a. The changes in use proposed by the Project would expand the types of allowable land uses within the PD district to include medical office uses, but would not result in changes to the existing, adopted building intensity limits since there is no increase in allowable floor area ratio or building area proposed.

- b. The Project site and corresponding general office PD District is presently developed with a full roadway system and utility infrastructure to accommodate the proposed Project. Development of the Project and amendment of the PD would result in a new infrastructure improvement at the Los Gamos Drive / Lucas Valley Road intersection but would not require physical development of open space or undeveloped areas.
  - c. The Project site is presently planned and developed to preserve all undeveloped open spaces west and north of the existing development, which will not be impacted or changed as a result of the PD amendment.
  - d. As proposed and as conditioned, the PD revisions will not impact public facility services that are currently provided to the Project site for individual parcel development, nor will amendments impact the established or planned auto, bicycle or pedestrian traffic system. Specifically, although the FEIR prepared and certified for the Project concludes that development of the Project would result in impacts to the Los Gamos Drive / Lucas Valley intersection, mitigation measures have been identified and adopted (MM TRAF-1 and TRAF-3) to reduce or eliminate these impacts, which will be required in conjunction with site development. To ensure implementation, conditions are incorporated into the Master Use Permit to require future project compliance with the Mitigation Monitoring and Reporting Program (MMRP), which is recommended for approval by separate resolution.
- 3. Kaiser Permanente has demonstrated that the proposed reuse of the existing office building with medical uses could be served by public facilities such as sewer, water, refuse services and other infrastructure resources that currently serve the existing development and are available to serve the proposed change in use. Furthermore, the new medical office use would not induce population growth necessitating additional public facilities.
- 4. The Project would not deviate from typical Zoning Ordinance property development and parking standards and the PD District land use regulations and development standards are consistent with what would be required for a lot of this size under a typical zoning designation.
- 5. The auto, bicycle and pedestrian traffic systems presented on the Project Development Plan are adequately designed for circulation needs and public safety in that: a) necessary circulation system improvements are proposed to be built with the Project as identified in the *General Plan 2020*; b) the Project site is surrounded by roadway and/or freeway on three sides and provides ample pedestrian and bicycle and vehicular access points; c) the Project access and site layout has been reviewed by the appropriate City Departments and has been determined to meet City standards; d) a new parking structure is proposed to be constructed to accommodate the parking demands associated with medical office uses; and (e) emergency vehicle access is provided to serve the Project.
- 6. As proposed and conditioned, the public health, safety and general welfare are served by the adoption of the proposed PD District, in that:
  - a. The action would not result in the addition of land use or development intensity, nor would it change the development and spatial regulations



- (e.g., setbacks, building heights, lot coverage) or the design standards (building and landscape standards and guidelines) that influence building size, building location or spacing, amount or location of open space.
- b. As noted above, by separate resolution, the City Council has approved a Mitigation Monitoring and Reporting Program (MMRP), which identifies all required mitigation measures to reduce or eliminate environmental impacts, including, but not limited to aesthetics, air quality, noise, and transportation and circulation.
  - c. This action would be consistent with the provisions of the Zoning Ordinance. Specifically, the proposed amendment to allow medical office uses within the General Plan Office designation would be consistent, in part, with the definition for medical office use in the Zoning Ordinance. The Zoning Ordinance defines medical office uses as a facility, other than a hospital, where medical, dental, mental health, surgical, and/or other personal health care services are provided on an outpatient basis.
  - d. The City Council has determined, through adoption of a separate resolution of CEQA Findings of Fact and Statement of Findings of Overriding Considerations, that the benefits of the Project outweigh the unavoidable, adverse environmental effects of the action to amend the PD District. The findings in that separate resolution are incorporate herein by reference and reaffirmed to support this action to amend the PD-1590 District;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:**

**DIVISION 1.**

Ordinance No. 1590 (PD-1590 District) is hereby amended to remove the 1650 Los Gamos Dr property from the PD District.

**DIVISION 2.**

A new PD Zoning District is hereby established for 1650 Los Gamos Dr with appropriate land use and development standards to allow medical office use, along with other office and ancillary uses of the existing building, a new parking structure and associated parking and site improvements as set forth in attached Exhibit B.

**DIVISION 3.**

The Zoning Map of the City of San Rafael, California, adopted by reference by Section 14.01.020 of the San Rafael Municipal Code is amended by reclassifying the following real property from Planned Development (PD-1590) District to a new Planned Development District. Said property so reclassified is 1650 Los Gamos Dr and is located on both sides of Los Gamos Dr, Street, as shown on County Assessor's Parcel No.'s 165-220-12 &13, and as illustrated on the map and detailed legal description attached as Exhibits "A" and "C" attached hereto and incorporated herein by reference.

**DIVISION 4.**

If any subsection, sentence clause or phrase of this ordinance amendment is, for any reason, held to be invalid, such decision shall not affect the validity or the remaining portions of this added ordinance section.

**DIVISION 5.**

This Ordinance shall be published once, in full or in summary form, at least five days before its final passage, in a newspaper of general circulation published and circulated in the City of San Rafael, California, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the ordinance shall simultaneously be posted in full in the City Clerk's office, and the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the Office of the City Clerk, a certified copy of the full text of this ordinance amendment along with the names of those Councilmembers voting for or against the amendment.

\_\_\_\_\_  
GARY O. PHILLIPS, Mayor

ATTEST:

\_\_\_\_\_  
LINDSAY LARA, City Clerk

The foregoing Ordinance No. \_\_\_\_\_ was read and introduced at a regular meeting of the City Council of the City of San Rafael on the 17th day of September 2018, and was ordered passed to print by the following vote, to wit:

AYES:            COUNCILMEMBERS:

NOES:           COUNCILMEMBERS:

ABSENT:        COUNCILMEMBERS:

and will come up for adoption as an Ordinance of the City of San Rafael at a regular meeting of the City Council to be held on the 1st day of October 2018.

\_\_\_\_\_  
LINDSAY LARA, City Clerk

**EXHIBITS**

- A:     Map of Properties Subject to PD Amendment
- B:     Land Use and Development Standards
- C:     Legal Description

**“EXHIBIT A”**



PD Rezoning to sever APN's 165-220-12 & 13 from current PD-1590 and establish a new PD District for APN's 165-220-12 & 13 with the Development Standards contained in Exhibit B

## **“EXHIBIT B”**

### **1650 Los Gamos Drive – APN’s 165-220-12 & 13 Kaiser Permanente Medical Office Building (Amending Former PD-1590, Lucas Green Buildings I and II)**

#### **INTENT**

The Kaiser Permanente Medical Office Building Planned Development (PD) District at 1650 Los Gamos Drive (Assessor’s Parcel Numbers (APN) 165-220-12 & 13) is based on the (1) Master Use Permit (UP17-005), (2) Environmental and Design Review Permit (ED17-001), Zone Change (ZC17-001), and (4) Sign Program Permit (SP17-002) approved by the City Council on \_\_\_\_\_, 201\_\_.

#### **LAND USES**

1. This site permits a maximum of 150,000 square feet of building area approved for the following uses: general office, medical office, professional office, and administrative office uses, as more specifically defined in Master Use Permit UP17-005.
2. The site is permitted to provide outpatient medical services, including, but not limited to, family medicine, pediatrics, chemical dependency recovery program, psychiatry/psychology, OB/GYN, laboratory, blood draw, optometry, pharmacy, and other similar and ancillary support services.
3. The site is permitted to provide limited accessory retail sales, including, but not limited to, a pharmacy and café.
4. This site is permitted to provide uses that promote sustainability. These may include, but are not exclusive of, solar panels, recycling areas, overnight parking for shuttles, electric vehicle charging stations, and other on-site alternative power generation units.
5. Uses determined to be accessory or incidental to the above-listed land uses shall be permitted, as determined to be appropriate by the Community Development Director.
6. Given dynamic changes in health and office uses, future minor changes or modifications to the above enumerated uses shall also be permitted as determined to be appropriate by the Community Development Director.

Requirements and conditions for all uses at the site shall be consistent with Master Use Permit UP17-005.

#### **DEVELOPMENT AND DESIGN STANDARDS**

All buildings, structures, site improvements, landscaping, parking, exterior lighting and signage shall be consistent with the conditions of approval for the site’s Master Use Permit (UP17-005), Environmental and Design Review Permit (ED17-001) and Sign Program Permit (SP17-002).

The following sustainable technologies may be implemented into the Master Use Permit per the discretion of the Community Development Director:

- Fuel-cell technology
- Other sustainable programs or technologies yet defined

Any minor site-specific regulations or development and design standards necessary to guide and approve building additions, modifications or property improvements are subject to administrative approval by the Community Development Director in lieu of amending the PD zoning.

## **“EXHIBIT C”**

### **LEGAL DESCRIPTION**

Real property in the City of San Rafael, County of Marin, State of California, described as follows:

#### **PARCEL A:**

PARCEL 2 AS SHOWN UPON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP LANDS OF KRONOS PROPERTY HOLDINGS NV D.N. 84-0058614 PARCEL MAP BEING A RESUBDIVISION OF PARCEL 1 (WEST) BOOK 19 OF PARCEL MAPS, PAGES 56 & A RESUBDIVISION OF PARCEL 1 BOOK 22 OF PARCEL MAPS, PAGE 39, CITY OF SAN RAFAEL, MARIN COUNTY, CALIFORNIA", FILED FOR RECORD FEBRUARY 28, 1994 IN VOLUME 25 OF PARCEL MAPS, AT PAGE 63, MARIN COUNTY RECORDS.

#### **PARCEL B:**

EASEMENT FOR ACCESS AND PARKING PURPOSES, OVER PARCEL 1, AS SAID PARCEL AND EASEMENT ARE SHOWN ON THE PARCEL MAP REFERRED TO HEREINABOVE.

APN: 165-220-12 (Affects: Portion of Said Land)

165-220-13 (Affects: Portion of Said Land)

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE SAN RAFAEL CITY COUNCIL APPROVING A  
A CITY-INITIATED REZONING OF AN EXISTING PLANNED DEVELOPMENT  
(PD-1590) DISTRICT FOR 1600 LOS GAMOS DRIVE TO REMOVE  
REFERENCES TO THE 1650 LOS GAMOS DRIVE PROPERTY FROM THE PD  
DISTRICT TEXT, FOLLOWING REZONING OF THAT PROPERTY INTO A  
SEPARATE PD DISTRICT BY SEPARATE ACTION.  
(1600 LOS GAMOS DR - MARIN COMMONS - APN's: 165-220-10 &11)**

**WHEREAS**, in 1972, the City of San Rafael adopted an Administrative Professional / Planned Unit Development Administrative Professional District (AP and PUD-AP District) establishing Lucas Green I for the 1600 Los Gamos Drive property. The 38.4-acre Lucas Green Master Plan was adopted to permit development of general office, administrative office, a computer center and associated parking and related uses for the specific parcels within the Plan Area.

**WHEREAS**, in 1979, the overlaying zoning district was amended (to PD-1350 District) to allow the construction of Lucas Green II at 1650 Los Gamos Drive with the condition requiring a Transportation Service Management (TSM) Plan. The PD District change was approved to allow two office buildings: a 340,000 sq. ft. computer center, and a 150,000 sq. ft. computer and office building with 1,296 parking spaces. In 1990, PD-1350 was further amended (to PD-1590) to include the TSM as a requirement; and

**WHEREAS**, On February 21, 2017, Kaiser Foundation Health Plan (Kaiser or Kaiser Permanente) submitted project applications to the City of San Rafael Community Development Department for a Use Permit (UP17-005), an Environmental and Design Review Permit (ED17-001), a Zone Change (ZC17-001) to amend the existing Planned Development (PD)-1590 District for the Marin Commons, and a Sign Program Amendment (SP17-002) for the conversion of an existing approximately 148,000-square-foot office building to medical office uses and the construction of an up to 511-space parking structure (Project) on the western parcel of a 11.2-acre property at 1650 Los Gamos Drive; and

**WHEREAS**, the application for PD rezoning by Kaiser Permanente proposes to sever the 1650 Los Gamos Drive property from the larger PD-1590 Zoning District that covers both 1600 and 1650 Los Gamos Drive to create a separate PD zoning that would allow medical office use at 1650 Los Gamos Drive; and

**WHEREAS**, the removal of the 1650 Los Gamos Drive property from PD-1590 without a PD rezoning would result in continued references to the 1650 Los Gamos Drive property in the PD1590 language; and

**WHEREAS**, the current property owner of 1600 Los Gamos (County of Marin) has neither applied for, nor requested, any changes to PD 1590; and

**WHEREAS**, to reduce future confusion in having outdated references to the 1650 Los Gamos Drive property contained in PD-1590, the City has initiated this district rezoning to update PD-1590 and remove any reference to the adjacent 1650 Los Gamos Dr property from that PD; and



**WHEREAS**, draft amendments to the PD-1590 District Marin Commons (Development Plan) have been prepared and are presented in attached Exhibit B with strikethrough/underline format. The draft amendments propose:

- a. General edits and updates to the current PD-1590 District to omit obsolete uses and references to the 1650 Los Gamos Drive property and improve reference to specific lots and parcels within the PD District to ensure proper tracking of regulations and provisions; and
- b. No changes are proposed to PD-1590, aside from removal of obsolete references mentioned above, would be created through the bifurcation of 1650 Los Gamos Drive into a new PD District; and

**WHEREAS**, on August 28, 2018, the Planning Commission held a duly-noticed public hearing on the Project, including the PD Rezoning (ZC17-001), Use Permit Amendment (UP17-005), Environmental and Design Review Permit (ED17-011), and Sign Program Amendment (SP17-001), accepting all oral and written public testimony and the written report of the Community Development Department Planning staff and closed said hearing on that date; and

**WHEREAS** on August 28, 2018, the Planning Commission adopted Resolution No. 18-08 (5-0, 1 absent, 1 recused), recommending to the City Council adoption of the Planned Development (PD) Zone Change to modify PD 1590 for the 1600 Los Gamos Dr site to remove references to 1650 Los Gamos Dr.; and

**WHEREAS**, on August 31, 2018, a Public Notice for the City Council hearing, which includes the Notice of Availability of the FEIR/Response to Comments, was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR, informing them of the City Council hearing for final action. A notice of availability was also published in the Marin Independent Journal on Saturday, September 1, 2018; and

**WHEREAS**, on September 17, 2018, the City Council held a duly-noticed public hearing to review the proposed amendment to the PD-1590 zone and all applications for the Kaiser Permanente 1650 Los Gamos Drive Medical Office Building Project and considered all oral and written public testimony and the written report of the Community Development Department; and

**WHEREAS**, on September 17, 2018, by separate resolutions, the City Council certified the FEIR, adopted CEQA findings of fact, adopted a statement of overriding consideration and approved the Mitigation Monitoring and Reporting Program (MMRP); and

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

**WHEREAS**, the City Council makes the following findings, as required under San Rafael Municipal Code Title 14 (Zoning Ordinance) Sections 14.27.060 and 14.07.090 in adopting the proposed minor amendments to PD-1590 District for 1600 Los Gamos Dr and presented in attached Exhibit B:

1. The proposed amendments to the PD-1590 District would be consistent with the San Rafael *General Plan 2020* in that:
  - a. As proposed, the continuation of existing land uses are consistent with Land Use Element Policies LU-23 (Land Use Map and Categories), LU-10 (Planned Development), LU-9 (Intensity of Nonresidential Development), LU-14 (Land Use Compatibility) in that these uses would be compatible with the current land uses allowed under the PD-1590 District adopted for this site; and compatible with existing land uses found in the surrounding area.
  - b. As proposed, the continuation of existing land uses would be consistent and not in conflict with Circulation Element Policies C-5 (Traffic Level of Service Standards) C-6 (Proposed Improvements), C-7 (Circulation Improvements Funding) and C-12 (Transportation Demand Management) in that: the increase in traffic estimated for these uses would not impact or change level of service conditions at local intersections nor would they warrant new transportation improvements.
  - c. As proposed, the continuation of existing land uses would be consistent with Neighborhood Element Policies NH-7 (Neighborhood Identity and Landmarks), NH-8 (Parking), NH-136 (Design Excellence), NH-138 (Industrial Uses and Design Improvement) in that they would: facilitate additional employment and future economic success in the North San Rafael area and allow compatible land uses.
  - d. As proposed, the continuation of existing land uses would be consistent with the Community Design Element Policy CD-21 (parking lot landscaping) in that: the uses proposed will have an existing landscaping plan that will provide shade cover and adequate screening of vehicles within parking lot areas.
  - e. As proposed, the continuation of existing land uses would be consistent with the Economic Vitality Element Policy EV-1 (Economic Health and Quality of Life) and EV-2 (Policy EV-2. Seek, Retain, and Promote Businesses that Enhance San Rafael) in that: the uses proposed will ensure a local employer will continue to provide jobs and access to health services in a centrally located office building close to freeway access.
  - f. As proposed, the continuation of existing land uses would be consistent with newly adopted Sustainability Element Policies SU-1 (Land Use) and SU-2 (Promote Alternative Transportation), and the adopted Climate Change Action Plan in that: the uses are proposed within an existing and approved development office park that is close to public transit (both bus stop on Highway 101 and SMART rail station at Civic Center).
2. As proposed, the changes to the existing PD 1590 District are appropriate for the area, location and overall planning for the Project, and the design and development standards will promote the maintenance of an environment of sustainable desirability and stability and will not impact the amount of open space surrounding the property in that:

- a. The changes would continue the allowable land uses within the PD District and would not result in additional allowances or changes to the existing, adopted building intensity limits since there is no increase in allowable floor area ratio or building area proposed.
  - b. The general office PD District is presently developed with a full roadway system and utility infrastructure to accommodate the proposed Project.
  - c. The PD District is presently planned and developed to preserve all undeveloped open spaces west and north of the existing development which will not be impacted or changed as a result of the amendments.
  - d. As proposed, the PD revisions will not impact public facility services that are currently provided to the area for individual parcel development, nor will amendments impact the established or planned auto, bicycle or pedestrian traffic system.
- 3. The City-initiated text update to PD-1590 would not alter any existing land uses on the 1600 Los Gamos Drive property or change any land use allowances in the existing PD; therefore, there would be no impact to infrastructure and the existing site would continue to be served by public facilities such as sewer, water, refuse services and other infrastructure resources that currently serve the existing development and are available to serve the proposed PD amendment.
- 4. The City-initiated text update to PD-1590 would not alter any of the current development or land use standards prescribed for PD-1590.
- 5. The auto, bicycle and pedestrian traffic systems presented on the Development Plan is adequately designed for circulation needs and public safety in that the minor text edits would not alter any pedestrian, bicycle or vehicular access to the 1600 Los Gamos Drive site.
- 6. As proposed, the public health, safety and general welfare would be served by the adoption of the revisions to the PD-1590 District in that:
  - a. The action would not result in the addition of land use or development intensity, nor would it change the development and spatial regulations (e.g., setbacks, building heights, lot coverage) or the design standards (building and landscape standards and guidelines) that influence building size, building location or spacing, amount or location of open space. The amendment is solely a text change to remove references to the 1650 Log Gamos Drive property from the PD-1590 text, given that 1650 Los Gamos Drive was rezoned to a new distinct PD zoning district through a separate action.
  - b. This action would be consistent with the provisions of the Zoning Ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:**

**DIVISION 1.**

Ordinance No. 1590 (PD-1590 District) is hereby amended to incorporate the following changes, as set forth in attached Exhibit B, incorporated herein by reference: a) General edits and updates to the current PD-1590 District to omit obsolete uses and references to the 1650 Los Gamos Drive property and improve reference to specific lots and parcels within the PD District to ensure proper tracking of regulations and provisions; and b) No changes are proposed to PD-1590, aside from removal of obsolete references mentioned above, would be created through the bifurcation of 1650 Los Gamos Drive into a new PD District.

**DIVISION 2.**

The Zoning Map of the City of San Rafael, California, adopted by reference by Section 14.01.020 of the San Rafael Municipal Code is amended by reclassifying the following real property from Planned Development (PD-1590) District to a new Planned Development District. Said property so reclassified is 1600 Los Gamos Dr and is located on both sides of Los Gamos Dr, Street, as shown on County Assessor's Parcel No.'s 165-220-10 &11, and as illustrated on the map as Exhibit "A" attached hereto and incorporated herein by reference.

**DIVISION 3.**

If any subsection, sentence clause or phrase of this ordinance amendment is, for any reason, held to be invalid, such decision shall not affect the validity or the remaining portions of this added ordinance section.

**DIVISION 4.**

This Ordinance shall be published once, in full or in summary form, at least five days before its final passage, in a newspaper of general circulation published and circulated in the City of San Rafael, California, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the ordinance shall simultaneously be posted in full in the City Clerk's office, and the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the Office of the City Clerk, a certified copy of the full text of this ordinance amendment along with the names of those Councilmembers voting for or against the amendment.

---

GARY O. PHILLIPS, Mayor

ATTEST:

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LINDSAY LARA, City Clerk

The foregoing Ordinance No. \_\_\_\_\_ was read and introduced at a regular meeting of the City Council of the City of San Rafael on the 17th day of September 2018, and was ordered passed to print by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

and will come up for adoption as an Ordinance of the City of San Rafael at a regular meeting of the City Council to be held on the 1st day of October 2018.

---

LINDSAY LARA, City Clerk

EXHIBITS

- A: PD Rezoning Map
- B: Development Standards for 1600 Los Gamos Drive



**“EXHIBIT A”**



PD Rezoning to remove references to 1650 Los Gamos Dr (APN's 165-220-12 & 13) from current PD-1590 District given that those two properties were severed and established as a new, separate PD zoning District

**“EXHIBIT B”**

**1600 LOS GAMOS DR**  
**FORMER MARIN COMMONS**

(a) ~~Two~~ One office buildings are is approved as shown on the plans: ~~One is a 340,000 square foot computer center; the other is a 150,000 square foot computer and office building.~~

(b) ~~1,296~~ 841 parking spaces are approved as shown on the plans.

(c) Secure Design Review approval for any modifications to the approved building. Any further addition for new office construction shall require an amendment to the Master Plan.

(d) Minor modifications, such as the installation of a par-course and landscaping can be approved as Design Review items.

(e) In addition to the ~~two~~ one private office buildings, public buildings for the safety of the community may be approved by Design Review.

(f) A TSM manager shall be appointed for ~~each of~~ the buildings, who may be the respective building managers. The TSM manager shall at all times perform the following duties:

- 1) Develop and disseminate information aids and other marketing resources;
- 2) Provide orientation and assistance to new employees regarding the selection of transportation options within the shortest reasonable time after they begin working;
- 3) Communicate with Golden Gate Transit and Marin County Transit and other transit agencies to become aware of existing transportation services and with Rides for Bay Area Commuters or similar organizations for ridesharing services and program support;
- 4) Provide available transit guides and schedules to all interested employees, describing both transit routes serving the area and route schedules, and provide notification to interested employees of changes in such routes or schedules;
- 5) Provide a written statement periodically to each tenant explaining the benefits of staggered work hours or "flex-time" systems for transportation management in the Highway 101 corridor.

(g) A transit information center or display shall at all times be maintained in ~~one or both of~~ the buildings in an area accessible to all employees, and the location of such center or display shall be advertised by signs or posters in highly travelled pedestrian corridors in ~~each of~~ the buildings. The center or display shall provide current information regarding public transit, bus pools, vanpools, carpools, and shuttle services serving the property.

(h) A carpool and vanpool matching program shall at all times be conducted in accordance with the following standards:

- 1) Applications for carpool and vanpool matching purposes shall be distributed to employees at least annually.



- 2) A master file of carpool and vanpool drivers, riders, and potential riders shall be maintained and made available to persons interested in forming carpools or vanpools with other employees at least annually to assure that information in the master file is current.
- 3) Vanpool applicants who are not able to join a vanpool shall be referred to existing carpools.
- 4) A designated vanpool and carpool parking area shall be maintained for ~~each of the buildings~~. Each such area shall be of sufficient size to accommodate all vanpools and carpools serving the building.
- 5) Some or all of the requirements for vanpool and carpool services may be performed by an independent agency designated by the TSM Manager.

(i) The TSM Manager for ~~each of the buildings~~ shall provide a written report to the City each year certifying the TSM activities undertaken at ~~each~~ the building for the preceding twelve months.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL  
APPROVING A MASTER USE PERMIT (UP17-005), ENVIRONMENTAL AND DESIGN  
REVIEW PERMIT (ED17-011), AND A SIGN PROGRAM AMENDMENT (SP17-002) TO  
ALLOW THE CONVERSION OF AN EXISTING OFFICE BUILDING TO MEDICAL OFFICE  
USES AND CONSTRUCTION OF A NEW 433-SPACE PARKING STRUCTURE ON THE  
WESTERN PARCEL OF 1650 LOS GAMOS DRIVE FOR THE KAISER PERMANENTE  
MEDICAL OFFICE BUILDING PROJECT AT  
1650 LOS GAMOS DR (APNs: 165-220-12 & 165-220-13)**

**WHEREAS**, on February 21, 2017, Kaiser Foundation Health Plan (Kaiser or Kaiser Permanente) submitted planning permit applications to the City of San Rafael Community Development Department proposing the conversion of an approximately 148,000-square-foot office building to medical office uses and the construction of a 511-space parking structure (Project) on the western parcel of a 11.2-acre property at 1650 Los Gamos Drive; and

**WHEREAS**, applications for a Master Use Permit (UP17-005), Environmental and Design Review Permit (ED17-001), and a Sign Program Amendment (SP17-002) were filed concurrent with an application requesting a Planned Development Rezoning (ZC17-001) for the development and operation of the Project; and

**WHEREAS**, upon review of the subject applications, an Initial Study was prepared on June 9, 2017, consistent with the requirements of the City of San Rafael Environmental Assessment Procedures Manual and the California Environmental Quality Act (CEQA), finding that there could be potentially significant impacts to the following issues: Air Quality, Greenhouse Gas Emissions, Land Use, Noise, Transportation and Circulation, and Project Alternatives; and;

**WHEREAS**, on June 27, 2017, the Planning Commission (Commission) held an appropriately noticed public scoping hearing on the Notice of Preparation (NOP) for the preparation of an Environmental Impact Report (EIR) to assess the impacts of the Project. The Planning Commission directed staff to prepare an EIR for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to address the following issues, Aesthetics, Air Quality, Greenhouse Gas Emissions, Land Use and Planning, Noise, Traffic and Transportation, and Project Alternatives, as per the Initial Study previously prepared for the Project; and

**WHEREAS**, on September 6, 2017, the City of San Rafael Design Review Board (DRB) conducted a duly-noticed public meeting and conducted a Conceptual Review of the conceptual plans submitted for the Project. The DRB generally expressed support for the proposed parking structure design but requested modifications to the façade to hide the “parking garage” look and requested that the structure be set back from the road. The Board provided the following specific recommendations on their concept review of the Project:

- 1) Balance the excavation better by ‘stepping back’ the upper floors.
- 2) Increase the building setback and provide more landscaping along the frontage.
- 3) Eliminate or reduce the ‘open’ design of the structure.
- 4) Shade structures or solar canopies on the top floor would be appropriate and should be evaluated.
- 5) Consider lowering the 1st floor finish grade to provide direct access from the elevator/staircase to the crosswalk at the south elevation.
- 6) Improvements to the existing crosswalk at the south elevation are necessary for safety.

- 7) Appropriateness of the location of the vehicle entrance/exit is best determined by the traffic study though the project should continue to separate the pedestrian entrance/exit from the vehicle entrance/exit.
- 8) The formal Project submittal shall include a comprehensive photometric study and security plan details; and

**WHEREAS**, on April 13, 2018, Kaiser Permanente resubmitted a revised parking structure design proposing construction of a 473-space, three-level, plus upper ramp, parking structure at the same location as originally proposed; and

**WHEREAS**, the DEIR was completed, a Notice of Completion (NOC) was filed and the DEIR was made available and circulated for a 45-day public comment period, beginning on March 8, 2018 and closing on April 23, 2018; and

**WHEREAS**, on April 24, 2018, the Planning Commission held a duly-noticed public hearing to accept comments on the DEIR and directed staff to prepare a Final Environmental Impact Report (FEIR); and

**WHEREAS**, on May 22, 2018, the DRB conducted a duly-noticed public meeting and reviewed the design of the formal applications. The Board reviewed the Project and voted unanimously (5-0, *with Commissioner Spielman absent and Alternate Member Blaney as a voting member*) to continue the matter to date uncertain, subject to the following consensus recommendations:

- 1) Submittal needs to include details for both the proposed Sign Program Amendment and the change in use from general office to medical office.
- 2) Submittal needs to include a summary of Board's comments and identify how the design revisions respond to each comment.
- 3) Submittals needs to include full-size (24" x 36") plan sets in addition to reduced plan sets.
- 4) Plans shall show greater details and dimensions throughout, particularly in the cross-sections.
- 5) Project needs greater sensitivity to the neighbors located upslope by reducing off-site light and glare from vehicle windshields, solar canopies and the brightness of the parking deck itself. Explore green roofs.
- 6) Project shall reduce the bulk and mass by eliminating the ramp level parking and lowering the structure so that ground level grade is closer to sidewalk grade.
- 7) Project shall add more material shielding along the frontage to reduce or eliminate headlight and, generally, to make it look less like a parking garage.
- 8) Show and provide light standard details. Provide a photometric plan.
- 9) The northeast corner stairwell needs better articulation and the southeast corner stairwell needs less glare expression; and

**WHEREAS**, on July 2, 2018, based on feedback from the City of San Rafael Design Review Board and community input, Kaiser Permanente resubmitted a revised parking structure design proposing construction of a 433-space, three-level, parking structure at the same location as originally proposed; and

**WHEREAS**, on July 17, 2018, the DRB conducted a duly-noticed public meeting and reviewed the revised plans in response to its May 22, 2018 comments and found that the revisions had adequately addressed prior comments and unanimously voted (5-0 *with Commissioner Paul absent and Alternate Member Blaney filling in as a voting member*) to recommend approval of the project design to the Planning Commission; and

**WHEREAS**, the FEIR was prepared and released for public review on August 10, 2018; and

**WHEREAS**, in considering the PD Rezoning, Master Use Permit, Environmental and Design Review Permit and Sign Program Amendment applications, the City Council has reviewed and considered the FEIR and all applicable mitigation measures therein. The FEIR concludes that the Project will result in significant and unavoidable adverse environmental traffic impacts to the Los Gamos Drive / Lucas Valley Road and Las Gallinas Drive / Lucas Valley Road intersections. Although these impacts could be mitigated to less-than-significant levels through the implementation of identified mitigation measures, the intersections are outside of the City's jurisdiction and require authorization and permits by the County of Marin and the California Department of Transportation (CALTRANS). As such, since the City cannot legally implement mitigation measures outside of its jurisdiction, the impacts are identified in the FEIR as significant and unavoidable. The FEIR also identifies Alternative 4: "Applicant-Implemented Traffic Improvements" as the Environmentally Superior Alternative and concludes that it would eliminate significant and unavoidable impacts to the Los Gamos Drive / Lucas Valley Road intersection. The City Council has weighed the Project benefits against the unavoidable, adverse environmental effects. By separate resolution, consistent with CEQA Guidelines Section 15063 and consistent with San Rafael *General Plan 2020* Circulation Element Policy C-6 (Proposed Improvements), the City Council adopted a Statement of Overriding Considerations, which supports approval of the Project and the accompanying planning applications. This separate Resolution also approves a Mitigation Monitoring and Reporting Program (MMRP) to ensure that required mitigation measures are incorporated into Project action; and

**WHEREAS**, on August 10, 2018, a Notice of Public Hearing of the Planning Commission and Notice of Availability for the FEIR/Response to Comments was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR. A notice of public hearing and notice of availability was also published in the Marin Independent Journal on Saturday, August 11, 2018; and

**WHEREAS**, on August 28, 2018, the Planning Commission held a duly-noticed public hearing on the Project, including a PD Rezoning (ZC17-001), Use Permit Amendment (UP17-005), Environmental and Design Review Permit (ED17-011), and Sign Program Amendment (SP17-001), accepting all oral and written public testimony and the written report of the Community Development Department Planning staff and closed said hearing on that date; and

**WHEREAS** on August 28, 2018, the Planning Commission, through adoption of separation Resolutions, took the following action:

- a) Adopted Resolution No. 18-05 (5-0, 1 absent, I recused), recommending to the City Council certification of the Final EIR for the project;
- b) Adopted Resolution No. 18-06 (5-0, 1 absent, I recused), recommending to the City Council adoption of the Statement of Overriding Considerations and approval of the Mitigation Monitoring and Reporting Plan (MMRP);
- c) Adopted Resolution No. 18-07 (5-0, 1 absent, I recused), recommending to the City Council adoption of the Planned Development (PD) Zone Change for 1650 Los Gamos Dr. to sever the property from the existing PD 1590 District and create a new PD for the proposed medical office use;
- d) Adopted Resolution No. 18-08 (5-0, 1 absent, I recused), recommending to the City Council adoption of the Planned Development (PD) Zone Change for modify PD 1590 for the 1600 Los Gamos Dr site to remove references to 1650 Los Gamos Dr;
- e) Adopted Resolution No. 18-09 (5-0, 1 absent, I recused), recommending to the City Council approval of the Environmental and Design Review Permit, Master Use Permit and Sign Program amendment; and

**WHEREAS**, on August 31, 2018, a Public Notice for the City Council hearing, which includes the Notice of Availability the FEIR/Response to Comments, was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR, informing them of the City Council hearing for final action. A notice of availability was also published in the Marin Independent Journal on Saturday, September 1, 2018; and

**WHEREAS**, on September 17, 2018, the City Council held a duly noticed public hearing to review the proposed amendment to the Kaiser Permanente 1650 Los Gatos Drive Medical Office Building Project and considered all oral and written public testimony and the written report of the Community Development Department; and

**WHEREAS**, on September 17, 2018: a) by separate resolutions (2), the City Council certified the FEIR, adopted CEQA findings of fact, adopted a statement of overriding consideration and approved the Mitigation Monitoring and Reporting Program (MMRP); and b) introduced an ordinance to rezoning the property; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of San Rafael hereby approves the Use Permit Amendment (UP17-005), Environmental and Design Review Permit (ED17-011), and Sign Program Amendment (SP17-001) based on the following findings:

**Findings for Master Use Permit  
(UP17-005)**

In accordance with SRMC 14.22.090. Findings, the following findings are required for approval of an Master Use Permit:

- 1) As proposed and conditioned, the Project's objectives to convert an existing 148,000 square foot office building to medical office uses and the construction of a 433-space, three level parking structure, is in accord with the San Rafael *General Plan 2020*, the objectives of the Zoning Ordinance, and the purposes of the zoning district in which the Project site is located. Detailed discussion of the Project's consistency with the applicable General Plan policies is provided in detail in matrix format in the attached General Plan Consistency Analysis Table (Exhibit 3).

The discussion demonstrates that the Project is generally consistent with the applicable General Plan Policies:

- a) As proposed, the Project's land uses are consistent with' Land Use Element Policies LU-23 (Land Use Map and Categories), LU-I0 (Planned Development), LU-9 (Intensity of Nonresidential Development), LU-14 (Land Use Compatibility) in that:
  - 1) Medical office uses are an allowable use in the Office General Plan Land use designation in which the Project site is located;
  - 2) Although the medical office uses are allowable under the Office General Plan land use designation, the current Planned Development zoning for the site (PD1590) does not allow for medical office use and a PD Rezoning is proposed for the site

- to accommodate medical office uses consistent with the General Plan land use designation;
- 3) The existing office building would be reused for the medical office use and as currently development, the building complies with the intensity of non-residential development standards (FAR); and
  - 4) The reuse of the existing building as medical office use would be compatible with the types of land uses found in the vicinity and typically allowed in the Office General Plan land use designation.
- b) As proposed and conditioned, the Project's land uses would be consistent and not in conflict with Circulation Element Policies C-5 (Traffic Level of Service Standards) C-6 (Proposed Improvements), C-7 (Circulation Improvements Funding) and C-12 (Transportation Demand Management) in that:
- 1) The increase in traffic estimated for the change in use would impact and change level of service conditions at local intersections and would warrant new transportation improvements that have been identified in the Kaiser Permanente 1650 Los Gatos Drive Medical Office Building Project Final EIR, as well as included in the "Applicant-Implemented Traffic Improvements Alternative" that will be adopted for this Project. The transportation improvements include the signalization of Lucas Valley Rd/Los Gatos Dr, which is an identified improvement per *General Plan 2020* Circulation Policy C-6;
  - 2) The medical office use component would be subject to the adopted citywide traffic mitigation fees, which would be used to fund long-term transportation improvements to maintain Level of Service (LOS) standards as identified in Circulation Policy C-6 and the payment of the mitigation fees will fund citywide improvements consistent with Circulation Policy C-7. The payment of fees would be in addition to installing the required signalized intersection at Lucas Valley Rd/Los Gatos Dr.; and
  - 3) The Project is conditioned to require the preparation and submittal of a Transportation Demand Management (TDM) plan that would implement transportation demand measures such as encouraging employees, through incentives to carpool and use public transit and other alternative means of transport.
- c) The Final Environmental Impact Report (FEIR) certified by the City Council for this Project through a separate Resolution, identifies that the additional traffic from the Project triggers the need to signalize the currently unsignalized intersection of Los Gatos Drive and Lucas Valley Road (per Circulation C-6). Once signalized, the intersection would operate at acceptable Levels of Service (LOS) as identified Circulation Policy C-5.
- d) As proposed, the Project's land uses would be consistent with Neighborhood Element Policies NH-7 (Neighborhood Identity and Landmarks), NH-8 (Parking), NH-136 (Design Excellence), NH-138 (Industrial Uses and Design Improvement) in that it would: facilitate additional employment and future economic success in the North San Rafael area; allow compatible land uses that would fill current and long-term projected vacancies in general office space; and provide required amount of parking required for the proposed medical office use; and .
- e) As proposed, the Project's land uses would be consistent with the Community Design Element Policy CD-21 (parking lot landscaping) in that the uses proposed will have an

approved landscaping plan and parking structure design that will provide shade cover and adequate screening of vehicles within parking lot areas.

- f) As proposed, the Project's land uses would be consistent with the Economic Vitality Element Policy EV-1 (Economic Health and Quality of Life) and EV-2 (Seek, Retain and Promote Businesses that Enhance San Rafael) in that:
  - 1) The reuse of the general office building with a medical office use would improve access to healthcare for San Rafael and Marin County residents;
  - 2) The proposed use would ensure that one of the largest employers in San Rafael would continue to provide jobs and access to health services in a location close to freeway access; and
  - 3) Allow a large healthcare business to remain in San Rafael and continue to serve the City and county at large.
- g) As proposed, the Project's land uses would be consistent with newly adopted Sustainability Element Policies SU-1 (Land Use) and SU-2 (Promote Alternative Transportation), and the adopted Climate Change Action Plan in that: the uses are proposed within an existing and approved development office park that is close to public transit (both bus stop on Highway 101 and SMART rail station at Civic Center). Relocating the Kaiser medical offices from their current undersized location at 99 Monticello Rd would shift current neighborhood traffic using the Monticello Rd facility to a location closer to the freeway, thus potentially reducing impacts on local circulation networks.
- h) As proposed, the Project's land uses would be consistent with the Conservation Element Policy CON-6 (setbacks) in that: the proposed new parking structure and intersection improvements at Lucas Valley Rd/Los Gatos Dr would be located outside the 25' top-of-bank setback from the intermittent tributary to Gallinas Creek northwest of the Project site.
- i) The approval of the Project's land uses would be consistent with the PD-1590 District, as amended by adoption of the PD Rezoning (ZC17-001), which would permit medical office land use in this District.

The FEIR has concluded that impacts to Transpiration and Circulation are significant and unavoidable for which there is mitigation; however, although all of these impacts could be mitigated to less-than-significant levels through the implementation of identified mitigation measures, the intersections are outside of the City's jurisdiction and require authorization and permits by the County of Marin and the California Department of Transportation (CALTRANS). As such, since the City cannot legally implement mitigation measures outside of its jurisdiction, the impacts are identified in the FEIR as significant and unavoidable. Nevertheless, it is noted that Public Resources Code section 21082.2(e) provides that statements in an EIR are not determinative of whether a project may have a significant effect on the environment. Further, the San Rafael *General Plan 2020* includes flexibility in determining project consistency. Specifically, Policy C-5c provides that "in order to balance the City's objectives to provide affordable housing, maintain a vital economy and provide desired community services with the need to manage traffic congestion, projects that would exceed the level of service standards set forth above may be approved if the City Council finds that the benefits of the project to the community outweigh the resulting traffic impacts." Accordingly, the Project's benefits have been evaluated by weighing the goals and policies of all elements, including, but not limited to: the Land Use Element, Circulation Element, Conservation Element, Economic Vitality and Safety Elements. Due to the Project's benefits, the City Council has



found and determined that the Project's benefits outweigh potential impacts. Accordingly, the Project is considered consistent with the San Rafael *General Plan 2020*.

2. That the Project's 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 in that:
  - a) A FEIR has been prepared and certified for the Project pursuant to the provisions of the California Environmental Quality Act (CEQA), which finds that all potentially significant project impacts related to health and safety can be adequately mitigated to a less-than-significant level with the implemented mitigation measures outlined in the approved Mitigation Monitoring and Reporting Program (MMRP), for which compliance is required by conditions of this approval.
  - b) A Statement of Overriding Considerations has been prepared and adopted by separate Resolution to address impacts that could not be mitigated to less than significant levels. The Statement of Overriding Consideration concludes that the Project would not be detrimental to public health, welfare of safety, given the fact that the override only addresses timing of the installation of the improvement, which would be required to be constructed prior to full occupancy of the medical office building.
  - c) Additionally, the Project has been reviewed by Community Development Department, the Department of Public Works, and other appropriate City Departments and conditions have been applied to minimize potential impacts to the public health, safety and welfare.
3. That the proposed use, together with the conditions applicable thereto, would comply with each of the applicable provisions of the amended Planned Development (PD) Zoning District contained in the Zoning Ordinance. Through the adoption of appropriate ordinances by the City Council, the Project site is being rezoned and severed from the current zoning (PD-1590) and a new PD zoning is being established with appropriate development standards and land use regulations with which the Project would be consistent. The Project would also comply with other applicable provisions in the Zoning Ordinance.

#### **Findings for Environmental and Design Review Permit (ED17-011)**

In accordance with SRMC 14.25.090. Findings, the following findings are required for approval of an Environmental and Design Review Permit:

1. The Project design is in accord with the General Plan, the objectives of the Zoning Ordinance, and the purposes of the zoning district in which the site is located as noted above. A detailed discussion of the Project's consistency with the applicable General Plan policies is provided in detail in matrix format in the attached General Plan consistency Analysis (Exhibit 3).

Findings for consistency with the General Plan, objectives of the Zoning Ordinance and purposes of the PD District in which the site is located have been made in Use Permit Finding #1 above.

2. The Project will be consistent with the revised PD District proposed for the property, as recommended for adoption by separate Resolution and Ordinance, in that:
  - a. The PD establishes the allowable uses for this site. In the "Office" General Plan land use designation, medical offices are an allowable use and the revised PD would allow medical office uses in addition to the currently allowed general office and ancillary uses. Kaiser Permanente has

applied for a PD amendment to include medical office uses within the existing list of permitted uses.

- b. No expansion or additions are proposed to the existing office building and, therefore, the Project would comply with the FAR, height and setback standards contained in the PD District
  - c. The new parking structure would be built on a current surface parking lot to accommodate the parking requirements contained in the Zoning Ordinance for medical office uses. The proposed structure would comply with the height and setback requirements of the PD District, as amended.
3. The Project complies with the SRMC Chapter 14.18 Parking Standards in terms of parking space dimensions and the number of required parking spaces. 651 parking spaces are required for medical office use, as noted in Chapter 14.18 or the Zoning Ordinance and the PD zoning. The Project provides 676 parking spaces, consistent with the requirement. The parking lot dimensions comply with the standards contained in 14.18.100 of the Zoning Ordinance. Further, the Project proposes solar arrays / shade structures on the roof top level of the proposed parking structure.
4. The Project complies with the design-related criteria of Chapter 14.25 Environmental and Design Review Permits in that:
  - a. The Project does not interrupt major views of Mt. Tamalpais and surrounding hills;
  - b. The site design provides for good vehicular, bicycle and pedestrian circulation and access;
  - c. The front, north and south side elevations of the parking structure have appropriate level of massing and articulation combined with the types and colors of materials to create interest;
  - d. The main vehicular and pedestrian access between the street and the building entry is oriented toward the building entry, thereby creating a sense of entry;
  - e. The DRB has reviewed the Project and found that the proposed design provides appropriate variation in structure placement and height and ultimately recommended approval of the Project design at its July 17, 2018 meeting. The DRB did provide recommended changes that Kaiser Permanente should consider, including modifying some of the landscaping species proposed and providing additional screening measures to the front of the parking structure to screen view of vehicles;
  - f. The proposed landscaping generally conforms to amount of landscaping required and to the species found on the already developed site; and
  - g. Project architecture with appropriate massing, articulation, building colors and natural materials in earth tone colors with the blue color providing accent to the color palette, is harmoniously integrated in relation to the architecture in the vicinity in terms of colors and materials, scale and building design. The proposed structure is designed to be tucked into the hillside to minimize mass and bulk and the highest point of the new parking structure would be below the height of the existing light standards contained in the existing surface parking lot.
5. The Project design would not result in potential adverse environmental impacts as documented in the Project's FEIR. A separate Resolution certifying the FEIR has been adopted.
6. The design of the Project as conditioned below will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the Project site, or to the general welfare of the City of San Rafael in that:
  - a. The Project has been reviewed by appropriate City departments. Conditions of approval recommended by other departments have been applied to minimize potential adverse visual, design, and safety impacts to the Project site and adjacent properties; and

- b. The proposed Planned Development Zoning amendment to add 'medical office uses' to the allowable uses under the revised PD would be consistent with the "Office" General Plan land use designation for this site and medical office uses would be consistent with the PD land uses allowances as adopted by the amended PD zoning.

### **Findings for Sign Program Amendment (SP17-001)**

In accordance with SRMC 14.19.046. Findings, the following findings are required for approval of a Sign Program Amendment Permit:

1. The signs contained in the amended Kaiser Sign program have common design elements placement, colors, architecture, materials, illumination, type, shape, letter size and letter type as the existing Sign Program for the Marin Commons that governs 1600 and 1650 Los Gamos Drive;
2. All of the signs contained in the program are in harmony and scale with the materials, architecture, and other design features of the buildings and property improvements they identify, and the program is consistent with the general design standards specified in Section 14.19.054; and
3. The amount and placement of signage contained in the program is in scale with the subject property and improvements, as well as the immediately surrounding area.

**BE IT FURTHER RESOLVED**, that the City Council approves of a Use Permit (UP17-005), Environmental and Design Review Permit (ED17-011), and Sign Program Amendment (SP17-001) for the Project, subject to the conditions of approval listed below, and

**BE IT FURTHER RESOLVED**, that the City Council approves the "Applicant-Implemented Traffic Improvement Alternative" evaluated in the Draft EIR and Final EIR prepared and certified for this Project. The Applicant-Implemented Traffic Improvement Alternative entails the Project as proposed but confirms that Kaiser Permanente will voluntarily construct identified traffic and infrastructure improvements at Los Gamos Drive and Lucas Valley Road. This voluntary commitment is above and beyond what is required by the City's General Plan, and the Project's identified fair-share contribution to mitigating traffic impacts. As a result, there would be no required mitigation measure to reduce impact significance related to AM and PM peak hour trips at the Los Gamos Drive and Lucas Valley Road intersection. However, permitting and construction of the intersection would still require multi-agency coordination and entitlement review and approval. This alternative was identified by the EIR to be the environmentally superior alternative.

### **Master Use Permit (UP17-001) Conditions of Approval**

#### Community Development Department, Planning Division

1. This Use Permit approves 148,000 square feet of medical office uses and 246 surface parking spaces around the building and a 433-space, three level parking structure across Los Gamos Dr, for a total of 679 parking spaces.
2. The Permitted uses approved by this Master Use Permit include the following and these uses do not require any additional Use Permit review:
  - a. *General Office Use.* General Office uses, as defined by San Rafael Municipal Code Title 14 (Zoning), Section 14.03.030, mean "The approved Use Permit allows a use providing administrative, professional or business services."

- b. *Medical Office Use.* Medical Office uses, as defined by San Rafael Municipal Code Title 14 (Zoning), Section 14.03.030, mean “a facility, other than a hospital, where medical, dental, mental health, surgical, and/or other personal health care services are provided on an outpatient basis. A medical office use would provide consultation, diagnosis, therapeutic, preventative or corrective treatment services by doctors, dentists, medical and dental laboratories, chiropractors, counselors, physical therapists, respiratory therapists, acupuncturists and psychiatrists, and similar practitioners of medical and healing arts for humans licensed for such practice by the state of California. Medical office uses typically require use of specialized medical equipment and medical training to evaluate, diagnose and administer treatments, medication or therapies which require a prescription (building, including administering oxygen or performing dialysis, and sleep related medical offices, diagnostics facilities); increased support staff needs; multiple patient treatment rooms; and patient waiting areas. Counseling services and other services provided by nonmedical professionals may also be included under ‘offices, general.’”
- c. *Medical services.* Medical services uses, as defined in San Rafael Municipal Code Title 14 (Zoning), Section 14.04.020, mean “medical, dental and health-related services, with sale of articles clearly incidental to the services provided”, including, but not limited to, optometry testing, diagnosis, consultation, fitting and/or sales.
- d. *Professional Office Use.* Professional Office uses, as defined by San Rafael Municipal Code Title 14 (Zoning), Section 14.03.030, mean “an office-type facility occupied by a business providing professional services. Examples of these uses include, but are not limited to, accounting, auditing and bookkeeping services, attorneys, counseling services, court reporting services, detective agencies and similar services, financial management and investment counseling, literary and talent agencies, management and public relations services, psychologists, secretarial, stenographic, word processing and temporary clerical employee services.” Hearing aid sales are also included in this definition as an allowed use.
- e. *Administrative Office Use.* Administrative Office uses, as defined by San Rafael Municipal Code Title 14 (Zoning), Section 14.03.030, mean “office-type facility used for administrative purposes, and/or occupied by a business engaged in the production of intellectual property. Examples of these uses include, but are not limited to, advertising agencies, commercial art and design services, construction contractors (office facilities only), design services including architecture, engineering, landscape architecture, urban planning, educational, scientific and research organizations, media postproduction services, news services, photography studios, and writers’ and artists’ offices.”
- f. *Limited accessory retail sales* include, but are not limited to, optical, hearing device, orthopedic, pharmacy and other medical retail sales, in support and conjunction with the medical office building.
- g. *Uses that promote sustainability.* These may include, but are not exclusive of, solar panels, recycling areas, overnight parking for shuttles, electric vehicle charging stations, and other on-site alternative power generation units.
- h. *Minor food service uses (Café),* primarily serving the office building and immediately surrounding office uses.

- i. The list of enumerated uses is intended to be illustrative, rather than an exhaustive of appropriate uses. Future minor changes or modifications to the above illustrative enumerated uses shall be permitted as determined to be appropriate by the Community Development Director.
3. The Conditionally Permitted uses approved by this Master Use Permit include the following, and these uses require an Administrative Use Permit to review for compatibility and parking:
  - a. *Urgent care facilities.*
  - b. *Accessory/Incidental Uses.* Uses determined to be accessory or incidental to the above-listed permitted land uses shall be permitted, as determined to be appropriate by the Community Development Director. Examples of accessory/incidental uses are child care and other minor uses that enhance and support the office building and its immediately surrounding uses.
4. The following uses are not allowed under the Master Use Permit.
  - a. *Hospital*, including facilities with overnight patient rooms.
  - b. *Emergency Room.*
  - c. Other uses not listed in Sections 1, 2, and 3 above.
5. This Master Use Permit approves construction of a 433-space parking structure located to the west of 1650 Los Gamos Drive (APN 165-220-13), continued use of 204 existing parking surrounding the building at 1650 Los Gamos Drive, and continued use of 42 parking spaces located on 1600 Los Gamos Drive (APN 165-220-12) by way of an existing legal easement held by Kaiser Permanente, totaling up to 679 parking spaces.
6. Prior to final occupancy of the medical office building, the following improvements shall be completed:
  - a. The proposed 433 space parking structure and continued use of 204 existing parking spaces surrounding the building at 1650 Los Gamos Dr. shall be constructed and operational.
  - b. The traffic improvement project at Lucas Valley Rd/Los Gamos Dr (i.e., signalization, widening, restriping, and repaving and signal interconnection) along with the other frontage improvements as shown on the BKF Intersection Improvement Exhibit (July 13, 2018) plan, shall obtain all necessary permits from the City of San Rafael, the County of Marin and Caltrans, and the improvements shall be constructed, finalized, and signed off by all permitting agencies and the new signalized intersection and frontage improvements shall be operational.

Should the improvements listed above in Use Permit condition #'s 6a and 6b not be completed when the building is completed for occupancy, medical office uses may occupy up to 70% of the existing office building. As documented in the Project's Draft EIR, a qualitative analysis was conducted by Fehr & Peers for a reduced medical office use project (see Project Alternative 2) to determine how much the Project's trip generation would need to decrease in order to reduce the Project's transportation impact to less than significant. Based on this analysis, transportation impacts would

be less than significant, and the signalized intersection would not be required if the Project includes 70% medical office use or less.

7. Parking requirements
  - a. For medical office uses, the site shall provide a minimum of 4.4 parking spaces per 1,000 sq. ft. (1 space/225 sq. ft. gross building area).
  - b. For general office, professional office, and administrative office uses, ancillary related retail uses, and other ancillary uses listed in the permitted use section, the site shall provide a minimum of 4 parking spaces per 1,000 sq. ft. (1 space/250 sq. ft).
8. Hours of operation
  - a. There are no hours of operation limitations on medical or general office uses, ancillary retail uses or after-hours urgent care.
  - b. The top floor of the parking structure shall not be used after 9pm or before 6am.
9. The Project is approved with the implementation of the "Applicant-Implemented Traffic Improvement Alternative" evaluated in the Draft EIR and Final EIR prepared and certified for this Project. This Alternative mirrors the Project as proposed, with the addition of Kaiser Permanente's offer to voluntarily construct the intersection improvements (signalization and associated widening) at Los Gamos Drive and Lucas Valley Road and other related traffic and vehicular circulation improvements as part of the Project. Intersection improvements include grading and restriping, traffic signal installation, new sidewalks and curbs, pedestrian level lighting, and an extension of a Class II bicycle lane. As a result, Kaiser Permanente will develop intersection designs and coordinate the review and permitting approval of the improvements before the impact threshold is triggered. As such, the Applicant-Implemented Traffic Improvements Alternative will avoid the significant impacts related to traffic impacts identified with the project, including Impact TRAF-1 and Impact TRAF-4, by voluntarily gaining approvals and constructing the intersection improvements at the Lucas Valley Road and Los Gamos Drive intersection. However, permitting and construction of the intersection would still require multi-agency coordination and entitlement review and approval. This alternative was identified by the EIR to be the environmentally superior alternative.
10. Kaiser Permanente shall implement a Transportation Demand Management (TDM) program as part of its on-going occupancy and operation of the medical office use. The final TDM program shall be submitted and approved by the City prior to the occupancy of the medical office building. Implementation of TDM strategies are intended to go beyond the requirements of the PD District, with the goal of reducing employee vehicle trips and reducing the Project's impact on the regional network. Kaiser Permanente shall implement additional TDM measures. Kaiser Permanente shall implement a TDM program, as described in Chapter 3: Project Description and Section 4.6.4.2: Transportation Demand Management Considerations of this traffic impact chapter (Section 3.1.1 of the 1650 Los Gamos Drive FTIA). Implementation of these TDM strategies would go beyond what is required as part of the PD District, with the goal of reducing employee vehicle trips, thereby reducing the Project's impact on the regional network.

Based on a quantitative assessment of the TDM measures proposed in the 1650 Los Gamos Drive FTIA, the TDM strategies may yield a Project vehicle trip generation reduction of up to 12-percent between the Miller Creek Off-Ramp and Miller Creek On-Ramp. If maximally effective, implementation of the Project's TDM strategies would result in a project trip reduction of up to 10-15 AM peak hour trips along this segment, which would result in a project contribution of less

than a 0.01 increase in volume to capacity ratio. As presented in the 1650 Los Gamos Drive FTIA, implementation of the Project's TDM measures will achieve this reduction, however, Kaiser will annually quantitatively analyze and monitor employee vehicle trip generation data via comprehensive employee surveys and make adjustments to its TDM measures as needed to achieve the stated reduction.

As described in the 4.6.4.2: Transportation Demand Management Considerations and the Fehr & Peers 1650 Los Gamos Drive FTIA, Kaiser Permanente shall conduct an annual employee survey and prepare a monitoring report that evaluates the effectiveness of the Project's TDM Plan. The TDM program will be submitted to the City of San Rafael for comment and review. Kaiser Permanente will coordinate with the City of San Rafael, as necessary. The annual survey shall be submitted to the Community Development Department on December 1 of each calendar following building occupancy. The survey shall demonstrate how the TDM measures reduce the Project's impact to peak-hour volume to capacity ratio for the Miller Creek On- and Off-Ramp. **(MM TRAF-2)**

11. This Master 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 17, 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 Master Use Permit.
12. This Master Use Permit (UP17-001) approving the Project and authorizing the allowable uses for the site shall run concurrently with the approved Environmental and Design Review Permit (ED17-011). If either entitlement expires, this Use Permit approving the allowable uses shall also expire and become invalid.

### **Environmental and Design Review Permit (ED17-011) Conditions of Approval**

#### ***General and On-Going***

##### Community Development Department, Planning Division

1. The Project is approved with the implementation of the "Applicant-Implemented Traffic Improvement Alternative" evaluated in the Draft EIR and Final EIR prepared and certified for this Project. This Alternative mirrors the Project as proposed, with the addition of Kaiser Permanente's offer to voluntarily construct the intersection improvements (signalization and associated widening) at Los Gamos Drive and Lucas Valley Road and other related traffic and vehicular circulation improvements as part of the Project. Intersection improvements include grading and restriping, traffic signal installation, new sidewalks and curbs, pedestrian level lighting, and an extension of a Class II bicycle lane. As a result, Kaiser Permanente will develop intersection designs and coordinate the review and permitting approval of the improvements before the impact threshold is triggered. As such, the Applicant-Implemented Traffic Improvements Alternative will avoid the significant impacts related to traffic impacts identified with the project, including Impact TRAF-1 and Impact TRAF-4, by voluntarily gaining approvals and constructing the intersection improvements at the Lucas Valley Road and Los Gamos Drive intersection. However, permitting and construction of the intersection would still require multi-agency coordination and entitlement review and approval. This alternative was identified by the EIR to be the environmentally superior alternative.



2. The building techniques, colors, materials, elevations and appearance of the Project, as presented to the City Council at its September 17, 2018 hearing, labeled *Kaiser Permanente 1650 Los Gatos Drive Medical Office Building Project*, 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.
3. The approved colors for the Project are on file with the Community Development Department, Planning Division as presented on the approved plans. 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.
4. Kaiser Permanente shall remit payment of the State Fish and Game fees in order for staff to file a Notice of Determination with the County Clerk within 5 days of project approval. The current fee amounts are \$3,078.25 payable to the State Fish and Game and \$50.00 payable to the Marin County Clerk and are subject to increase.
5. Kaiser Permanente shall be responsible for implementing all mitigation measures presented in the Project's Final Environmental Impact Report (FEIR), on file with the Community Development Department, including any mitigation measures that may not have been incorporated into the Project conditions of approval. A deposit for Mitigation Monitoring shall be paid as required by ED Condition 33, herein.
6. All required mitigation measures are identified in the Mitigation Monitoring and Reporting Program (MMRP) as recommend for adopted by separate Resolution and included as conditions of approval.
7. Kaiser Permanente agrees to defend, indemnify, release and hold harmless the City of San Rafael, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities ("indemnities"), the purpose of which is to attack, set aside, void or annul the approval of this application or the certification of any environmental document which accompanies it. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the indemnities, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the indemnities.
8. In the event that any claim, action or proceeding as described above is brought, the City shall promptly notify Kaiser Permanente of any such claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action, or proceeding. In the event Kaiser Permanente is required to defend the City in connection with any said claim, action or proceeding, the City shall retain the right to: 1) approve the counsel to so defend the City; 2) approve all significant decisions concerning the manner in which the defense is conducted; and 3) approve any and all settlements, which approval shall not be unreasonably withheld. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding, provided that if the City chooses to have counsel of its own to defend any claim, action or proceeding where

Kaiser Permanente already has retained counsel to defend the City in such matters, the fees and the expenses of the counsel selected by the City shall be paid by the City.

9. As a condition of this approval, Kaiser Permanente agrees to be responsible for the payment of all City Attorney expenses and costs, both for City staff attorneys and outside attorney consultants retained by the City, associated with the reviewing, process and implementing of the land use approval and related conditions of such approval. City Attorney expenses shall be based on the rates established from time to time by the City Finance Director to cover staff attorney salaries, benefits, and overhead, plus the actual fees and expenses of any attorney consultants retained by the City. Applicant shall reimburse City for City Attorney expenses and costs within 30 days following billing of same by the City.
10. All site improvements, including but not limited to, site lighting, fencing, landscape islands and paving striping shall be maintained in good, undamaged condition at all times. Any damaged improvements shall be replaced in a timely manner.
11. All fencing shall be installed and maintained in a good, undamaged condition. Any damaged portions shall be replaced in a timely manner.
12. The Project site shall be kept free of litter and garbage. Any trash, junk or damaged materials that are accumulated on the site shall be removed and disposed of in a timely manner. Kaiser Permanente shall institute a program to provide regular cleanup of the parking lot, parking structure and the site facility, as well as all other areas immediately around the new parking structure and office building.
13. 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. 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.
14. 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.
15. 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.
16. All submitted building permit plan sets shall include a plan sheet incorporating these conditions of approval.
17. If reclaimed water for landscaping purposes is made available, Kaiser Permanente shall upgrade its water system and install any and all required facilities to use reclaimed water for all site landscaping purposes.
18. 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/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 17, 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.

19. This Environmental and Design Review Permit (ED17-011) approving the Project shall run concurrently with the approved Master Use Permit (UP17-001). If either entitlement expires, this Environmental and Design Review Permit approving the Project, as depicted on Project plans, shall also expire and become invalid.

### ***Prior to Issuance of Grading/Building Permits***

#### Community Development Department, Planning Division

20. Bicycle parking shall be provided in compliance with San Rafael Municipal Code Section 14.18.090. This requires bicycle spaces provided on site at a minimum of 5% of total vehicle parking, including a minimum of one two bike capacity rack for short term bicycle parking and a minimum of 5% of the total vehicle parking for long term spaces. Final plans shall include a design detail for proposed bicycle parking spaces, proposed number and location subject to final review and approval by the Community Development Department and Traffic Engineer.
21. Parking spaces for clean air vehicles shall be provided in compliance with SRMC Section 14.18.045.
22. Kaiser Permanente shall be responsible for all costs associated with mitigation monitoring and shall remit an initial deposit in the amount of \$5,000.00 for mitigation monitoring and condition compliance. Staff shall bill time against this deposit amount during Project review and implementation of the Project and monitoring of Project conditions, to assure compliance with conditions and mitigation measures has been achieved.
23. Any outstanding Planning Division application processing fees, including payment of EIR consultant and contract planner, shall be paid prior to issuance of the first construction permit.
24. A construction logistics plan shall be submitted demonstrating how construction conditions shall be met. The plan must be approved by the Public Works Department and Community Development Director and shall include the conditions of approval and mitigation measures that are applicable to the construction of the Project.
25. All mechanical equipment (i.e., air conditioning units, meters and transformers) and appurtenances not entirely enclosed within the structures (on side of building or roof) shall be screened from public view. The method used to accomplish the screening shall be indicated on the building plans and approved by the Planning Division.
26. Protective barrier fencing shall be installed during construction to protect existing trees that are to remain on site, as per the approved landscape plan. Plans showing the fencing, signage and barrier details shall be included on Project plans. The fencing shall be a minimum four-foot orange mesh protected by hay bales and signage designed to avoid intrusion by construction workers and equipment.
27. Kaiser Permanente shall submit to the satisfaction of the Community Development Department Director Project building plans that include a photometric lighting study demonstrating that outdoor

lighting fixtures meet the requirements of the California Energy Code (known as Part 6, Title 24 of the California Code of Regulations). **(MM AES-1)**

28. The lighting plan shall be revised to utilize a maximum Lumen rating of 3,000 Kelvins for parking structure lighting fixtures.
29. Prior to grading activities, Kaiser Permanente shall prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements of the statewide Construction General Permit. The SWPPP shall be prepared by a Qualified SWPPP Developer (QSD). The SWPPP shall include the minimum Best Management Practices (BMPs) required for the identified risk level. **(MM HYDRO-1)**

The SWPPP shall be designed to address the following objectives:

- 1) All pollutants and their sources, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction activity are controlled;
  - 2) Where not otherwise required to be under a Regional Water Quality Control Board permit, all non-stormwater discharges are identified and either eliminated, controlled, or treated;
  - 3) Site BMPs are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity; and
  - 4) Stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.
  - 5) BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction or the Caltrans Stormwater Quality Handbook Construction Site BMPs Manual.
30. Incorporate Best Management Practices during Project construction activities. Reasonable regulation of the hours of construction, as well as regulation of the arrival and operation of heavy equipment and the delivery of construction material, are necessary to protect the health and safety of persons, promote the general welfare of the community, and maintain the quality of life. In compliance with the City's Municipal Code, the Project shall adhere to the allowable construction hours of 7:00 a.m. to 6:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on Saturdays. Construction activities are prohibited on Sundays and national holidays. Additionally, the construction crew shall adhere to the following construction best management practices to reduce construction noise levels emanating from the site and minimize disruption and annoyance at existing noise-sensitive receptors in the Project vicinity **(MM NOISE-1)**:

In order to reduce potential significant impacts from temporary construction activities, Kaiser Permanente shall be required to develop a construction noise control plan, including, but not limited to, the following available controls:

- 1) Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment. Temporary noise barrier fences would provide a 5-dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps.
- 2) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- 3) Unnecessary idling of internal combustion engines should be strictly prohibited.
- 4) Locate stationary noise-generating equipment, such as air compressors or portable power generators, as far as possible from sensitive receptors as feasible. If they must

be located near receptors, adequate muffling (with enclosures where feasible and appropriate) shall be used to reduce noise levels at the adjacent sensitive receptors. Any enclosure openings or venting shall face away from sensitive receptors.

- 5) Utilize "quiet" air compressors and other stationary noise sources where technology exists.
  - 6) Construction staging areas shall be established at locations that will create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the Project site during all Project construction.
  - 7) Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
  - 8) Route construction-related traffic along major roadways and as far as feasible from sensitive receptors.
  - 9) Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the Project site.
  - 10) The contractor shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
  - 11) Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.
  - 12) The implementation of the reasonable and feasible controls outlined above would reduce construction noise levels emanating from the site by 5 to 10 dBA in order to minimize disruption. With the implementation of these controls, as well as the Municipal Code limits on allowable construction hours, and considering that construction is temporary, the impact would be reduced to a less-than-significant level.
31. Prior to tree removal, Kaiser Permanente shall conduct a pre-construction nesting bird survey of existing trees on-site (**MM BIO-1**). Prior to issuance of a grading or building permit, Kaiser Permanente shall conduct a preconstruction nesting bird and bat survey. Preconstruction surveys shall include the following:
- 1) Perform any vegetation trimming and/or removal outside of the bird nesting season (Sept. 1 – Feb. 14);
  - 2) Provide a worker environmental awareness training for construction personnel;
  - 3) Perform preconstruction surveys for nesting migratory birds by a qualified biologist no more than 72 hours prior to the start of construction for activities occurring during the breeding season (February 15 to August 31); and
  - 4) If work is to occur within 300 feet of active raptor nests or 50 feet of active passerine nests, non-disturbance buffers will be established at a distance sufficient to minimize disturbance.

#### Public Works Department

32. Given the scope of the Project and available staff time, third party project coordination and inspection may be required on behalf of the City. If determined necessary by the Department of Public Works a deposit may be required to fund coordination and development of the offsite improvements and inspection activity, including but not limited to grading, traffic, drainage, and access.

33. The City of San Rafael reserves the right to review, condition and approve all offsite improvements related to this Project. This includes traffic signal improvements, roadway improvements, and utility work where it extends beyond City limits. Show existing and proposed easements on the plan. Relocation of easements shall require approval of the easement holders. It is unclear if any new easements are proposed, such as access for drainage and sanitary sewer.
34. It is recommended that parking be designated in the parking structure, such that most of the public traffic will access the building directly and Kaiser employees would mainly utilize the upper floors of the parking structure.

#### *Access*

35. An encroachment permit is required for any work within the City's Right-of-Way, from the Department of Public Works located at 111 Morphew St. Additional encroachment permits shall be required from the County of Marin and Caltrans.
36. The Project shall include sidewalk curb and gutter for the frontage along Lucas Valley Rd. This includes the pathway connection from the eastern parking lot to the entrance of the pedestrian corridor for public transit access at the intersection with the Southbound 101 On/Off Ramp.
37. Show existing and proposed easements on the plan. Relocation of easements shall require approval of the easement holders. It is unclear if any new easements are proposed, such as access for drainage and sanitary sewer.
38. The driveways for the parking structure shall approach Los Gamos close to perpendicular. This will help to improve safety for vehicles entering and exiting the parking structure, as well as for pedestrians and cyclists along Los Gamos. Driveway profiles shall be required prior to issuance of a building permit, however, based on the slopes presented on the plan, it appears that the current design can accommodate adequate slope transitions.
39. The existing mid-block crosswalk shall be replaced with a crosswalk located in line with the pedestrian entrance/exit to the garage. This crosswalk shall include bulb-outs and a rapid repeating flashing beacon (RRFB) similar to others utilized in the City. The RRFB shall be hardwired and a meter provided. Prior to building permit submittal, the location plan for the bulb outs and RRFB shall be revised to show a current aerial photograph.
40. Wheelstops are recommended for the parking spaces in front of the accessible pathway, instead of the bollards shown on the plan due to the accessible aisles extending through the line of bollards. If bollards are used, they shall be placed according to the parking spaces (such as one bollard centered per parking space).
41. The accessible parking space near the bike storage area does not include a full-length aisle. This space cannot be counted for the number of accessible parking spaces. However, it appears that there may be sufficient parking without it or that the area could accommodate the aisle with minor modification. Prior to building permit submittal, the plan shall be revised to remove this space or accommodate the aisle as suggested.

#### *Drainage and Sewer*

42. Prior to building or grading permit submittal, Kaiser Permanente shall submit a detailed [plan to show that MCSTOPPP requirements for water quality and reduced runoff are met. The hydrology and water quality report for CEQA review discusses that runoff impacts will be less than a significant impact due to the extent of existing impervious surface compared to the proposed

conditions. The submitted documents do not clearly define the square footage of existing impervious area, as well as the proposed creation or replacement.

The new parking garage is a MCSTOPPP regulated project and the proposed plan includes bioretention. It is understood that more detailed plans and submittals to show that MCSTOPPP requirements are met are deferred to future submittals. Meeting these requirements is anticipated to result in improved water quality and reduce runoff impacts compared to the existing conditions.

If additional treatment is necessary following a more detail review, Kaiser Permanente may consider additional bioretention area or other potential improvement options for stormwater such as pervious pavement, bioswales and tree-planter devices.

43. The storm drain proposed to be abandoned shall be removed to the inlet structure or, alternatively, for the portion to be abandoned-in-place, flow-able fill may be used and the inlet structure.
44. It is recommended that the storm drainage beneath the parking garage structure is routed outside the footprint of the proposed improvement, due to potential maintenance and access issues.
45. It appears that the sidewalk around the uphill perimeter of the Project site will act to direct surface water conveyance. It is recommended that the uphill perimeter sidewalk be designed to accommodate flow in a swale.
46. Prior to building or grading permit submittal, the sanitary sewer alignment shall be reviewed by the Las Gallinas Valley Sewer District. It is recommended that the alignment be configured to eliminate or reduce angles where possible. Kaiser Permanente may consider following a similar angular direction of the existing uphill section of sewer, to reach the Fire Lane on the north side of the building in a more direct route, while protecting existing trees where possible.
47. Prior to building permit submittal, a comprehensive utility plan for the roadways and site improvements shall be provided for review and comment.

#### *Grading*

48. Prior to soil disturbance or stockpiling, a grading permit shall be required from the Department of Public Works located at 111 Morphew St.
49. Truck trips may be limited for delivery, and off-haul as part of the grading permit. This is generally applied during peak hour traffic to reduce congestion. For example, one trip per 15 minutes between 7am-9am and 4pm-6pm. This will be reviewed in more detail at the time of grading permit issuance.
50. For portions of the roadway not identified for repaving, but within the truck route, a pre-construction and post-construction condition survey, similar to the City's regular pavement condition index, completed by a third party may be required to determine if any damage occurred to the roadway, attributed to the Project. Repairs or funding in lieu of may be required.

#### *Traffic*

51. A construction vehicle impact fee shall be required at the time of building permit issuance; which is calculated at 1% of the valuation, with the first \$10,000 of valuation exempt.
52. Please refer to the Memo from Parisi Transportation Consulting dated March 14, 2017 prepared on behalf of the City, which summarizes the review findings for the Traffic Study.



Additional comments were provided in the previous memorandum from the Department of Public Works dated May 15, 2017.

53. As volunteered by Kaiser Permanente, the construction of Los Gamos Drive / Lucas Valley Road intersection improvements, as a community benefit to also mitigate impacts that could otherwise be significant and unavoidable, (the intersection improvements have been identified as part of the Project EIR, which have been designed to incorporate elements previously identified by the City and updated to meet current standards) is conditioned to address the following:

- Signalization of the intersection of Los Gamos and Lucas Valley Rd. with interconnection to the existing Highway 101/Lucas Valley intersection;
- Elimination of the free right turn movements, removing the islands and to make the intersection more square;
- Accessible curb ramps;
- Bike Lanes from the Southbound On/Off ramp and through the intersection with Los Gamos;
- Repaving, striping, signage and revegetation accordingly;
- Preservation of monuments, or setting new;
- Relocation or adjustment of existing utilities as required; and
- Accommodation for cyclists along Los Gamos.

Detailed plans shall be required prior to building permit issuance. These improvements require multiple agency coordination. As noted in comment 33 above, the City may provide comments and conditions for the improvements.

54. Traffic mitigation fees shall be required, based on the increase in peak hour trips currently calculated at \$4,246 per AM and PM trip. For 437 AM and PM peak hour trips this equals \$1,855,502.

#### Community Development Department, Building Division

55. Prior to use or occupancy of the new building or structure or any portion thereof, a "Certificate of Occupancy" must be issued by the Chief Building Official pursuant to California Building Code Section 111.1. Failure to secure a "Certificate of Occupancy" is a violation and will result in a \$500 citation per day for as long as the violation continues.

56. The design and construction of all site alterations shall comply with the 2016 California Residential Code, 2016 California Building Code, 2016 Plumbing Code, 2016 Electrical Code, 2016 California Mechanical Code, 2016 California Fire Code, 2016 California Energy Code, 2016 Title 24 California Energy Efficiency Standards, 2016 California Green Building Standards Code and City of San Rafael Ordinances and Amendments, or the codes that are in effect at the time of building permit submittal.

57. 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 (fire suppression)
- e) Mechanical plans if applicable

- f) Site/civil plans (clearly identifying grade plan and height of the building)
- g) Structural Calculations
- h) Soils reports

58. If the parking structure is proposed to have a new address, the address for structure shall be determined by the Chief Building Official. You must apply for a new address for this building from the Building Division.
59. With regard to 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 the Building Division and Department of Public Works for review and comments prior to any such activities taking place.
60. A grading permit may be required for the above-mentioned work.
61. Prior to building permit issuance for the construction of the structure, geotechnical and civil pad certifications are to be submitted.
62. In the parking garage, if mechanical ventilation is required (enclosed parking garage) it will be required to be capable of exhausting a minimum of .75 cubic feet per minute per square foot of gross floor area CMC Table 4-4. Open garages shall conform with CBC Section 406.5 and Closed garages with Section 406.6.
63. In the parking structure, 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 SWPPP.
64. 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.
65. The parking garage ceiling height shall have a minimum vertical clearance of 8' 2" where required for accessible parking.
66. The public accommodation disabled parking spaces must be provided according to 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

67. The project shall be designed to provide access to the physically disabled in accordance with requirements of Title-24, California Code of Regulation.
68. At least one disabled parking space shall be van accessible; 9 feet wide parking space and 8 feet wide off- load area. Additionally, one in every eight required handicap spaces shall be van accessible.
69. Proposed relocated sewer line needs to be identified as either a mainline or lateral.

Las Gallinas Valley Sanitation District (LGVSD)

70. LGVSD requires a special site visit with Kaiser Permanente to discuss potential access issues.
71. Kaiser Permanente shall provide adequate vehicle access to all sanitary manholes on the sewer main for District maintenance activities. The area needs to be paved and accessible with a 39-foot long truck.
72. No permanent structure shall be constructed within the proposed easement.
73. Kaiser Permanente shall be responsible for preparation of quitclaim deed and new sewer easement documents necessary for recordation by the District. Please submit a draft of the quitclaim deed for review as soon as possible.
74. Complete and submit Application for Allocation of Capacity to LGVSD along with the application fee of \$250 when appropriate. Application is available on District website. Applicants shall submit design/construction plans to LGVSD for review when available. Plans must show, including but not limited to, the following: a table showing existing and proposed plumbing fixture count, existing and proposed floor plans showing location of plumbing fixtures, location of backwater prevention devices, sanitary sewer, cleanouts, manholes, and other relevant sanitary sewer information that may be applicable.
75. Based on the LGVSD ordinance of fees adopted on August 10, 2017, the preliminary cost estimates are:
- a. For new buildings, structures, and developments:
    - i. \$5,968 per Equivalent Sewer Unit
    - ii. Actual fees may be adjusted according to specific conditions outlined in the Ordinance.
  - b. For existing buildings, structures, and developments:
    - i. \$298 per Plumbing Fixture Unit (PFU)
    - ii. Credit may be given to existing plumbing fixtures.

- c. Kaiser Permanente shall reimburse the District for all plan review, field verification before and after construction, and inspection fees accrued associated with this Project. The estimate cost is \$7,500. Actual fees may be adjusted according to Project-specific conditions.
- d. For more information about District Ordinance and permitting process, please visit <http://www.lgvsd.org/>.

#### San Rafael Fire Department, Fire Prevention Bureau

- 76. For Fire Protection equipment and systems, the design and construction alterations shall comply with the 2016 California Fire Code, City of San Rafael Ordinances and Amendments, and the 2016 edition of the National Fire Protection Standards.
- 77. 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 plans (Deferred Submittal to the Fire Prevention Bureau)
  - c. Fire Underground plans (Deferred Submittal to the Fire Prevention Bureau)
- 78. A Post Indicator Valve (PIV) will be provided in proximity to the exposed check valve and Fire Department connection equipment.
- 79. A Class I standpipe shall be installed in each stairwell.
- 80. If this structure is to have an independent street address, then address numbers that are on contrasting background, illuminated and 6" minimum height with 4" stroke shall be placed in a location that is clearly visible from the street.
- 81. The entire area fronting the structure shall be posted as a FIRE LANE with all appropriate signage, striping and stenciling. The fire hydrants will have curbs painted red for 15' on either side along the roadway.
- 82. KNOX Fire Department access equipment shall be installed at both FIRE LANE gates. This will either be a key switch for electric gates, KNOX padlocks for manually operated gates or KNOX key vaults for keys to open gates equipment. Additionally, keys for locked utility and equipment rooms will be placed inside a KNOX key vault.

#### ***During Construction***

#### Community Development Department, Planning Division

- 83. During any construction period ground disturbance, Kaiser Permanente shall ensure that the Project contractor implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below would reduce the air quality impacts associated with grading and new construction to a less than significant level. The contractor shall implement the following best management practices that are required of all projects (**MM AIR-1**):
  - a) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- d) All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
  - e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  - g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
  - h) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
84. The Project shall implement a Tree Protection Zone to protect existing trees to be retained pursuant to the Urban Forestry Associates arborists report from March 17, 2017. This includes implementation of the arborists checklist and the installation of four-inch metal deer fencing at the canopy edge where possible or otherwise as close to any proposed excavation as possible.
85. Protect Archaeological Resources Identified during Construction: Kaiser Permanente shall ensure that construction crews stop all work within 100 feet of the discovery until a qualified archaeologist can assess the previously unrecorded discovery and provide recommendations. Resources could include subsurface historic features such as artifact-filled privies, wells, and refuse pits, and artifact deposits, along with concentrations of adobe, stone, or concrete walls or foundations, and concentrations of ceramic, glass, or metal materials. Native American archaeological materials could include obsidian and chert flaked stone tools (such as projectile and dart points), midden (culturally derived darkened soil containing heat-affected rock, artifacts, animal bones, and/or shellfish remains), and/or groundstone implements (such as mortars and pestles). **(MM CULT-1)**
86. Protect Human Remains Identified During Construction: Kaiser Permanente shall treat any human remains and associated or unassociated funerary objects discovered during soil-disturbing activities according to applicable State laws. Such treatment includes work stoppage and immediate notification of the Marin County Coroner and qualified archaeologist, and in the event that the Coroner's determination that the human remains are Native American, notification of NAHC according to the requirements in PRC Section 5097.98. NAHC would appoint a Most Likely Descendant (MLD). A qualified archaeologist, Kaiser Permanente, County of Marin, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of any human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5[d]). The agreement would take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, and final disposition of the human remains and associated or unassociated funerary objects. The PRC allows 48 hours to reach agreement on these matters. **(MM CULT-2)**
87. Implementation of the unanticipated discovery measures outlined in Section V(b) and (d) above, address the potential discovery of previously unknown resources within the project area. If significant tribal cultural resources are identified onsite, all work would stop immediately within 50 feet of the resource(s) and Kaiser Permanente would comply with all relevant State and City policies and procedures prescribed under PRC Section 21074. **(MM TRIBAL-1)**

## Marin Municipal Water District

### *Medical Office Uses*

88. The subject property is currently being served by the Marin Municipal Water District (Service Nos. 54267 – Reclaimed 54268). The purpose and intent of Service No. 54268 are to provide water for commercial use. The purpose and intent of Service No. 54267 are to provide reclaimed water for irrigation. The proposed conversion for the existing structure into medical offices will not impair the District's ability to continue service to this property.
89. The property's total annual water entitlement of 16.71 acre-feet may be insufficient for the new use, therefore purchase of additional water entitlement may be required.
90. Prior to building permit/grading permit issuance and water service approval, a landscape plan shall be submitted for compliance with all indoor and outdoor requirements of District Code Title 13 – Water Conservation, which requires a landscape plan, an irrigation plan, and a grading plan.

Any questions regarding District Code Title 13 – Water Conservation should be directed to the Water Conservation Department at 415-945-1497. You can also find information about the District's water conservation requirements online at [www.marinwater.org](http://www.marinwater.org).

91. Comply with the backflow prevention requirements, if upon the Districts review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to Dewey Sorensen at (415) 945-1558.
92. 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 Dewey Sorensen at (415) 945-1558.
93. Pursuant to Ordinance No. 429, installation of gray water recycling systems is required when practicable for all projects required to install new water service and existing structures undergoing a "substantial remodel" that necessitates an enlarged water service.

### Parking Structure – APN 165-220-12

The referenced parcel is not currently being served. This parcel will be eligible for water service upon request and fulfillment to the following conditions:

94. Complete a High-Pressure Water Service Application.
95. Submit a copy of the building permit.
96. Pay the appropriate fees and charges.
97. Complete the structure's foundation within 120 days of the date of application.
98. Comply with the District's rules and regulations in effect at the time service is requested.
99. Comply with all indoor and outdoor requirements of District Code Title 13 – Water Conservation. Plans submitted and reviewed to confirm compliance. The following are required:
  - a) Verification of indoor fixtures compliance
  - b) Landscape plan
  - c) Irrigation plan

d) Grading plan

100. 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 Dewey Sorensen at (415) 945-1558.
101. 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 Dewey Sorensen at (415) 945-1558.
102. Pursuant to Ordinance No. 429, installation of gray water recycling systems is required when practicable for all projects required to install new water service and existing structures undergoing a "substantial remodel" that necessitates an enlarged water service.

Pacific Gas & Electric

103. 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.
104. 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.
105. 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.

***Prior to Occupancy***

Community Development Department, Planning Division

106. Signalize Lucas Valley Road / Los Gamos Drive. In coordination with the City of San Rafael, the County of Marin's Department of Public Works, and Caltrans, Kaiser Permanente shall pay the cost to signalize the Lucas Valley Road / Los Gamos Drive intersection to mitigate poor operating conditions. Signalizing the intersection is consistent with improvements identified in the San Rafael *General Plan 2020* and is provided as a public benefit as part of the Project. Due to its close proximity to the US-101 Ramp terminal intersections, the new signal should include traffic signal interconnect and be coordinated with the adjacent interchange signals. Additionally, interagency coordination will be required during design, construction and maintenance of the new signal. Therefore, a memorandum of understanding (MOU) will be required between the City of San Rafael and the County of Marin to document the management and maintenance of the new signal, since the US 101/Lucas Valley interchange signals and the new Lucas Valley Road / Los Gamos Drive signal would need to be operated and maintained by one or multiple agencies (**MM TRAF-1**).
107. The final TDM program shall be submitted to the City prior to occupancy of the medical office building. See Master Use Permit UP17-005 condition 10 for the detailed requirements, monitoring and annual reporting (**MM TRAF-2**).
108. Improve Intersection Operations at Lucas Valley Road/Las Gallinas Avenue. Improvements at the Lucas Valley Road/Las Gallinas Avenue intersection have yet to be identified through the



City of San Rafael's *General Plan 2020*; however, several vehicle capacity improvements (such as reconfiguring the intersection to remove channelized turn islands or replacing the existing signal with a roundabout) may be considered by the City of San Rafael to mitigate poor operating conditions at the intersection. Capacity increasing improvements include various trade-offs, however. For example, adding capacity could facilitate more vehicular traffic but this could also have an adverse impact to pedestrians and bicyclists and result in the diversion of more pass-through traffic along Las Gallinas Avenue and an increase in VMT. Although mitigation is possible at this intersection to address Project impacts, the intersection is outside of the City's jurisdiction and specific improvements have yet to be identified by either the City of San Rafael or the County of Marin. As such, the feasibility of potential mitigations will require further study and coordination with local neighborhood groups, the City of San Rafael, and the County of Marin, which operates and maintains the existing traffic signal. Since the City cannot legally implement mitigation measures outside of its jurisdiction, this potential mitigation is infeasible from both a legal and public policy standpoint. Ultimately, the City of San Rafael, in coordination with the County of Marin, would be responsible for implementing improvements, of which Kaiser Permanente would pay its fair share (**MM TRAF-3**).

109. In coordination with the City of San Rafael Department of Public Works, the County of Marin Department of Public Works, and Caltrans, Kaiser Permanente shall pay a fair share contribution to the reconfiguring and signalization of the Lucas Valley Road/Los Gamos Drive Intersection. The San Rafael *General Plan 2020* (Exhibit 21 #2) identifies improvements at this intersection, including signalizing the intersection, adding dual westbound left turn lanes, reconfiguring the northbound approach, and removing existing striped channelized islands, as illustrated in BKF Intersection Improvement Exhibit plan submitted to the City on July 19, 2018. Due to its close proximity to the US-101 Ramp terminal intersections, the new signal should include traffic signal interconnect and be coordinated with the adjacent interchange signals. Additionally, since the majority of the intersection is located within the County of Marin jurisdiction, interagency coordination will be required during design, construction and maintenance of the new signal. Furthermore, a memorandum of understanding (MOU) will be required between the City of San Rafael and the County of Marin to document the management and maintenance of the intersection and signals since the US 101/Lucas Valley interchange signals and the new Lucas Valley Road / Los Gamos Drive signal would be operated and maintained by one or multiple agencies (**MM TRAF-4**).

110. Prior to final occupancy of the medical office building, the following improvements shall be completed:

- i. The proposed 433-space parking structure and continued use of 204 existing parking spaces surrounding the building at 1650 Los Gamos Dr. shall be constructed and operational.
- ii. The traffic improvement project at Lucas Valley Rd/Los Gamos Dr (i.e., signalization, widening, restriping, and repaving and signal interconnection) along with the other frontage improvements as shown on BKF Intersection Improvement Exhibit plan, dated July 13, 2018, shall obtain all necessary permits from City, County and CalTrans, and the improvements shall be constructed, finalized, and signed off by all permitting agencies and the new signalized intersection and frontage improvements shall be operational.

Should the improvements listed above in Use Permit condition #'s 6a and 6b not be completed when the building is completed for occupancy, medical office uses may occupy up to 70% of the

existing office building. As documented in the Project's Draft EIR, a qualitative analysis was conducted by Fehr & Peers for a reduced medical office use project (see Project Alternative 2) to determine how much the Project's trip generation would need to decrease in order to reduce the Project's transportation impact to less than significant. Based on this analysis, transportation impacts would be less than significant, and the signalized intersection would not be required if the Project includes 70% medical office use or less.

111. Prior to a certificate of occupancy, Kaiser Permanente shall verify that operational stormwater quality control measures that comply with the requirements of the current Phase II Small MS4 Permit have been implemented. **(MM HYDRO-2)**

Responsibilities include, but are not limited to,:

- 1) Designing BMPs into Project features and operations to reduce potential impacts to surface water quality and to manage changes in the timing and quantity of runoff associated with operation of the Project. These features shall be included in the design-level drainage plan and final development drawings.
- 2) The Project shall incorporate site design measures and Low Impact Development design standards, including minimizing disturbed areas and impervious surfaces, infiltration, harvesting, evapotranspiration, and/or bio-treatment of stormwater runoff.
- 3) Kaiser Permanente shall establish an Operation and Maintenance Plan. This plan shall specify a regular inspection schedule of stormwater treatment facilities in accordance with the requirements of the Phase II Small MS4 Permit.
- 4) Funding for long-term maintenance of all BMPs shall be specified.

112. Final inspection of the Project by the Community Development Department, Planning Division, is required. Kaiser Permanente shall contact the Planning Division to request a final inspection upon completion of the Project. The final inspection shall require a minimum of 48-hours advance notice.

113. All landscaping and irrigation shall be installed prior to occupancy. In the alternative, Kaiser Permanente shall post a bond with the City in the amount of the estimated landscaping/irrigation installed cost. In the event that a bond is posted, all areas proposed for landscaping shall be covered with bark or a substitute material approved by the Planning Division prior to occupancy. Deferred landscaping through a bond shall not exceed 3 months past occupancy.

114. The landscape architect shall certify in writing and submit to the Planning Division, and call for inspection, that the landscaping has been installed in accordance with all aspects of the approved landscape plans, that the irrigation has been installed and been tested for timing and function, and all plants including street trees are healthy. Any dying or dead landscaping shall be replaced.

115. Prior to final occupancy, Kaiser Permanente shall submit evidence of a two-year maintenance contract for landscaping or alternately post a two-year maintenance bond.

116. All ground- and rooftop-mounted mechanical equipment shall be fully screened from public view.

117. All trash enclosures shall be screened by a combination of fencing with privacy slats and landscaping.

118. All exterior lighting shall be shielded down. Following the issuance of a certificate of occupancy, all exterior lighting shall be subject to a 90-day lighting level review by the Police Department and Planning Division to ensure compatibility with the surrounding area and conformance with that identified in Condition #27 above.
119. All plan details shall be implemented as indicated plans approved for building permit, in compliance with all conditions of approval and applicable City zoning code requirements, to the satisfaction of the Community Development Director. Any outstanding fees including planning review fees, inspection fees, etc. shall be paid.

#### Public Works Department

##### Drainage

120. A stormwater agreement, and stormwater Operation and Maintenance (O&M) plan shall be required to comply with stormwater requirements.

More information is available from MCSTOPPP, hosted on the Marin County Website. See tools and guidance, and post construction requirements at:

<http://www.marincounty.org/depts/pw/divisions/mcstoppp/development/new-and-redevelopment-projects>

121. The Los Gamos Drive frontage sidewalks shall be revised to meet accessibility requirements, notably at the existing driveway aprons of the new parking structure. Any deficiencies or trip hazards shall be addressed prior to occupancy, based on conditions observed in the field.
122. The existing mid-block crosswalk shall be replaced with a crosswalk located in line with the pedestrian entrance/exit to the garage. This crosswalk shall include bulb-outs and a rapid repeating flashing beacon (RRFB) similar to others utilized in the City. The RRFB shall be hardwired and a meter provided. Prior to building permit submittal, the location plan for the bulb outs and RRFB shall be revised to show a current aerial photograph.

#### ***After Occupancy***

#### Community Development Department, Planning Division

123. 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.

### **Sign Program Amendment (SP17-001) Conditions of Approval**

#### Community Development Department, Planning Division

1. The sign program and appearance and location of all approved signage, as presented to the Planning Commission at its August 28, 2018 hearing, labeled *Kaiser Permanente 1650 Los Gamos Drive Medical Office Building Project*, and on file with the Community Development

Department, Planning Division, shall be the same as required for issuance of all building permits, subject to these conditions. Minor modifications or revisions to the signage 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 an amendment to the Sign Program

2. This Sign Program Amendment 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/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 17, 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 Sign Program.
3. This Sign Program Amendment (SP17-001) approving revised site and building signage shall run concurrently with the approved Environmental and Design Review Permit (ED17-011) and Master Use Permit (UP17-001). If either entitlement expires, this Sign Program Amendment shall also expire and become invalid.
4. Future changes to the signage shall require a Sign Permit to review and confirm changes are consistent with the Sign Program.
5. If future signage changes do not meet the Sign Program, the signage shall be revised to meet the approved Program or a Sign Program amendment will need to be applied for and approved

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 17th of September 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS

NOES: COUNCILMEMBERS

ABSENT: COUNCILMEMBERS

By: \_\_\_\_\_  
LINDSAY LARA, City Clerk

**CITY OF SAN RAFAEL**  
**NOTICE OF PUBLIC HEARING**

You are invited to attend the City Council hearing on the following project:

**DATE/TIME/PLACE:**    **Monday, September 17, 2018 at 7:00 P.M.**

City Hall Council Chambers, 1400 Fifth Avenue, San Rafael, CA 94901

**PROJECT:**

**PROJECT: 1650 Los Gamos Drive (Kaiser Medical Offices)**— Request for Planned Development (PD) Rezoning, Environmental and Design Review Permit , Master Use Permit and Sign Program amendment for the conversion of an existing three-story office building to medical office uses and the construction of a new 37-foot tall, 3-level, 433- stall parking structure on the western parcel at 1650 Los Gamos Drive in North San Rafael. The PD Rezoning also requires amending the current PD (PD 1590) to remove language specific to the 1650 Los Gamos Drive property for 1600 Los Gamos Dr (APN's 011-256-10 & -11). This item was previously reviewed and recommended for approval by the Planning Commission at their August 28, 2018 meeting. APN: 011-256-12, 011-256-13; PD 1590 District; Kaiser Foundation Health Plan, owner/applicant; File No(s): ZC17-001, ED17-011, UP17-005, SP17-002, NM17-001, IS17-001.

*As required by state law, the project's potential environmental impacts have been assessed. A Draft Environmental Impact Report (DEIR) (SCH # 2017062019) was previously prepared and made available for public review on March 8, 2018, for a 45-day public review and comment period concluding on April 24, 2018 at the Planning Commission meeting. A Final Environmental Impact Report/Response to comments (FEIR), which meets the provisions of the California Environmental Quality Act will be available for review on Friday, August 10, 2018. The FEIR (along with the DEIR) is available on the City's web site at <http://www.cityofsanrafael.org/kaiser-losgamos/>. A limited number of copies of the FEIR will be available for review at the City of San Rafael Community Development Department (1400 Fifth Avenue) and the San Rafael Library (1100 E Street).*

**WHAT WILL  
HAPPEN:**

You can comment on the project. The City Council will consider all public testimony and decide whether to: 1) certify the Final EIR, 2) approve a mitigation monitoring program and adopt a statement of overriding considerations; and 3) approve of project entitlements.

**IF YOU CANNOT  
ATTEND:**

You may send a letter to Lindsay Lara, City Clerk, City of San Rafael, 1400 5<sup>th</sup> Ave, San Rafael, CA 94901. You may also hand deliver a letter to the City Clerk prior to the meeting.

**FOR MORE  
INFORMATION:**

Contact **Sean Kennings**, Project Planner at **(415) 533-2111** or [sean.kennings@cityofsanrafael.org](mailto:sean.kennings@cityofsanrafael.org). You can 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

(Please publish in the Marin Independent Journal on Saturday, September 1, 2018.)



**SAN RAFAEL**  
THE CITY WITH A MISSION

Agenda Item No: 7.a

Meeting Date: September 17, 2018

## SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Human Resources

Prepared by: Cristine Alilovich,  
Assistant City Manager

City Manager Approval: \_\_\_\_\_

**TOPIC: SUCCESSOR MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN RAFAEL AND SAN RAFAEL FIREFIGHTERS' ASSOCIATION**

**SUBJECT: DISCUSSION AND CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING PERTAINING TO COMPENSATION AND WORKING CONDITIONS FOR SAN RAFAEL FIREFIGHTERS' ASSOCIATION (JULY 1, 2018 THROUGH JUNE 30, 2020)**

### RECOMMENDATION:

Direct staff to return with a Resolution seeking approval of a successor Memorandum of Understanding between the City of San Rafael and San Rafael Firefighters' Association.

### BACKGROUND:

The San Rafael Firefighters' Association (SRFA) represents 67 employees in the San Rafael Fire Department, including safety and non-safety classifications. The most recent Memorandum of Understanding ("MOU") for SRFA expired on June 30, 2018 after a two-year term. Over the past several months, representatives of the City and SRFA have met in good faith and worked diligently to negotiate the terms of a successor MOU. The City and SRFA reached a tentative agreement on August 25, 2018, for a two-year successor MOU and SRFA membership are anticipated to ratify the tentative agreement September 13.

### ANALYSIS:

The following are the highlights that reflect the terms and significant economic items included in the tentative agreement between the City and SRFA. 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 September 1, 2018 and a 2.0% base wage increase effective the pay period including July 1, 2019.

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**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

**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 first full pay period following City Council approval of the MOU, 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 PEPRA employees' pensions and is subject to normal payroll taxation; and
2. Effective the pay period including July 1, 2019, a one-time payment of \$3,000 in exchange for the elimination of Revenue Sharing. This payment will not contribute to Classic or PEPRA employees' pensions and is subject to normal payroll taxation.

**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 SRFA job classes.

**5. Uniform Allowance:** The uniform allowance for all employees will be increased from \$425 per year to \$1,135 per year which has not been increased since 2001. The additional uniform allowance brings up this benefit slightly higher than that of the Bay Area labor market average.

**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 draft redline MOU includes all the changes agreed to by the parties. A brief overview of these negotiated MOU sections includes:

- FLSA Compliance (various sections):
  - Change references to "salary" (a term applicable to FLSA exempt staff paid on a salary) to "base hourly pay rate". The City does not believe that making this replacement would have any material impact on employees' compensation.
  - Hours of Work (Section 6.1): Amend language to define twenty-hour hour shifts versus fifty-six hour work weeks.
  - Overtime (6.2.1): Add language to define the FLSA work period and overtime eligibility.
- Association Orientation of New Employees & Employee Information (Sections 2.1.8 and 2.1.9): Pursuant to recent legislation (AB 119), the parties negotiated specific terms regarding SRFA access to new employees and communication to SRFA of employee information.
- Compensation Surveys (Section 3.1.5): Surveys will be conducted on the benchmark position of Firefighter-Paramedic in the final year of the contract.
- Pay Schedule (Section 3.1.6): The parties may reopen negotiations on the City's proposed change to the payroll schedule for suppression personnel.
- Retiree Health Insurance (Section 4.2.3): Clean up language to remove reference to a Retiree Healthcare Reimbursement Trust (Retiree HRA Trust) since payments are made directly to CalPERS.
- Contributions into RHS (Section 4.2.4): Clean up language to comply with administration of the existing benefit and consistent with plan documents.
- Vacation and Sick Leave Accrual Conversion (Section 5.3.4): Include language to define current practice for calculating accrual conversion when switching from a 24-hour shift



schedule to a 40-hour work week and vice versa.

- Holiday Pay (Section 5.4.2): Effective January 1, 2019, employees will be paid during the pay period that the holiday occurs instead of the current practice of paying on a biannual basis.
- Work Schedule / Established Work Week (Section 6.1.1): Clean up language to incorporate current practice. An employee assigned to a prevention, training or other special assignment who works an eight-hour shift receives 5.0% premium pay.
- Contract Overtime (Section 6.2.2): Clean up language. Clarify current contract overtime eligibility definition.
- Fire Captain Qualifications (Section 6.4.2): Incorporate language a Side Letter previously agreed to with SRFA regarding qualifications for promotional opportunities for Fire Captain.
- Safety Committees (Section 6.10.1): The committee shall meet at least quarterly, or more often as needed.
- Physical Fitness Program (Section 6.10.4): Incorporate language changes on the recommendation from the department Health and Wellness Committee.

**FISCAL IMPACT:**

The current total annual salary and benefit cost to the City for the 67 employees of SRFA is \$15,635,130. The additional ongoing incremental cost of the successor MOU beyond the FY 17/18 budget is:

	<b><u>Incremental FY 2018-19</u></b>	<b><u>Incremental FY 2019-20</u></b>
<b>Wages:</b>		
Base Salary (2%)	\$137,733*	\$196,132
<b>Uniform Allowance:</b>	\$ 47,570	- 0 -
<b>Other costs:</b>		
Pension**	\$119,138	\$138,425
Taxes (Medicare, W/C)	<u>\$ 13,862</u>	<u>\$ 19,035</u>
<b>Total Incremental Cost:</b>	<b>\$318,303</b>	<b>\$353,592</b>

*\*Cost of base salary increase over 10 months for FY 18/19 (September 2018 to June 2019). FY 19/20 cost is for 12 months.*

*\*\*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 \$318,303 for fiscal year 2018-2019 and \$353,592 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 \$990,198 for the two-year term. In addition, there is a cost of \$536,000 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:

- Direct staff to return at the next meeting with a resolution seeking approval of the successor MOU between the City of San Rafael and San Rafael Fire Association.

- Direct staff to return with more information.

**RECOMMENDED ACTION:**

Staff recommends that the City Council take public comment, and direct staff to return at the next meeting with a resolution seeking approval of the successor Memorandum of Understanding between the City of San Rafael and San Rafael Fire Association pertaining to compensation and working conditions (July 1, 2018 through June 30, 2020).

**ATTACHMENTS:**

- Draft redline MOU between City of San Rafael and San Rafael Fire Association for July 1, 2018, to June 30, 2020 (and all attachments)

**MEMORANDUM OF UNDERSTANDING**

*between*

**CITY OF SAN RAFAEL**

*and*

**SAN RAFAEL FIREFIGHTERS' ASSOCIATION**

**I.A.F.F., LOCAL 1775**

***JULY 1, 20186 - JUNE 30, 202018***

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## LIST OF EXHIBITS

Exhibit A	Salary Schedules for July 1, 201 <del>86</del> – June 30, 20 <del>2018</del>
Exhibit B	San Rafael Firefighters' Association Represented Benchmark and Internal Relationships
Exhibit C	San Rafael Fire Department Drug and Alcohol Testing Policy and Procedures
Exhibit D	Firefighters Outside Employment Policy
Exhibit E	Memorandum from Liebert Cassidy Whitmore regarding Firefighters Memorandum of Understanding & Firefighters Bill of Rights
Exhibit F	Side Letter, Chief Officer Suppression Qualifications
Exhibit G	Side Letter, Acting Captain Requirements

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**CITY OF SAN RAFAEL**  
**and**  
**SAN RAFAEL FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 1775**

The San Rafael Firefighters' Association, I.A.F.F., Local 1775, and representatives of the City of San Rafael have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of employees in the representation unit specified in Chapter 1, have exchanged freely information, opinions and proposals and have reached agreement on all matters relating to the employment conditions and the employer/employee relations of such employees.

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500, et seq.) and has been jointly prepared by the parties.

This Memorandum of Understanding shall be presented to the San Rafael City Council as the joint recommendations of the undersigned for salary and employee benefit adjustments for the period commencing July 1, 201~~86~~ and ending June 30, 20~~2018~~. When ratified by the City Council, this Memorandum of Understanding shall be binding upon the San Rafael Firefighters' Association, I.A.F.F., Local 1775, the employees it represents, and the City of San Rafael.

As used throughout this Memorandum of Understanding, the pronoun designations "he" or "his" is intended to be applicable to both the male and female gender.

## **1 GENERAL PROVISIONS**

### **1.1 RECOGNITION**

#### *1.1.1 Association Recognition*

The San Rafael Firefighters' Association, I.A.F.F., Local 1775, hereinafter referred to as the "Association" is the recognized employee organization, as defined by Government Code Section 3501, (b), for all employees in classifications represented by the Association, said classifications being set forth in Exhibit A.

#### *1.1.2 City Recognition*

The Municipal Employee Relations Officer of the City of San Rafael or any person or organization duly authorized by the Municipal Relations Officer, is the representative of the City of San Rafael, hereinafter referred to as the "City" in Employer-Employee relations, as provided in Resolution No. 12189 adopted by the City Council on February 5, 2007.

### **1.2 NON-DISCRIMINATION**

#### *1.2.1 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 orientation, perceived sexual orientation, gender, gender expression, gender identity,, marital status, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history) or physical or mental 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 (Chapter 7).

#### **1.2.2 Association 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 the Association.

### **1.3 INSPECTION OF MEMORANDUM OF UNDERSTANDING**

Both the City and the Association agree to keep duplicate originals of this Memorandum on file in a readily accessible location available for inspection by any employee or member of the public upon request.

### **1.4 EXISTING LAWS, REGULATIONS & POLICIES**

This Memorandum is subject to all applicable laws.

### **1.5 STRIKES & LOCKOUTS**

During the term of this Memorandum of Understanding, the City agrees that it will not lock out employees, and the Association agrees that it will not agree to, encourage, or approve any strike or slow down 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.

### **1.6 SEVERABILITY**

If any article, paragraph or section of this Memorandum shall be held to be invalid by operation of law, or by any tribunal or competent jurisdiction, or if compliance with or any enforcement of any provision hereof be restrained by such tribunal, the remainder of this Memorandum shall not be affected thereby, and the parties shall, if possible, enter into meet and confer sessions for the sole purpose of arriving at a mutually satisfactory replacement for such article, paragraph or section.

### **1.7 FULL UNDERSTANDING, MODIFICATION, WAIVER**

#### **1.7.1 Joint Representation**

The parties jointly represent to the City Council that this Memorandum of Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein.

#### **1.7.2 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, nor as to wages or fringe benefits during the period of the term of this Memorandum. 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 of meeting and conferring for a proposed Memorandum of Understanding between the parties to be effective on or after July 1, 2020~~18~~18.

### 1.7.3 *Effective Dates*

This Agreement will be in effect from July 1, 201~~86~~ through June 30, 20~~20~~18. It shall be automatically renewed from year to year thereafter unless either party shall have notified the other, in writing, at least sixty (60) days prior to the annual anniversary of the above date that it desires to modify the Memorandum. In the event that such notice is given, negotiations shall begin no later than thirty (30) days prior to the anniversary date.

## **2 MMBA**

### **2.1 ASSOCIATION RIGHTS**

#### *2.1.1 Advance Notice of Change*

Except in cases of emergency, reasonable advance written notice shall be given the Association of any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council, and any Board or Commission, or any Department and the Association shall be given the opportunity to meet and confer with the City and Representatives prior to adoption. In cases of emergency, when the City Council determines that an ordinance, rule, policy, resolution or regulation must be adopted immediately without prior notice or meeting with the Association, the City shall provide such notice and opportunity to meet and confer at the earliest practical time following the adoption of such ordinance, rule, policy, resolution or regulation. A copy of any such ordinance, rule, policy, resolution or regulation shall be provided to the association together with the notice required by this Section, whenever possible.

#### *2.1.2 Dues Deduction*

Payroll deduction for membership dues shall be granted by the City to the Association.

The following procedures shall be observed in the withholding of employee earnings:

1. Payroll deductions shall be for a specified amount in uniform as between employee members of the Association and shall not include fines, fees and/or assessments. Dues deductions shall be made only upon the employees' written authorization.
2. Authorization, cancellation or modifications of payroll deduction shall be made upon forms provided or approved by the City Manager or his/her designee. The voluntary payroll deduction authorization shall remain in effect until employment with the City is terminated or until canceled or modified by the employee by written notice to the City Manager or his/her designee. Employees may authorize dues deductions only for the organization certified as the recognized employee organization of the classification to which such employees are assigned.
3. Amounts deducted and withheld by the City shall be transmitted to the officer designated in writing by the Association as the person authorized to receive such funds, at the address specified.
4. The employee's earnings must be sufficient, after all other required deductions are made, to cover the amount of the deductions herein authorized. When an employee is in a non-pay status for an entire pay period, no withholdings will be made to cover that pay period from future earnings, nor will the employee deposit the amount with the City which would have been withheld if the employee had been in a pay status during that period.
5. In the case of an employee who is in a non-pay status during a part of the pay period, if the salary is not sufficient to cover the full withholding, no deductions shall be made. In

this connection, all other required deductions have priority over the employee organization deduction.

6. The Association shall file with the City an indemnity statement wherein the Association shall indemnify, defend, and hold the City harmless against any claim made and against any suit initiated against the City on account of check-off of Association dues, assessments and other payments to the Association. In addition, the Association shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

#### *2.1.3 Release Time*

The City shall allow a reasonable number of Association representatives who are official representatives of the Association be given time off without loss of compensation or other benefits when formally meeting and conferring with representatives of this City on matters within the scope of representation. One hundred forty-four (144) hours per calendar year shall be provided for union release time, apart from MMB activity, with ten days advance notice and approval of the Fire Chief. Once approved, hours will be deducted from this total on an hour for hour basis per representative. Except by mutual agreement, the number of Association representatives excused for such purposes shall not exceed three (3) at any one time, per the approval process outlined above.

#### *2.1.4 Association Access to Work Locations*

Reasonable access to employee work locations shall be granted to officers of the Association and officially designated representatives of the Association for the purpose of processing grievances or contacting members of the Association concerning business within the scope of representation, which are to be discussed with City representatives. Access may be restricted so as not to interfere with the normal operations of Department or with established safety or security requirements.

#### *2.1.5 Association Office Space*

The Association shall be allowed office space on City property at a mutually agreed upon location, with telephone service maintained at the expense of the Association.

#### *2.1.6 Conduct of Business*

Consultations between the City and the Association, for discussion of grievances and for negotiations between the City and Association representatives normally will be conducted during regular working hours. Association representatives who are on duty will be allowed to participate in such meetings.

Association officers are authorized reasonable time during on-duty hours to process employee complaints or grievances, and to conduct negotiations with management at the local level.

#### *2.1.7 Association Meetings*

The Association shall be able to use Fire Department facilities for meetings provided space and time are available. All meetings using Fire Department facilities must have prior approval of the Fire Chief or his/her designee. Employees and companies normally covering the first in district where any such meeting is being held will be allowed to attend provided they remain ready and available to perform their duties. Association officers and employees who have business to present at the meeting but are assigned to other stations will be allowed to attend meetings. Arrangements for this purpose will be the same as routine department cover-ins, provided that the Association and Duty Chief both determine the resulting coverage meets acceptable emergency response safety standards.

### 2.1.8 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 inform the employee, as soon as possible, of the terms and provisions of this Memorandum of Understanding and will provide said 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.

### 2.1.9 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 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 of facts which are the basis of the management decision.
3. To determine the necessity of any 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 organizational 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, the Firefighters Procedural Bill of Rights and this Memorandum of Understanding.
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 Rules and Regulations.
15. To determine policies, procedure 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 its 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 Association agree and understand that if, in the exercise of any of the 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 Meyers/Milias/Brown Act, case law interpreting said act, and/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.

### **3 COMPENSATION**

#### **3.1 TOTAL COMPENSATION**

##### **3.1.1 Entry Level Step**

All entry level Firefighters hired on or after July 1, 2013 shall be paid at the entry level step for the base hourly pay rate salary and incentives as indicated in Exhibit A through the probationary year.

##### **3.1.2 Salary Increases**

~~Effective the pay period including July 1, 2016 or the first full pay period following City Council ratification of a new MOU, whichever occurs later, the City will increase base wages for all employees by 2.0%. Contingent upon SRFA ratification and City Council adoption of the successor MOU by September 6, 2016, the increase will be retroactive to July 1, 2016.~~

~~Effective the pay period including July 1, 2017, the City will increase base wages for all employees by 0.0%.~~

~~Effective the first full pay period following including September 1, 2018, 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%.~~

Future salary adjustments for Fire Mechanics will be based on labor market comparisons of Fire Mechanic positions that perform similar duties of the City's Fire Mechanic.

Effective July 1, 2008, the Fire Captain Specialist base hourly pay rates salary will be set at 5% above the Fire Captain base hourly pay rates salary (see Exhibit B).

##### ~~3.1.3 Equity Adjustments~~

~~Employees represented by this bargaining unit will receive an additional 1.0% equity adjustment to base hourly rate at the same time as the salary increase for FY 2016/17 as noted in section 3.1.2 above.~~



### 3.1.43.1.3 *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 first full pay period following City Council approval of the MOU, 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 July 1, 2019, 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 following one-time payments are limited to the two years cited in this agreement and are not scheduled to recur in the future:~~

- ~~a. Each employee in the bargaining unit will receive an Expedited Bargaining Payment (\$2,200) and New Tiered Medical Benefit Program Payment (\$1,337); a total payment in the amount of \$3,537 will be paid during the first pay period in December 2016. This money will not be included in the Full Flex Cafeteria Plan. This payment will not contribute to employees' pensions and is subject to normal payroll taxation; and~~
- ~~b.a. Each employee in the bargaining unit will receive a Health Cost Increase Offset (\$2,200) and Medical Plan Restructure Payment (\$1,337); a total payment in the amount of \$3,537 will be paid during the first full pay period in December 2017. This money will not be included in the Full Flex Cafeteria Plan. This payment will not contribute to employees' pensions, is subject to normal payroll taxation and may be used by each employee to address their own unique health care cost needs.~~

### 3.1.53.1.4 *Compensation Goal & Definitions*

It is the goal of the City Council to try to achieve a total compensation package for all employees represented by the Association in an amount equal to the following:

1. The average, plus one dollar, of the total compensation paid to the same or similar classifications in the following ten (10) cities/districts: Alameda, Alameda County, Fairfield, Hayward, Napa, Novato Fire District, Santa Rosa, Southern Marin, South San Francisco, and Vallejo; AND,
2. The highest total compensation paid to the same or similar classifications in agencies in Marin County.

Total Compensation for survey purposes shall be defined as: Top step base hourly pay ratesalary (excluding longevity pay steps), educational incentive pay, EMT 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.

~~The CPI shall be the percentage change in the San Francisco-Oakland-San Jose Area All Urban Consumer Index as published by the Bureau of Labor Statistics for the one year period ending the month of October each year during the term of the contract.~~

### 3.1.63.1.5 Compensation Surveys

To measure progress towards the above-stated goal, the City will survey the benchmark position, Firefighter-Paramedic, as identified in Exhibit B and included as part of this MOU in September before February of the final each year of this contract. ~~However, if General Tax Revenues as defined in Section 3.2.2 have not increased over the prior fiscal year, then the City and Association will not complete the compensation survey unless it is the final year of this Agreement.~~

Identified benchmark positions from other agencies include positions that are filled as well as those that may be unfilled, so long as the benchmark position is identified by the survey agency as having similar job duties, qualifications, class and grade compared to the Association's benchmark position. The City and the Association may identify other city/agency positions to be included in San Rafael's compensation survey upon similar duties, qualifications, class and grade to those set out in Exhibit B of this MOU.

Survey data will include all salary and benefit increases, as defined in 'total compensation', in place or to be effective no later than SeptemberFebruary 1 of that same year, ~~for the purpose of applying the excess General Tax Revenues, if any, described in this chapter.~~ The City and the Association shall review the benchmark and related survey data for accuracy and completeness.

### 3.1.73.1.6 Pay Schedule

During the term of this Agreement, the parties may reopen negotiations on the City's proposed change may institute a change of the payroll schedule for suppression personnel from 24 pay cycles per year to payment after each twenty-four day FLSA 207(k) work period, which would be approximately 1526 pay cycles per year. Any changes to mandatory subjects of bargaining during the term of the MOU will be implemented subject to mutual agreement.

### 3.1.83.1.7 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 SRFA.

## **3.2 REVENUE SHARING**

### 3.2.1 Conditions for Revenue Sharing

~~Employees in the bargaining unit positions defined in this MOU shall receive Revenue Sharing Increases, effective January 1 of each year of the contract, in addition to the Contract Compensation Increase (if any), if the following conditions are met:~~

- ~~a. If the CPI increase, as defined in Section 3.1.3, is greater than the Contract Compensation Increase, and~~
- ~~b. If General Tax Revenues have resulted in revenues being available for distribution, based upon the formulas defined in Section 3.2.2, and~~
- ~~c. The "net change in General Fund Balance", as defined in Section 3.2.2, as presented in the previous fiscal year's annual audited financial statements, is positive, and~~
- ~~d. The City's General Fund Emergency and Cash Flow reserve at the end of the previous fiscal year contains at least 10% of the General Fund budgeted expenditures for that same year.~~

~~If all of the above four conditions are met, then a Revenue Sharing salary increase shall be paid prospectively, in accordance with the schedule below, to bring the combination of the Contract~~

~~Compensation Increase (if any) and the Revenue Sharing Increase up to the level of the CPI, however, in no event shall the Combined Contract Compensation Increase and Revenue Sharing Increase exceed 5% for the contract year under review.~~

### ~~3.2.2 Revenue Definitions & Revenue Sharing Calculations~~

~~**Net Change in General Fund Balance** is determined in the course of the City's annual financial audit and presented as "net change in fund balance" in the City's published financial statements.~~

~~**General Tax Revenues** shall be defined to include the following taxes: Sales Tax, Property Tax (Secured, Unsecured and Unitary), Motor Vehicle License Fees, Property Transfer Tax, Hotel Occupancy Tax, Business License Tax and Franchise Fees. No other revenue sources of the City will be included in this definition.~~

~~If General Tax Revenues of the City for the fiscal year previous to this contract year (i.e., FY 2013-2014) exceed General Tax Revenues of the City for the prior fiscal year (i.e., FY 2012-2013), then the members of the bargaining unit shall be entitled to apply 20.0% of one-half (1/2) of the excess of fiscal year General Tax Revenues over prior fiscal year General Tax Revenues adjusted for 75% of the total compensation increases provided to members for the contract year, in accordance with the schedule below, for a Revenue Sharing Total Compensation adjustment.~~

### ~~3.2.3 Schedule~~

- ~~a. **September 7th - General Tax Revenues.** The City shall make known to the Association if General Tax Revenues of the most recently ended fiscal year have grown from the prior fiscal year on September 7th of each year of this contract. If no growth in General Tax Revenues has taken place, there shall be no Revenue Sharing for that fiscal year of the contract.~~
- ~~b. **November 15th - Net Change in General Fund Balance and the funding level of the City's General Fund Emergency and Cash Flow reserve.** By November 15th of each year, the City shall make known to the Association whether there is a positive change in the General Fund Balance when the most recently ended fiscal year is compared to the previous one. At the same time, the City shall make known to the Association whether the funding level of the City's General Fund Emergency and Cash Flow reserve is at or above 10% of budgeted expenditures. If these two conditions are not met, then no Revenue Sharing shall take place for that contract year.~~
- ~~c. **November 30th - CPI.** If the conditions for revenue sharing have been met for the contract year, the City shall identify the change in CPI in October and make the figure known to the Association by November 30th.~~
- ~~d. **January 1st** - Base Monthly Pay Increases are calculated. January 1st is the effective start date (for paycheck date of January 31st) for Revenue Sharing Salary increases.~~

## **3.3.2 EDUCATIONAL INCENTIVE**

To increase the educational level of the employees in the Fire Department, and to assist in the recruitment of public safety members into the fire service, the City shall pay an educational incentive in accordance with the following:

### **3.3.13.2.1 Thirty (30) College Units Fire Science**

Employees who have completed their first year of full-time service with the San Rafael Fire Department and have successfully completed 30 accredited college units of Fire Science or Fire

Technology shall receive additional compensation amounting to 2.5% of their ~~base hourly pay rate~~base hourly pay rate.

### 3.3.23.2.2 AA Degree Fire Science

Employees who have completed their first year of full-time service with the San Rafael Fire Department and who possess an A.A. or A.S. degree in Fire Science or Fire Technology shall receive additional compensation amounting to 5% of their ~~basic monthly salary~~base hourly pay rate.

### 3.3.33.2.3 EMT I

Employees who have completed their first year of full-time service with the San Rafael Fire Department and who have successfully completed and who maintain an EMT I certification, accredited by the State of California or State Fire Marshal's Office, shall receive an additional compensation amounting to 2.5% of their ~~basic monthly salary~~base hourly pay rate. EMT I re-certification training shall be conducted on duty at times determined by the Fire Chief.

If an employee fails to maintain a valid EMT - 1, said employee shall lose their 2.5% incentive pay. All non-paramedic line employees hired on or after March 7, 1994 shall be required to possess and maintain a valid EMT - 1 certificate as a condition of employment.

### 3.3.43.2.4 Other Job Related Courses

It is agreed that college course work other than those specified in "3.23.1." and "3.23.2." completed by non-safety members of the department may be deemed to be job-related by the Fire Chief to qualify for the 2.5% or 5.0% educational incentives. This is provided in lieu of "3.23.1." or "3.23.2." but will not preclude an employee from receiving "3.23.1." or "3.23.2." It is agreed that an employee shall receive not more than one (1) educational incentive. Educational incentive for non-safety members of the department shall not exceed 5.0% exclusive of EMT incentives.

## 3.43.3 OUT OF CLASS COMPENSATION

When safety employees work out of their normal classification, they will be compensated and governed by the following rules:

### 3.4.13.3.1 Firefighters and Firefighter-Paramedics

All firefighters and firefighter-paramedics with one and one-half (1.5) years or more of line service (line service is defined as active participation as a member of an Engine, Truck Company or Medic Unit working a standard 24 hour work schedule with the City of San Rafael Fire Department) who provide documentation which proves that they meet the eligibility requirements to take the Engineer's promotional examination are eligible to work out-of-class as an Engineer.

All firefighters and firefighter-paramedics with four (4) years or more of line service (line service is defined as active participation as a member of an Engine, Truck Company or Medic Unit working a standard 24 hour work schedule with the City of San Rafael Fire Department) who provide documentation which proves that they meet the eligibility requirements to take the Captain's promotional examination are eligible to work out-of-class as Captain.

When working out of class as Engineers or Captains, the Firefighter or Firefighter-Paramedic will be paid the appropriate out-of-class compensation for each full shift completed in the out-of-class position. They will be paid at the same step as their regular position, i.e., Step A – Firefighter-Paramedic is paid at Step A, - Engineer or Step A - Captain.

#### 3.4.23.3.2 *Fire Engineers*

All Engineers who meet the minimum qualifications of the Captain classification will perform in Acting Captain status as needed and will be paid out-of-class compensation at the same step as their regular position, i.e., Step A - Engineer is paid at Step A - Captain. Engineers will be paid the out-of-class compensation for each full shift completed in the out-of-class position.

#### 3.4.33.3.3 *Fire Captains*

All Fire Captains who meet the eligibility requirement to take the Battalion Chief-Operations promotional exam may work out of class as Battalion Chief-Operations. When working out of class as Battalion Chief-Operations, Captains will be paid the appropriate out-of-class compensation for each full shift completed. They will be paid at the same step as their regular position, i.e., Step C-Captain is paid at Step C-Battalion Chief-Operations.

### **3.5.3.4 SPECIALTY COMPENSATION**

#### 3.5.13.4.1 *Paramedic Certification*

Fire Captains and Engineers are not eligible for the Paramedic compensation. Fire Captains, Engineers and Firefighter-Paramedics are eligible for an A.C.L.S. incentive equal to 2.5% of their ~~regular monthly salary~~base hourly pay rate in lieu of the E.M.T. incentive (applicable only to those employees who have completed their first year of full-time service).

All fees and continuing education expenses associated with license maintenance will be reimbursed by the City upon verification of completion of the required training.

#### 3.5.23.4.2 *Paramedic Liaison*

The Paramedic liaison and Assistant Paramedic liaison will be selected by those individuals assigned Paramedic duty and will serve for a minimum of one (1) year and a maximum of two (2) years. The individual selected as the Paramedic Liaison will receive \$200.00 per month premium pay over and above his/her base ~~monthly salary~~hourly pay rate while serving in this capacity. The individual selected as the Assistant Paramedic liaison will receive \$100 per month premium pay over and above his/her base ~~monthly salary~~hourly pay rate while serving in this capacity. Individuals may serve more than the 2 year maximum if no other candidates accept a nomination and run for the position.

#### 3.5.33.4.3 *EMT / Ambulance Drivers*

EMT-1 drivers shall receive a ten-dollar (\$10.00) bonus for each shift, full or partial that they are assigned to drive either ambulance. Regular assignment to the paramedic unit as an EMT-1 shall be voluntary. Non-voluntary assignment to the paramedic unit as an EMT-1 shall be made to cover absence of members regularly assigned to the unit. Association members cannot refuse assignment to staff the paramedic ambulance.

#### 3.5.43.4.4 *ALS Transport Units*

The Fire Department operates three ALS transport units. Two full-time ALS units will be staffed with two (2) Firefighter EMT-P. The "cross-staffed" ALS unit will be staffed with a minimum of one (1) Firefighter EMT-P and one (1) EMT Captain, Engineer, or Firefighter. The cross-staffed unit operates from a fire station that will be decided at the discretion of the Fire Chief and may vary on different platoons. Captain or Engineer EMT-Ps may volunteer to staff an ALS ambulance.

The Department will utilize an available fourth ALS Transport Unit at the discretion of the on-duty Battalion Chief or on-duty Fire Captains as needed to maintain adequate service levels.



The City shall have the right to deploy ALS Transport Units where needed as determined by the Fire Chief.

#### ~~3.5.5~~3.4.5 *BLS Transport Unit*

The department may deploy a BLS Transport Unit during the term of this agreement. The management and operational procedures related to this unit will be resolved through negotiations with the Department's Management Staff and the Association.

### ~~3.6.3~~3.5 OTHER COMPENSATION

#### ~~3.6.1~~3.5.1 *Uniform Allowance*

Uniform members of the Fire Department shall receive a uniform allowance in the amount of ~~\$212.50~~\$567.50 at the completion of each six months of service ending May 31 and November 30. Uniform member employees shall receive a pro-rated amount during the first and last six months of service of ~~\$35.42~~\$94.58. Effective January 1, 2009 the City shall provide all new hire uniform members with 1 shirt and 1 pair of pants at the time of appointment. When needed, a maximum of 1 shirt and 1 pair of pants per year will be replaced by the City for all members. The uniform shall consist of Workrite Nomex pants and the Workrite Nomex uniform shirt. Fire Association members will be responsible for purchasing all other uniform related product with the uniform allowance provided. When uniform members leave employment, all shirts and pants will be returned to the department.

Fire administration will work with the Fire Association to identify 2 vendors for boot purchase. During odd numbered years, employees will be eligible for 1 pair of boots and will be responsible for any boot cost exceeding \$160.

#### ~~3.6.2~~3.5.2 *Call-Back Pay*

Employees covered by this Memorandum of Understanding shall be paid at a rate of time and one-half of the affected employee's regular hourly rate. Whenever an employee is asked to continue his/her work past the scheduled duty day or is called back to unscheduled duty by the Department. In such cases, a minimum of two hours callback pay shall be paid.

## **4 BENEFITS**

### **4.1 JOINT BENEFITS COMMITTEE**

Both parties agree to continue to utilize the Joint Benefits Committee for on-going review of benefit programs, cost containment, and cost savings options. The committee shall be made up of representatives of Miscellaneous, Supervisory, Police, Fire and Management employees

### **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 shall receive a monthly flex dollar allowance to purchase benefits under the full flex cafeteria plan.

The monthly flex dollar allowance ~~effective the first full month following adoption of this MOU shall be \$655 which~~ includes the California Public Employees' Medical and Hospital Care Act (PEMHCA) contribution hereby referred to as the PEMHCA minimum contribution for an Employee, an Employee & One Dependent or an Employee & Two or More Dependents.

The monthly flex dollar allowance effective the first paycheck in December 2017 shall be:

For employee only:	\$ 733.39
For employee and one dependent:	\$1,173.42
For employee and two or more dependents:	\$1,525.46

Effective December 2018, flex dollar allowances shall increase on the first paycheck in December 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 monthly flex dollar allowance may be used in accordance with the terms of the cafeteria plan to purchase medical insurance, taken in the form of cash to contribute to a deferred compensation (457) plan, or may be converted to taxable income.

**Conditional Opt-Out Payment:** An employee may elect to waive the City's health insurance coverage and receive ~~\$300~~<sup>\$655</sup> 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 Essential 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.

~~Effective the first paycheck in December 2017, the Opt-out payment will be \$300.~~ 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 *Life Insurance and Accidental Death & Dismemberment*

The City pays 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.

Members of the Firefighters Association may choose to subscribe to a long-term disability (LTD) plan other than that offered by the City as long as there is no cost to the City.

#### 4.2.3 *Retirees Health Insurance*

Employees represented by the Association who retire from the Marin County Retirement System are subject to Marin County Employee Retirement Association procedures and regulations and applicable 1937 Act laws that govern such plans and 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. Longevity Payment for Employees hired on or before January 1, 2010**

The City shall make a monthly ~~longevity retiree health insurance~~ payment ~~into a Retiree Healthcare Reimbursement Trust (Retiree HRA Trust)~~ 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 ~~contribution to the Retiree HRA trust~~ payment shall be the difference between the premium cost of coverage ~~for any two-party rate~~ minus the PEMHCA minimum contribution. The City's total payment (PEMHCA minimum contribution plus ~~additional~~ cost of retiree premiums) shall ~~not exceed~~ \$557 per month. The City's ~~retiree health insurance~~ contribution ~~towards a retiree's Retiree HRA Trust account~~ shall continue for the lifetime of the retiree and retiree's spouse, in accordance with PEMHCA eligibility provisions for coverage.

**B. Employees hired by the City 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, 4.2.3 B, 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.

**4.2.4 Contributions into ~~a Retirees' HRA~~ Retiree Health Savings Account (RHSA)**

**For employees hired on or after January 1, 2010**, the City shall ~~make a~~ contribution ~~one 2% of top step Firefighter salary each pay period~~ into a Retiree HRA Health Savings Account (RHSA) ~~equal to 2.0% of top Step Firefighter-Paramedic base hourly pay for the pay period and the employee shall also contribute 2% of top step Firefighter salary into the same account. Each eligible employee will make a contribution in the same amount each pay period as a payroll deduction.~~ In the event an employee's salary is not sufficient to contribute the 2.0%, no City or employee contribution will be made until such time as the ~~employee's~~ salary is ~~sufficientable~~ to make the contribution.

This contribution will occur each pay period beginning the month after the employee has been hired ~~and will be open for negotiations at the end of the term of this contract.~~

**4.2.5 Deferred Compensation Plan**

Over the course of this Agreement, the City will provide up to two deferred compensation plan providers, as allowed under the Internal Revenue Code Section 457. Costs of the plan are solely the responsibility of employees. No City contributions are provided for employees, except under the Payback provision identified in subsection 4.2.1 of this Memorandum of Understanding.

**4.2.6 Flexible Spending Account (125 Plan) for Health & Dependent Care Expenses Reimbursement**

The City will continue to offer a Flexible Spending Account (Section 125 Plan) pursuant to the IRS Code. Flexible Spending Accounts offered by the City include:

- a. Out-of-pocket medical expenses that qualify under the IRS Code effective January 1, 2013 at IRS Code limit, not to exceed \$2,500.

- b. Dependent care expenses that qualify under the IRS Code at the IRS Code limit (currently \$5,000 for calendar year 2006).
- c. 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.

The City shall establish an annual enrollment period for the Flexible Spending Account and each employee must re-enroll if he/she wishes to participate in the FSA for the following calendar year. The City shall have the authority to implement changes to the FSA programs to comply with changes in applicable IRS laws without having to go through the meet and confer process.

### **4.3 DENTAL PLAN**

#### **4.3.1 Dental Plan**

- a. The City will provide a dental insurance program providing 100% coverage for diagnostic and preventative care; \$25.00 deductible on corrective care (80/20 cost sharing after deductible) per calendar year per person, with a \$75 deductible limit per family; and orthodontic care (50/50 cost sharing).
- b. The dental plan shall provide for an 80/20 cost sharing for basic services such as casts, crowns and restorations. Major services such as bridgework and dentures are covered using a 50/50 cost sharing formula.
- c. The City will pay the entire premium cost for such a dental plan and shall pay the entire cost for any premium rate increases occurring during the term of this agreement.
- d. The calendar year benefit for each eligible, enrolled member is \$1,500 per calendar year. Orthodontic benefits remain unchanged and are limited to those dependents up to the age of 19 and subject to a \$1,000 per person, per lifetime benefit.

### **4.4 RETIREMENT**

#### **4.4.1 Retirement Contribution**

Bargaining unit members shall pay the full share of the employee's contribution to the Marin County Retirement System.

**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).

#### **4.4.2 Additional Pension Funding**

Effective the pay period including September 1, 2013, each member shall pay an additional 1.0% of pensionable compensation to the Marin County Employee Retirement Association through a payroll deduction to help fund pension. This deduction shall be made on a pre-tax basis to the extent allowed by law.

#### **4.4.3 Retirement Plans**

On January 1, 2007, 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 is based on an employee's single highest year of compensation with a 3% COLA benefit cap.

On January 1, 2007, 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 is based on an employee's single highest year of compensation with a 3% COLA benefit cap.

**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 consecutive three years of compensation, with a 2% COLA benefit cap.

**Miscellaneous employees hired on or after July 1, 2011** will receive an MCERA retirement benefit at the formula 2% at 55, calculated based on the average of their highest consecutive three years of compensation, in accordance with MCERA regulations. The annual pension adjustment will be a maximum of 2% COLA.

**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.

**Miscellaneous 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.

## **5 SICK LEAVE**

### **5.1.1 Accrual**

Each eligible full-time employee working a 56-hour work week shall earn sick leave credits at the rate of twelve (12) hours per month. Represented employees working a 40-hour work week shall continue to earn sick leave credits at the rate of eight (8) hours per month.

All eligible full-time employees shall earn sick leave credits at the rates specified above, commencing with the date of employment. Unused sick leave may be accumulated to any amount, but a cap exists for payoff purposes (see Section 5.1.4). The sick leave accrual rate is prorated for eligible part time employees.

### **5.1.2 Sick Leave Usage**

An employee eligible for sick leave with pay will be granted such leave with approval of the department head for the following purposes:

- a. Personal illness of the employee or illness within the immediate family (immediate family under subsection 5.1.2 a is defined as employee's spouse, dependent children and/or employee's parents, not in-laws) or physical incapacity of the employee resulting from causes beyond the employee's control; or

- b. Enforced quarantine of the employee in accordance with community health regulations; or
- c. In the event of a death or critical illness in the immediate family, an employee may, upon proper notification, be allowed to be granted an absence up to five (5) consecutive calendar days (combining duty and off duty days), using sick leave as needed during this period of absence, for such a circumstance either in or out of state. Where such death or critical illness has occurred, the employee will be expected to furnish satisfactory evidence of the situation to the Fire Chief if requested. The employee may request, and on approval of the Department Head, receive additional sick leave hours off in the event of such a death or critical illness in the immediate family. The immediate family is defined as spouse, children, parents, grandparents, brothers or sisters.

Except that in a. and b. above, an employee may not use sick leave for a work-related injury and/or illness once said employee has been determined permanent and stationary. The Association acknowledges the Fire Chief's right to investigate sick leave abuse.

#### 5.1.3 *Sick Leave Service Credit Option*

Employees who are eligible to accrue sick leave and who retire from the City of San Rafael, on or after July 1, 1999, 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, pursuant to Section 5.1.4 - Sick Leave Payoff).

#### 5.1.4 *Sick Leave Payoff upon Termination of Employment*

Upon termination of employment by resignation, retirement or death, employees who leave the municipal service in good standing shall receive compensation of all accumulated unused sick leave, based upon the rate of two percent (2%) of each year of service to a maximum of fifty percent (50%). The maximum accrual limits for sick leave payoff purposes are 1,200 hours for employees working a 40-hour work week and 1,680 hours for employees working a 56-hour work week. Sick leave payoff would be subject to a maximum of 600 hours for 40-hour per week employees and 840 hours for 56-hour per week employees, subject to the 2% per year formula noted above.

### **5.2 VACATION LEAVE**

#### 5.2.1 *Policy Statement*

Four (4) members per shift shall be allowed off on vacation during all days of the calendar year except for those sets of shifts containing a designated holiday as defined in Section 5.4.1 and including December 24<sup>th</sup> and 31<sup>st</sup>. For sets of shifts containing a holiday, three (3) members shall be allowed off on vacation. Vacation shall be administered in accordance with current Fire Department policy, which is incorporated into this MOU by reference of this statement.

#### 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 accrue vacation at the rate shown in the charts below:

#### For 40-hour per week employees

MONTHS OF SERVICE	ACCRUAL PER YEAR	ACCRUAL PER PAY PERIOD
0 – 35 months	10 days or 80 hours	3.33 hours
36 – 119 months	15 days or 120 hours	5.0 hours
120 – 179 months	20 days or 160 hours	6.66 hours
180+ months	25 days or 200 hours	8.34 hours

#### For 56-hour per week employees

MONTHS OF SERVICE	ACCRUAL PER YEAR	ACCRUAL PER PAY PERIOD
0 – 35 months	5 shifts or 120 hours	5.0 hours
36 – 119 months	7.5 shifts or 180 hours	7.5 hours
120 – 179 months	10.0 shifts or 240 hours	10 hours
180+ months	12.5 shifts or 300 hours	12.5 hours

#### 5.2.3 *Vacation Accrual Cap*

During each calendar year employees will be limited (capped) in the number of vacation hours they can accrue.

No employee may accrue more than 250 hours for 40-hour per week employees and 396 hours for 56-hour per week employees. 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 will need to be in writing, submitted through the department, and received the approval of the Fire 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 and be consistent with the provisions of the MOU. This additional vacation accrual could not exceed one-half of the employee's regular annual vacation accrual. In no case would the addition of vacation accrual over the cap be extended beyond one additional year.

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 completed his/her initial probationary period.

#### 5.2.4 *Vacation Accrual when on 4850 Leave*

While on 4850 leave, if an employee exceeds the maximum vacation accrual (250 for 40 hours/week employees or 396 for 56 hours/week employees) he/she will be bought down to 200 vacation hours for 40-hour employees and 300 vacation hours for 56-hour employees. This buy-down will occur when the employee returns to regular duty and will be documented via a Personnel Action Report (PAR). The buy-down will not prevent employees from participating in



the vacation conversion program or the vacation cash in program. Once the employee's hours have been bought down the employee will then continue to accrue vacation hours at their regular rate.

#### **5.2.5 Vacation Relief**

Beginning January 2005, the City converted to the constant staffing model and was no longer hiring vacation relief positions. Should the City wish to return to using vacation relief, following meeting and conferring with the Firefighter's Association on the implementation of such change, primary selection for vacation relief will occur annually and will be voluntary based on seniority (those employees in the Firefighter job class with the most seniority in the Fire Department will have the first opportunity to sign up for vacation relief).

If through the above reference voluntary selection process the department is unable to identify an adequate number of firefighters for this annual assignment employees will be assigned by the department using a least senior (seniority within the Fire Department) procedure.

Employees volunteering and/or being assigned to the vacation relief assignment must have completed two years with the San Rafael Fire Department as a safety member. At no time will there be more than two (2) Firefighter/Paramedics per shift assigned to Vacation Relief.

Those employees assigned to this annual vacation relief assignment shall be paid \$125.00 per month.

No employee shall serve more than three (3) consecutive years on vacation relief. After three (3) years of not serving on vacation relief, such employee may then work up to three (3) consecutive years on vacation relief.

### **5.3 LEAVE CONVERSION TO HOUR FOR HOUR**

#### **5.3.1 Accrued Balance Conversion**

On January 1, 1995, each employee covered by this Memorandum of Understanding working a regularly scheduled ~~56-hour work week~~24-hour shift schedule had their current balances of accrued sick leave hours and accrued vacation leave hours multiplied by a factor of 1.5. The resulting figures then became each employee's new accrued balances of sick and vacation leave.

#### **5.3.2 Sick and Vacation Leave Usage**

Each employee covered by this Memorandum of Understanding shall have one (1) hour of sick leave or one (1) hour of vacation leave, as appropriate, deducted from their accrued balance for each hour of leave used during any reportable 24-hour period.

#### **5.3.3 Hourly Rate for Leave Payoff**

Effective with the conversion to hour for hour reporting, the hourly rate used for leave payoff purposes shall be based on 2080 annual work hours for represented job classes working a 40 hour work week and ~~2912-2920~~2912-2920 annual work hours for represented job classes working a ~~56-hour work week~~24-hour shift schedule.

#### **5.3.4 Vacation and Sick Leave Accrual Conversion**

When a member moves from a 24-hour shift schedule to a 40-hour work week, accrued vacation and sick hours will be multiplied by 0.714 to determine new vacation and sick leave balances.

When a member moves from a 40-hour work week to a 24-hour shift schedule, accrued vacation and sick hours will be multiplied by 1.4 to determine new vacation and sick leave balances.

Vacation and sick leave accrual for employees on a 40-hour work week will be at the rates outlined (per pay period) in the MOU for 40-hour work week employees.

~~Effective with the conversion to hour for hour reporting, the hourly rate used for leave payoff purposes shall be based on 2080 annual work hours for represented job classes working a 40 hour work week and 2912 annual work hours for represented job classes working a 56 hour work week.~~

## **5.4 HOLIDAYS**

### **5.4.1 Days Observed**

Employees covered under this Memorandum of Understanding shall be entitled to the following holidays:

January 1 <sup>st</sup>	New Year's Day
Third Monday in January	Martin Luther King Day
February 12 <sup>th</sup>	Lincoln's Birthday
Third Monday in February	Washington's Birthday
March 31 <sup>st</sup>	Cesar Chavez Birthday
Last Monday in May	Memorial Day
July 4 <sup>th</sup>	Independence Day
First Monday in September	Labor Day
September 9 <sup>th</sup>	Admission Day
As observed by the City of San Rafael	Veteran's Day
As observed by the City of San Rafael	Thanksgiving Day
As observed by the City of San Rafael	Day after Thanksgiving
December 25 <sup>th</sup>	Christmas Day

### **5.4.2 Holiday Pay**

All ~~56 hour a week~~twenty-four hour shift employees covered under this Memorandum of Understanding are entitled to additional straight time compensation for every holiday ~~given in~~ Section 5.4.1 ~~above that they are employed with the City.~~ Straight time or straight hourly rate is defined as base hourly rate plus eligible premium pays. Said compensation shall be paid twice each year on the first pay period of December and the first pay period of June. Effective January 1, 2019, said compensation will be paid in the pay period in which the holiday occurs. The holiday pay formula for each holiday will be based on a 56 hour work week (2,912 hour year for calculating the hourly rate for a twelve hour day) the employee's straight hourly rate multiplied by twelve hours. The holiday pay amount will be factored into the regular rate of pay for FLSA overtime.

All 40-hour week ~~shift~~ employees ~~covered under this Memorandum of Understanding are entitled to the aforementioned holidays off or shall receive an 8-hour paid day-off or shall be paid one hour of additional straight time for each hour worked on the holidays listed in Section 5.4, in addition to 8 hours of holiday compensation at the straight hourly rate.~~ their regular salary for the number of hours worked during such a day at the rate of straight time based on their standard hourly rates.



### 5.4.3 *Holiday Routine*

Holiday routine shall apply to New Year's Day, Martin Luther King Day, Presidents' Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, the day after Thanksgiving and Christmas. In addition to the emergency responses, the holiday routine shall consist of the normal daily emergency preparedness, routine maintenance of facilities and equipment and the related administrative work, and participation in public education or community events.

## 5.5 **OTHER LEAVE**

### 5.5.1 *Court Appearance*

Employees required to appear in court or other official hearings shall be granted a leave of absence with pay from their assigned duty until released by the Court. Employees required to appear in Court or other official hearings other than during their regular tour of duty shall receive a minimum of four (4) hours pay calculated at one and one-half times the employee's base hourly pay rate at the overtime rate and Employees shall appear in Class A uniform. The Fire Department, when informed, shall provide appearance information for the employees. This information shall be made available, if known, by 6:00 p.m. on the last court day preceding the scheduled appearance date of the employee. Employees will be responsible for calling the dispatcher after 6:00 p.m.

### 5.5.2 *Jury Duty*

Employees required to report to jury duty shall be granted a leave of absence with pay from their assigned duty until released by the court. The employee shall notify his/her employer in advance when summoned for jury duty. If the employee is a shift employee and is selected to serve on a jury, said employee shall not be required to perform duty during non-court hours until released by the court.

### 5.5.3 *Military Leave*

Military leave as defined in State law shall be granted to any regular employee.

All employees entitled to Military Leave shall give the Fire Chief a reasonable opportunity, within the limits of military regulations, to determine when such leave shall be taken.

### 5.5.4 *Workers' Compensation / Industrial Injury Leave*

Safety employees shall be governed by the provisions of Section 4850, et seq. of the Labor Code. Non-safety employees shall be governed by applicable state law and City Rules and Regulations. Refer to Section 5.1.2. for qualifications regarding use of accrued sick leave.

### 5.5.5 *Family Medical Leave / California Family Rights Act*

Family leave shall be granted in accordance with the Federal FMLA of 1993 and the CFRA of 1991. Requests for Family leave are submitted to the Fire Chief for approval and reviewed by the Human Resources Director for consistency with the law prior to approval.

### 5.5.6 *Catastrophic Leave*

Effective July 1, 2008 Association members have agreed to adhere to the provisions of the City's Catastrophic Leave Policy which is available on the City's Intranet website.

### 5.5.7 Bereavement Leave

In the event of the death of an employee's spouse, registered domestic partner, child, parent, brother, sister, in-law(s), or a 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 for 37.5 hour per week represented employees (2 shifts for 56 hour per week employees) of paid bereavement leave within the state and up to five (5) days for 37.5 hour per week represented employees (2 shifts for 56 hour per week employees) of paid bereavement leave may be granted to attend an out of state funeral.

In those cases where the death involves an individual other than immediate family, who had such a relationship with the employees, as defined above, the employee shall sign a simple affidavit describing the relationship and submit this to the Fire Chief as part of the request for bereavement leave.

## 6 TERMS & CONDITIONS OF EMPLOYMENT

### 6.1 HOURS OF WORK

All suppression employees ~~covered by this Memorandum of Understanding~~ shall work a set of twenty-four hour shifts within fifty-six (56) hour work week with a three (3) platoon system. ~~A work shift shall be defined as~~ Each suppression shift lasts twenty-four (24) consecutive hours, commencing at 0800 and continuing through 0800 the following day. A set ~~is shall be defined as~~ two consecutive twenty-four hour shifts ~~worked consecutively~~.

#### 6.1.1 Work Schedule / Established Work Week

Employees ~~in this unit~~ shall be assigned to either eight hours per shift, 40 hour per calendar week administrative shifts work weeks or twenty-four hour suppression shifts. All suppression employees ~~are scheduled to work four sets of work a fifty-six (56) hour work week in~~ twenty-four (24) hour shifts within ~~each~~ twenty-four (24) day FLSA Section 7k work period as is illustrated cycle as listed below (commonly referred to as the "2X4" schedule):

X = 24 hour on-duty period

0 = 24 hour off-duty period

Example: XXOOOO/XXOOOO/XXOOOO/XXOOOO

Fire prevention personnel may work different schedules according to administrative needs. ~~The work week will consist of 40 hours or 56 hours respectively.~~

Any employee working the 2 X 4 suppression schedule described above may agree to transfer to prevention, training or other special assignment, subject to the approval of the Fire Chief. An employee assigned to any of these special assignments who works an eight-hour shift shall receive a 5.0% premium pay. The special assignment shall last two years unless the Fire Chief and employee agree to extend the assignment.

The 2 X 4 schedule shall not change the rules regarding use of sick leave. Employees should notify the Fire Department administration that sick leave use is needed according to current policy and before each 24-hour shift. It is acknowledged by all parties that if a Fire Captain, Fire Division Chief or Fire Battalion Chief determines that an employee is too fatigued to continue work said Officer is authorized to send the employee home on sick leave. ~~Any employee working the suppression schedule described above may agree to transfer to prevention, training or other special assignment, subject to the approval of the Fire Chief. If transferred to the forty (40) hour work week in such a capacity outlined above, such employee shall receive five~~

~~percent (5%) premium pay. The length of the transfer shall be two (2) years, but may be modified by mutual agreement between the employee and the Fire Chief.~~

### 6.1.2 *Shift Trade Policy*

To provide a mechanism which will enable Fire Department members to take a normally assigned work shift off without having to use vacation time, a shift trade policy has been implemented in order to maintain appropriate staffing levels. Refer to Fire Department Policy IVI. ~~In order to maintain appropriate staffing levels, all shift trades will be made on a rank for rank basis only, provided there is no more than a 10% vacancy in the given rank.~~

## 6.2 OVERTIME

### 6.2.1 *Overtime*

The work period for suppression personnel is twenty-four days pursuant to Section 207(k) of the FLSA, which begins at 8 a.m. on the first day of the work period and at 7:59 a.m. on the last day of the work period. The work period for administrative personnel is seven days, Sunday through Saturday of each calendar week. For administrative personnel, all work periods begin at midnight on the first day of the period and end one minute before midnight on the last day of the period.

~~All employees covered by this Memorandum of Understanding shall be paid at the rate of time and one-half of their established hourly rate for time worked in excess of their regular forty (40) hour or fifty-six (56) hour work week. The City shall pay FLSA overtime, i.e. hours actually worked in excess of 182 per 24-day work period, in compliance with the law. Approved paid vacation and approved paid sick leave shall count as hours worked towards overtime. There shall be no compensatory time off; all overtime shall be paid overtime.~~

In order to maintain appropriate staffing levels, all overtime coverage will be made on a rank for rank basis only as outlined in Fire Department Policy IVI, or with the assurance all positions within the company are covered to current department standards, including the placement of at least one person licensed as a paramedic on each company.

The City may reopen negotiations during the term of the Agreement to negotiate any issue within the scope of representation affected by the City's administration of a new payroll system and/or changes made to comply with the FLSA.

### 6.2.2 *FLSA-Contract Overtime*

~~Overtime shall be calculated pursuant to the Fair Labor Standards Act and For employees working a twenty-four hour shift schedule, approved paid vacation and approved paid sick leave shall not count as hours worked towards overtime eligibility and the employee will not be eligible for overtime until the employee actually works more than 182 hours in a 24 work period.~~

For employees working an eight-hour shift schedule, approved paid vacation and approved paid sick leave shall not count as hours worked towards overtime eligibility. In accordance with the 7k exemption, non-exempt 56-hour personnel shall receive 6.33 hours additional pay per pay period.

### 6.2.3 *Maximum Continuous Hours of Work*

No employee shall work more than one hundred and twenty (120) consecutive hours without the written approval of the Fire Chief or the Fire Chief's designee.

### 6.3 EMD-CERTIFICATION

EMT-D certification is a requirement for each employee with a safety classification. The certification is to be conducted on duty, between the hours 0800 and 1700, and counted as a portion of the eight-hour routine duty day.

### 6.4 SELECTION PROCESS

#### 6.4.1 Promotional Recruitments

Recruitments in the Firefighter series to the rank of Fire Engineer and Fire Captain shall be promotional. In the event that no qualified candidates are identified through the examination process, the position(s) will remain vacant and another promotional recruitment will begin as soon as feasible, as determined by the Fire Chief. This will continue until a qualified candidate is found. The City will strive to maintain active promotional lists to prepare for vacancies.

#### 6.4.2 Fire Captain Qualifications

##### Option 1

- A. Four (4) years full time suppression experience in the Firefighter series.
- B. Associate Degree in Fire Science or Fire Technology.
- C. San Rafael Fire Department Engineer Certification or Engineer Rank.
- D. Completion of NWCG S-231 and S-290 curriculum.
- E. State ~~Board of Fire Services~~ Fire Training Fire Officer Certification or completion of State Fire Training Company officer curriculum.

- or -

##### Option 2

- A. Five (5) years full time suppression experience in the Firefighter series.
- B. State ~~Board of Fire Services~~ Fire Training Fire Officer Certification or completion of State Fire Training Company Officer curriculum.
- C. San Rafael Fire Department Engineer Certification or Engineer rank.
- D. Completion of NWCG S-231 and S-290 curriculum.

- or -

##### Option 3

- A. Ten (10) years full time suppression experience in the Firefighter series.
- B. San Rafael Fire Department Engineer Certification or Engineer rank.
- C. Completion of Fire Command 1A and 1B or Company Officer 2D.
- D. Completion of NWCG S-231 and S-290 curriculum.

- or -

##### Option 4

- A. Seven (7) years full time suppression experience in the Firefighter series, with three (3) of those being in the position of Fire Engineer with the City of San Rafael
- B. ~~Completion of State Board of Fire services~~ Fire Command 1A and 1B or Company Officer 2D.
- C. Completion of NWCG S-231 and S-290 curriculum

For the purpose of definition, in Section 6.4.2., Firefighter series shall mean the following job classes: Firefighter, Firefighter-Paramedic, Fire Engineer and Fire Captain.

#### 6.4.3 Fire Captain – Administrative Duty

Application for and acceptance of the position of Fire Captain includes the explicit understanding that Fire Captains may be assigned to either:

- A. Supervise a Fire Company and work a ~~24-hour~~~~56-hour~~ per ~~day shift~~~~week~~ on a 2 x 4 schedule
- or
- B. Perform an Administrative assignment with the following conditions:
  - 1. Employee has cleared probation
  - 2. Employee will serve as the Training/ Safety Coordinator
  - 3. To serve as EMS Coordinator
  - 4. Assignment is for a 40-hour work week
    - Four 10-hour work days per week is optional.
    - Work day will include 1 hour for physical fitness

#### Assignment to Administrative Duty

In the event Administrative assignments remain vacant following the solicitation of volunteers, the assignment will be filled using reverse seniority based on ~~each employee's~~~~his/her~~ date of appointment.

~~Starting with the 2011 bid process,~~ Administrative positions will be filled at the time of the Station bidding and will last for a 2 year period. Any period of time less than 2 years will be considered on a hardship basis at the discretion of the Chief and the incumbent.

In the event that a Captain has fulfilled a 2 year Administrative position but no positions as a Fire Company Captain are available, the Administrative position shall return to the bid process. If no officers choose the Administrative position it shall be filled by the least senior Captain having completed probation.

Once a Captain has served two years in an Administrative position, he/she will not be required to serve again. However, a person serving in the Administrative position may serve in that capacity for more than two years per the discretion of the Chief and the incumbent.

If 2 or more line Captain assignments are vacant at the time of the Station bid, the Administrative position shall be suspended until the Department is able to reach full staffing of the Captain position. When full staffing has been achieved the position shall return to the bid process.

#### Compensation and Overtime

Captains filling an Administrative position shall receive (5%) Premium Pay as outlined in Section 6.1.1 and shall also receive an additional Incentive Pay of 5% added to the base salary. However, when a Captain works overtime while on Administrative assignment, this additional 10% will not be added to the hourly rate and overtime pay shall be based on the base salary.

Captains filling an Administrative assignment are eligible for shift overtime if it does not conflict with their regular work schedule. If a Captain works shift overtime, the hourly rate of pay will be adjusted to the ~~24-hour shift~~~~56-hour workweek~~ rate and the hourly rate will not include the 5% Premium Pay or the 5% Incentive Pay. Captains filling administrative assignments are exempt from mandatory overtime.

## **Vacation and Sick Leave Accrual**

When a member moves from a ~~24-hour shift~~~~56-hour work week~~ to a 40-hour work week, accrued vacation and sick hours will be multiplied by 0.714 to determine new vacation and sick leave balance.

When a member moves from a 40-hour work week to a ~~24-hour shift~~~~56-hour work week~~, accrued vacation and sick hours will be multiplied by 1.4, to determine new vacation and sick leave balance.

Vacation and sick leave accrual for employees on a 40-hour work week will be at the rates outlined (per pay period) in the MOU for 40-hour work week employees.

### **6.4.4 Rule of Three**

Appointments made off of departmental promotional lists or open lists for Fire Department vacancies which have Fire Department employees on them require filling of vacancies from within the top three names on a certified list as follows:

1 opening	=	3 candidates
2 openings	=	4 candidates
3 openings	=	5 candidates and etc.

The Human Resources Director may remove a name of an eligible employee from a list if he/she has been rejected or passed over three times by the appointing authority.

Nothing herein shall require use of a Rule of Three for entry-level selections, which shall be subject to a Rule of the List. Should the number of candidates fall below the stated number for the vacancy openings, the Human Resources Director may certify an eligibility list in accordance with the City's Personnel Rules and Regulations Article 6.6.

### **6.4.5 Duration of Eligibility Lists**

Eligibility lists (entry level and promotional) shall remain in effect for twelve (12) months from the established date and can be extended by an additional six (6) months at the written request of the Fire Chief.

## **6.5 CAREER DEVELOPMENT PROGRAM**

The San Rafael Firefighters Association agrees to conform to the Career Development Guidelines regarding Engineer Certification (Policy 1-V-10) and Firefighter (Policy 1-V-9) as revised 11-18-03 and 9-23-08 respectively, and said policy is hereby incorporated by reference.

## **6.6 PROBATIONARY PERIOD**

### **6.6.1 Purpose of Probation**

The purpose of probation is to give the City an opportunity to evaluate an employee's performance prior to the employee entering regular status.

### **6.6.2 Periodic Probationary Evaluation**

After passing an examination and accepting appointment, each employee shall serve a probationary period. During this probationary period the employee's performance shall be evaluated at least twice, once during the fourth (4th) month and once during the eighth (8th) month. The results of these evaluations shall be discussed with the employee.



### 6.6.3 *Length of Probationary Period*

The probationary period on original and promotional appointments shall be for twelve (12) months.

### 6.6.4 *Rejection During Probation*

During the probationary period an employee may be rejected at any time by the Fire Chief without the right of appeal, except as provided by law.

### 6.6.5 *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.

### 6.6.6 *Notification of Extension or Rejection*

The Fire Chief shall notify the Human Resources Director in writing of his/her intention to extend the employee's probationary period or reject the employee. After discussion with the Human Resources Director, the Fire Chief shall notify the employee in writing of his/her extension or rejection.

### 6.6.7 *Regular Status*

For the purpose of this agreement, regular status shall mean; full time, non-probationary status. Regular status shall commence with the day following the expiration date of a probationary period.

### 6.6.8 *Promotion of Probationary Employee*

An employee serving a probationary period may be promoted to a position in a higher classification. When an employee is promoted under such circumstances, the probationary period of the lower classification shall be suspended. This suspension, the new promotional probationary period and the promotional appointment shall commence on the same date.

### 6.6.9 *Unsuccessful Passage of Promotional Probation*

An employee who does not successfully pass his/her promotional probationary period shall be reinstated to the position in which the employee held regular status prior to his/her promotion. If the employee was serving a probationary period at the time of promotion, the suspension of the prior probationary period shall be lifted, the employee shall be reinstated to probationary status in the prior classification and the remainder of that period shall be served. Provided, however, that if the cause for not passing the promotional probationary period is sufficient grounds for dismissal, the employee shall be subject to dismissal without reinstatement to the lower position. If the employee has completed the probationary period in the prior classification and the employee is subject to dismissal without reinstatement, the employee has the opportunity to appeal pursuant to the provisions of the Firefighters Procedural Bill of Rights Act and this Memorandum of Understanding.

## **6.7 TRANSFERS / REASSIGNMENTS**

### 6.7.1 *Types of Transfers*

Transfers may be within the same department (intra-departmental) or between departments (inter-departmental). The requirements for each are as follows:



- a. **Inter-departmental transfers.** An employee may be transferred from a position in one department to a position in the same classification in another department, with the recommendation of the two department heads and the approval of the City Manager.
- b. **Voluntary transfers.** An employee may make a written request for transfer to the Personnel Director to a position in the same or similar classification with the same salary range. Such a request may be made on the recommendation of the affected department head(s) and the approval of the City Manager.

#### 6.7.2 *Minimum Qualifications & Probation*

Any persons transferred to a different classification shall possess the minimum qualifications for that classification. In the case of a voluntary transfer, the employee shall serve a six (6) month probationary period.

#### 6.7.3 *Station Transfers*

Station transfer will be in accordance with department policy 1-V-24, Station Bid Preference Guideline, which is hereby incorporated by reference.

### 6.8 STAFFING LEVELS

#### 6.8.1 *Constant Staffing*

The City determines the level of service and therefore the overall size of the Fire Department's staff. However, the City is committed to provide safe staffing levels for the City's firefighters and the public. The City and the Association agree to continue Constant Staffing as implemented in 2005. This allows the City to maintain staffing needs through current staffing levels and callback when necessary. Constant Staffing levels will consist of a range not to exceed 22 personnel per each shift operating no more than six companies and no more than 2 medic units. The City shall promptly commence hiring and/or promotions to ensure refreshed staff at each rank and to minimize or eliminate forced overtime.

#### 6.8.2 *Minimum Staffing*

Minimum Staffing will consist of a range of personnel per each Company. The range will consist of staffing each engine company with 3 members qualified to function in the following roles, (1) Captain, (1) Engineer, (1) Firefighter or Firefighter Paramedic. Staffing for each Medic unit shall consist of (2) Firefighter Paramedics.

#### 6.8.3 *Hiring Additional Personnel*

In addition to those listed in this paragraph, when the Department reaches full staffing the City may hire up to three additional personnel for permanent vacancies. Hiring additional personnel would require the mutual consent of the Fire Chief and the Firefighters Association.

#### 6.8.4 *Paramedic Staffing*

It is a goal of the fire department to assign at least one Firefighter/Paramedic to each Engine or Truck Company and realize ALS assessment capabilities for those units.

Captain or Engineer EMT-Ps no longer receive the direct paramedic incentive that is now built into base salary and are encouraged to continue participation in the paramedic program in an effort to deliver ALS service from all fire stations. The City will facilitate the continued cost of EMT-P licensure and continuing education. Captain and Engineer EMT-Ps are encouraged to assist with fire department staffing to maximize our ability to field Engine/Truck Companies as Assessment Units.

Firefighter/Paramedics will serve in assignments on Engine or Truck Companies and Medic Units to facilitate the maintenance of firefighting and paramedic skills. Quarterly or less frequent station rotation of non-probationary Firefighter/Paramedics between two fire stations may be employed to enable this alternation of duties. Firefighter/Paramedics are available for occasional relocation from regularly assigned stations when exigent circumstances require a paramedic to maintain the provision of ALS service on Medic Units.

## **6.9 PERSONNEL RULES & REGULATIONS**

The City and the Association met and conferred over a revision to the City's Rules and Regulations and agreement was reached in October of 1995. Prior to final consideration of any future, proposed amendments to these rules that constitute a change in or impacts wages, hours or terms and conditions of employment, said proposed amendment(s) shall be subject to the provisions of the Meyers-Milias-Brown (MMB) Act.

### **6.9.1 *Wireless Communication Policy***

Effective July 1, 2008 Association members have agreed to adhere to the provisions of the City's Wireless Communication Policy which is available on the City's Intranet website.

### **6.9.2 *Drug & Alcohol Policy***

The City and the Association both support a drug and alcohol free work place. Association members will adhere to the provisions of the Drug and Alcohol Testing Policy and Procedures attached herein as Exhibit E and will continue to work with the City to develop a mutually agreeable policy within the terms of this Memorandum of Understanding. It is understood that the policy will apply to all represented departmental employees and non-represented fire safety employees.

### **6.9.3 *Outside Employment Policy***

No regular employee shall engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with or inimical to his/her duties with the City. It is the intent of this provision to exercise the authority granted by Section 1126 of the Government Code, subject to the limitations provided therein. Effective July 1, 2008 Association members have agreed to adhere to the provisions of the City's Firefighters Outside Employment Policy attached herein as Exhibit F and available on the City's intranet website.

### **6.9.4 *Use of Fire Apparatus for Shopping***

Affected employees will be allowed to use fire vehicles for shopping. Affected employees shall carry a portable radio or alert device and shall remain ready to respond to any call received.

### **6.9.5 *Light Duty Policy Statement***

Light duty is offered to employees with temporary medical disabilities under the following circumstances:

1. Must be medically authorized by the individual's treating physician.
2. Any and all work restrictions or modifications necessary to accommodate the employee's temporary disability must be thoroughly defined.
3. There must be actual light duty work available that can accommodate the temporary modifications.
4. This option is available to all employees whether the debilitating injury occurred on or off duty.

5. Light duty will be applied in a non-discriminatory manner.
6. All light duty assignments will consist of work, which falls within the scope of regular employment in the Fire Department, which can accommodate prescribed temporary physical limitations. Light duty assignments may include, but are not limited to, departmental work such as: fire prevention, running supplies and administrative projects. Light duty will be the only circumstance where an employee will be required to perform duties outside of his/her job description. It is understood and agreed that light duty assignments will be confined to the Fire Department.

#### 6.9.6 *No Smoking / Tobacco Use Policy*

Employees hired by the City of San Rafael after 7/1/08 are required to sign a condition of employment statement that they agree not to smoke or use tobacco products of any kind while employed by the City of San Rafael. This signature must be obtained prior to the date of hire.

Employees hired **before** 7/1/08 will not be allowed to smoke or use other tobacco products as follows:

1. While inside any City/Fire Department vehicle
2. While in public when on-duty or in uniform
3. In compliance with State Law and Local Ordinances

The City will provide tobacco cessation assistance to employees who desire to stop using tobacco products. Employees will be referred to the City's employee assistance program for initial assistance and, if needed, will be eligible to receive up to \$2500 in additional funds to complete a certified tobacco cessation program. Written approval from the Fire Chief is required for the additional funding.

#### 6.9.7 *Grooming Standards*

All personnel covered by this Memorandum of Understanding shall conform to the Grooming Standards specified in Departmental Policy 1-VI-2 and said policy is hereby incorporated by reference.

### 6.10 MISCELLANEOUS

#### 6.10.1 *Safety Committees*

**Fire Department Committee:** In order to promote health and safety among the Fire Department employees, a joint committee of seven (7) will be established with equal representation and authority, with four (4) employees to be designated by the Fire Chief and three (3) employees designated by the Association. This committee shall be called the Health and Safety Committee. The committee shall ~~strive to meet regularly at least once a month~~ quarterly or more often as needed in order to review accident records and other data bearing on the employee's health and safety. The committee shall make recommendations for the correction of any undesirable conditions, which may be found to exist.

**City-Wide Committee:** If the City reinstates a City wide Safety Committee, one member designated by the Firefighter's Association shall serve on this committee.

#### 6.10.2 *Management & Miscellaneous Positions*

The position of Fire Chief is deemed a management position and included in the Resolution Pertaining to the Compensation and Working Conditions for Unrepresented Management and Mid-Management Employees for salaries and fringe benefits. The Fire Division Chief, Fire Battalion Chief - Operations, and Administrative Chief are deemed mid-management positions and are included in the San Rafael Fire Chief Officers' Association schedules for salaries and

fringe benefits. The Fire Department clerical personnel are included in the S.E.I.U. 949 Supervisory and Miscellaneous Units Memorandum of Understanding, with the exception of the Administrative Assistant to the Fire Chief position, which is part of the Association of Confidential Employees.

#### 6.10.3 *Medical Standards*

The City will establish pre-employment medical standards for all classifications represented by the San Rafael Firefighters' Association, I.A.F.F., Local 1775. A medical standards ordinance to be applicable to Fire Department personnel in the classification of Firefighter, Firefighter-Paramedic, Engineer, and Captain will be discussed by the City and the Association and will be adopted only after mutual agreement by both parties.

#### 6.10.4 *Physical Fitness Program*

Members of the Association have agreed to adhere to the provisions of the Employee ~~Wellness/Fitness~~Health and Wellness Program as outlined below:

##### A. ~~Wellness/Fitness~~Health and Wellness Committee

Fire Management will manage a Wellness/Fitness Committee with representation comprised of both Fire Management and representatives of the Association. The purpose of the Committee is to maintain a comprehensive Wellness/Fitness program to improve the physical and general health of all unit employees.

##### B. ~~Wellness/Fitness~~Health and Wellness Program

Employees shall participate in a Wellness/Fitness program conducted by a mutually agreed upon provider.

##### 1. Comprehensive Fitness Assessment and Profile

A fitness evaluation will be conducted annually by a mutually agreed upon provider. This evaluation may include, but not limited to:

- a. 12 lead EKG printout with computer interpretation at rest
- b. Pulmonary function recording of lung capacity and flow rates
- c. Resting and exercise blood pressure measurement
- d. 12 lead EKG printout during graded exercise treadmill test
- e. Body composition evaluation
- f. Abdominal endurance crunch test
- g. Pushup evaluation of upper body strength and endurance
- h. Grip strength
- i. Lower body strength test
- j. Trunk, legs, shoulder and spinal flexibility tests
- k. Health appraisal and coronary risk questionnaire
- l. Individual fitness profiles compiled from above evaluations

##### 2. Blood Chemistry Panel

The blood chemistry panel shall include, but not limited to the following:

- a. Glucose, Bun, Creatine, Bun/Creatine ration, SGOT, SGPT, LDH, GGTP, Billirubin, Alkaline Phosphate, Calcium, Phosphorus, ~~Magnesium, Sodium,~~ Potassium, Chloride, Uric Acid, Triglyceride, Cholesterol (HDL & LDL and Coronary risk ratio), Globulin, Albumin, Total Protein and A/G Ratio, PSA for male and OCS for female employees.

### 3. Heavy Metal and Special Exposure Screening (hazmat members or under specific exposures)

Baseline testing for heavy metals and special exposures may be performed under special circumstances, such as hazardous materials exposures; recurrent exposures; other known exposures; or where under federal, state, or provincial regulations requires it, such as OSHA standards. The following screenings may be utilized: urine screen accesses exposure to arsenic, mercury and lead; blood screen for lead and zinc protoporphyrin assesses exposure to lead; testing and screening for specific exposure or other heavy metal screens may include aluminum, antimony, bismuth, cadmium, chromium, copper, nickel and zinc; and special blood testing may be ordered for organophosphates, RBC cholinesterase, or other toxic exposures such as blood screening for exposure to PCBs.

### 3.4. Lecture Series and Individual Presentations

The wellness Portion of the program will include the following:

- a. Lecture series on health, nutrition, injury prevention, and exercise science topics.
- b. Literature for topic specific needs or interests dealing with wellness and fitness to be provided at each work site.

### 4.5. Physical Fitness

Unit employees will have up to 2 hours per day for physical fitness and personal and facility readiness, unless an emergency or call for service prevents a workout. Unit employees shall adhere to the physician's recommended physical fitness program. Unit employees must be in their uniforms and ready for duty after completing their workout. Captains shall schedule workout time for each Company. On occasion, Department management may adjust workout times when necessary to accommodate other Department business.

The City will provide funds to purchase additional exercise equipment for each fire station during the term of this agreement. The equipment to be purchased shall be determined by ~~a physical fitness~~ the Health and Wellness committee and approved by the Chief.

## C. The Program

This program is designed to provide an effective method for keeping employees healthy by implementing methods for early detection of potential health issues. The City shall pay for annual examination associated with this program and will adhere to all HIPAA confidentiality issues. All medical records are strictly confidential in accordance with State and Federal law. Participation in this program is mandatory.

## D. Annual Examination

1. The City shall provide a physical examination conducted by a health professional ~~cardiologist~~ annually for all unit employees to include a stress EKG reviewed by a cardiologist. ~~In addition, each male unit employee shall receive a digital prostate exam and hernia examination. The physician shall provide all female unit employees a mammogram and Pap Smear examination. The physician~~ health professional will evaluate all employees' EKG, fitness, and blood chemistry plan results and will provide a confidential summary to each employee. Employees are responsible for adhering to the recommendations indented by the assessment team

and any follow-up recommendations from the Cardiologist, for actually participating in the lectures series and for reading the literature provided by the City.

2. Upon request, a physician shall provide each male employee a:

- a. Digital prostate exam
- b. Hernia examination
- c. Skin examination

3. Upon request, a physician shall provide each female employee a:

- a. Mammogram
- b. Pap Smear
- c. Breast examination
- a-d. Skin examination

E. Examinations and Scheduling

The physical examination and all involved medical tests, including laboratory test, spirometer test, Chest X-ray and Stress EKG shall be administered while employees are on duty as scheduled by the City. Employees agree to take such stress EKG and physical examination when scheduled.

F. Agreement to Abide to Examinations Findings

Employees agree to abide by the findings of the medical examination and to comply with any of the program's the medical examiner's doctor's prescribed plans to correct medical deficiencies, including excess weight. All subsequent additional medical examinations shall be arranged for and paid for by the City employees. This understanding is not intended to waive any rights of the employee under State law.

G. Findings Make Known to City and Employee

Medical findings determined through such examinations shall be made known to the employee in writing by the physician. The City shall be notified of any work restrictions resulting from said examination, if applicable.

6.10.5 *Association Meetings with the Fire Chief*

The Fire Chief and/or Staff members designated by the Fire Chief, along with the representatives of the Association, shall strive to meet at least quarterly to discuss topics and issues of mutual concern. Meetings may be called by either party. The parties will attempt to schedule the meeting within fourteen (14) calendar days of the request for the meeting, unless otherwise mutually agreed. The parties will develop and share an agenda for the meeting at least twenty-four (24) hours prior to the date of the meeting.

6.10.6 *Shared Services*

The City and the Association agree to pursue opportunities to share services with other agencies, including the potential of the formation of a JPA for fire/rescue services. The City and the Association understand that the Association will be involved in any shared services discussions with any other agency throughout that process.

6.10.7 *Gym Reimbursement*

Employees are eligible to receive up to \$16.50 per month reimbursement for paid gym memberships. Such reimbursement shall be reported as taxable income to the employee.



## **7 PROCEDURES**

### **7.1 DEMOTION**

#### *7.1.1 Demotion*

The Fire Chief may demote an employee when the following occurs:

- A. The employee fails to perform his/her required duties.
- B. 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 Fire Chief, written notice of demotion shall be provided to an employee at least ten (10) calendar days before the effective date of the demotion, and a copy filed with the Personnel Department.

Demotion pursuant to subsection 7.1.1 A of this Memorandum of Understanding shall be deemed disciplinary action and as such shall be handled according to the provisions in Article 7.3, Disciplinary Action, of this Memorandum of Understanding.

### **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) calendar 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 Fire Chief and the Personnel Department.

#### *7.2.2 Termination - Layoff (Lack of work or funds)*

The Fire Chief may terminate an employee because of reorganization, abolition of position, and shortage of funds. Said termination shall be considered a Reduction In Force and shall be processed in accordance with Article 7.5, Reduction in Force, of this Memorandum of Understanding.

#### *7.2.3 Termination - Disciplinary Action*

An employee may be terminated for disciplinary reasons, as provided in Article 7.3, Disciplinary Action, of this Memorandum of Understanding.

#### *7.2.4 Termination During Probation*

The rejection of an employee during his/her initial probationary period is covered in Article 6.6, Probationary Period, of this Memorandum of Understanding.

#### *7.2.5 Retirement*

Retirement from the City service 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 Definition*

Disciplinary action shall mean discharge/dismissal, demotion, reduction in salary, and/or suspension resulting in loss of pay.



### 7.3.2 *Authority*

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 for violating or ordering the violation of the Memorandum of Understanding.

### 7.3.3 *Causes for Disciplinary Action*

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-prescription 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 (mistreatment or discourteousness to) 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. Misuse 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.

### 7.3.4 *Appeal of Disciplinary Action*

Whenever punitive action is undertaken, the offending employee shall have the opportunity for an administrative appeal which will be conducted in conformance with the Administrative Procedure Act and this Memorandum of Understanding. Such appeal must be filed with the City Manager or his/her designee by the employee in writing within fourteen (14) calendar days from the date of the discipline/discharge and unless so filed the right of appeal is lost.

### 7.3.5 *Arbitration (Disciplinary Action)*

The appellant may have the appeal heard by the City Manager or may request arbitration. If an employee elects to have an appeal heard by the City Manager, the employee must state in writing that he or she waives his/her right to an appeal that conforms to the procedures of the Administrative Procedure Act.

If arbitration is requested, the arbitration will be held in conformance with the Administrative Procedure Act, California Code of Regulations, and other applicable statutes. Representatives of the City and the appellant shall meet within fourteen (14) calendar days to select a mutually acceptable arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the appellant and the City.

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, in which case the hearing shall be held not more than 120 days after the selection of the arbitrator. 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 him/her shall be final and binding on the parties hereto, to the extent permitted by the Charter of the City.

In addition to 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 a side letter to the MOU.

## **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, or any Fire Department policy specifically referenced herein, except issues concerning appeals of punitive action, which is governed by Article 7.3, Disciplinary Action, of this Memorandum of Understanding. Policy 1-VI-3 is specifically incorporated by reference.

### 7.4.2 *Initial Discussions*

Any employee who believes that he or she has a grievance may discuss his or her complaint with the Fire Chief or with such subordinate management official as the Fire Chief may designate. If the issue is not resolved within fourteen (14) calendar days, or if the employee elects to submit his or her grievance directly to an official of the association, the procedures hereafter specified shall be invoked.

### 7.4.3 *Referral to City Manager*

Any employee or any official of the Association may notify the City Manager and Fire Chief in writing that a grievance exists, and in such notification, state the particulars of the grievance, and, if possible, what remedy or resolution is desired.

No grievance may be processed under Section 7.4.4 below, which has not been first heard and investigated in pursuance of Section 7.4.2. A grievance which remains unresolved fourteen (14) calendar days after it has been submitted to the City Manager in writing may be referred to arbitration.

Any time limit may be extended to a definite date by mutual agreement of the Association and the appropriate management representative.

#### **7.4.4 Arbitration (Grievance)**

If the grievance is not resolved, the grievant, the Association, or the City may, after completion of the previous step in the grievance procedure, submit the grievance directly to the City Manager or may request arbitration. If arbitration is requested, representatives of the City and the Grievant shall meet within fourteen (14) calendar days to select a mutually acceptable arbitrator (the selection process shall include the review of the arbitrator's availability). The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Grievant and the City. Each party, however, shall bear the cost of its own presentations, including preparation and post hearing briefs, if any. A hearing before the arbitrator shall be held within 60 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 which is binding on the parties hereto, to the extent permitted by the Charter of the City.

### **7.5 REDUCTION IN FORCE**

#### **7.5.1 Authority**

The Fire Chief may lay off, without prejudice, any regular employee because of lack of work or funds, or organizational alterations, or for reasons of economy or organization efficiency.

#### **7.5.2 Notice**

Employees designated for layoff or demotion in lieu of lay off shall be notified in writing at least thirty (30) calendar days prior to the anticipated date of lay off or demotion. The Association shall also be so notified.

#### **7.5.3 Order of Layoff**

Layoffs and/or reductions in force shall be made by classification. A classification is defined as a position or number of positions having the same title, job description, and salary. Extra-hire employees shall be laid off before permanent employees in the affected classification. In effecting the preceding order, a part-time permanent employee with more seniority can displace a full-time permanent employee.

#### **7.5.4 Seniority**

If two or more employees within a classification have achieved permanent status, such employees will be laid off or reduced on the following basis:

- A. Seniority within the affected classifications will be determinative. Such seniority shall include time served in higher classification(s). The computation of seniority for part-time employees will be credited on a pro-rata basis to full-time service. Time spent on a City Manager approved leave of absence without pay does not count toward seniority.
- B. If the seniority of two or more employees in the affected classification or higher classification(s) is equal, departmental seniority shall be determinative.
- C. If all of the above factors are equal, the date of regular status in City service is achieved shall be determinative.
- D. If all of the above are equal, date of certification for appointment shall be determinative.

#### **7.5.5    *Bumping Rights***

An employee designated to be laid off may bump into a class at the same salary level, or into the next lower classification in which such employee has previously held regular status. An employee, who is bumped, shall be laid off in the same manner as an employee whose position is abolished.

#### **7.5.6    *Transfer Rights***

The Personnel Director will make every effort to transfer an employee who is to be affected by a reduction in force to another vacant position for which such employee may qualify. The length of eligibility for such transfer will be the period of notification as provided in Section 7.5.2, but no longer than the effective date of such layoff or reduction.

### **7.6   RE-EMPLOYMENT**

#### **7.6.1    *General Guidelines***

Individuals who have been laid off or demoted shall be offered re-appointment to the same classification in which they held status in the order of seniority in the classification. Individuals demoted in lieu of reduction in force shall be offered restoration to the highest class in which they held status and in which there is a vacancy prior to the appointment of individuals who have been laid off.

#### **7.6.2    *Right to Re-Employment***

Each person who has been laid off or demoted in lieu of a layoff from a position the person held, shall, in writing, be offered re-appointment in the same classification should a vacancy occur in the classification within two years after the layoff or demotion. Prior to being re-employed, the employee must pass a physical exam administered by a City appointed physician and must pass the background check administered by the City.

#### **7.6.3    *Time Limits***

Should the person not accept the re-appointment within seven (7) calendar days after the date of the offer, or should the person decline or be unable to begin work within two weeks after the date of acceptance of the offer, the person shall be considered unavailable for employment, shall forfeit the right to re-employment and be removed from the re-employment list.

#### **7.6.4    *Availability***

Whenever a person is unavailable for re-employment, the next senior person who is eligible on the re-employment list shall be offered re-employment.

#### **7.6.5    *Probationary Status***

Employees re-appointed under the provisions above will not be required to complete a new probationary period if they had previously held permanent status in the classification. Employees who had not completed their probationary period shall serve the remainder of the probationary period upon re-appointment.

#### **7.6.6    *Restoration of Benefits***

Employees restored to previously held positions shall be deemed to have returned from a leave of absence for the purpose of all rights and benefits legally permissible. Time not on the payroll will not count as time worked for the purposes of seniority accrual.

**SAN RAFAEL FIREFIGHTERS'  
ASSOCIATION, I.A.F.F., LOCAL 1775**

**CITY OF SAN RAFAEL**

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**John Grey, Local 1775 Attorney**

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**Tim Davis, Lead Negotiator  
Attorney, Burke Williams Sorensen**

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**Andrew Rogerson, Fire Captain**

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**Cristine Alilovich, Assistant City Manager**

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**Anthony Alviso, Firefighter-Paramedic**

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**Date**

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**Esteban Cespedes, Firefighter-Paramedic**

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**Michael Lewis, Fire Engineer**

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**Ryan Goodwin, Fire Captain**

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**Ryan Kirkpatrick, Firefighter-Paramedic**

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**Date**

**SAN RAFAEL FIREFIGHTERS' ASSOCIATION**  
**BASE PAY SCHEDULE**  
Effective September 16, 2018

Exhibit A

NOTE: Monthly rate was calculated by multiplying the hourly rate by 2,920 annual hours, then dividing by 12, except for Fire Mechanic which is multiplied by 2,080 annual hours.

Grade Code	Title		A	B	C	D	E
7105	Fire Captain*	Annually	\$ 104,523.73	\$ 109,749.92	\$ 115,237.42	\$ 120,999.29	\$ 127,049.25
		Monthly	\$ 8,710.31	\$ 9,145.83	\$ 9,603.12	\$ 10,083.27	\$ 10,587.44
		Hourly	\$ 35.7958	\$ 37.5856	\$ 39.4649	\$ 41.4381	\$ 43.5100
1107	Fire Captain Specialist	Annually	\$ 109,753.78	\$ 115,241.47	\$ 121,003.54	\$ 127,053.72	\$ 133,406.41
		Monthly	\$ 9,146.15	\$ 9,603.46	\$ 10,083.63	\$ 10,587.81	\$ 11,117.20
		Hourly	\$ 37.5869	\$ 39.4663	\$ 41.4396	\$ 43.5115	\$ 45.6871
7106	Fire Engineer	Annually	\$ 94,670.50	\$ 99,404.02	\$ 104,374.22	\$ 109,592.94	\$ 115,072.58
		Monthly	\$ 7,889.21	\$ 8,283.67	\$ 8,697.85	\$ 9,132.74	\$ 9,589.38
		Hourly	\$ 32.4214	\$ 34.0425	\$ 35.7446	\$ 37.5318	\$ 39.4084
7109	Fire Mechanic (40 hr/week)	Annually	\$ 85,542.20	\$ 89,819.31	\$ 94,310.28	\$ 99,025.79	\$ 103,977.08
		Monthly	\$ 7,128.52	\$ 7,484.94	\$ 7,859.19	\$ 8,252.15	\$ 8,664.76
		Hourly	\$ 41.1261	\$ 43.1824	\$ 45.3415	\$ 47.6086	\$ 49.9890
7110	Firefighter (without PM license)	Annually	\$ 83,118.05	\$ 87,273.95	\$ 91,637.65	\$ 96,219.53	\$ 101,030.51
		Monthly	\$ 6,926.50	\$ 7,272.83	\$ 7,636.47	\$ 8,018.29	\$ 8,419.21
		Hourly	\$ 28.4651	\$ 29.8883	\$ 31.3828	\$ 32.9519	\$ 34.5995
7126	Firefighter-Paramedic** (after probationary year)	Annually	\$ 93,221.10	\$ 97,377.00	\$ 101,740.70	\$ 106,322.58	\$ 111,133.56
		Monthly	\$ 7,768.43	\$ 8,114.75	\$ 8,478.39	\$ 8,860.22	\$ 9,261.13
		Hourly	\$ 31.9250	\$ 33.3483	\$ 34.8427	\$ 36.4118	\$ 38.0594

\*Fire Captain assigned to Administrative Duty receives an additional 5% Premium pay and 5% Incentive pay

\*\*Includes Paramedic Pay

**Entry Level Firefighter pay for probationary year:		Months 1-2	Months 3-6	Months 7-12*
2126	Entry Level Firefighter	Annually	\$ 74,806.24	\$ 78,962.15
		Monthly	\$ 6,233.85	\$ 6,580.18
		Hourly	\$ 25.6186	\$ 27.0418

\*After probationary year move into Firefighter-Paramedic grade code



**SAN RAFAEL FIREFIGHTERS' ASSOCIATION**  
**BASE PAY SCHEDULE**  
Effective July 1, 2019

Exhibit A

NOTE: Monthly rate was calculated by multiplying the hourly rate by 2,920 annual hours, then dividing by 12, except for Fire Mechanic which is multiplied by 2,080 annual hours.

Grade Code	Title		A	B	C	D	E
7105	Fire Captain*	Annually	\$ 106,614.21	\$ 111,944.92	\$ 117,542.16	\$ 123,419.27	\$ 129,590.24
		Monthly	\$ 8,884.52	\$ 9,328.74	\$ 9,795.18	\$ 10,284.94	\$ 10,799.19
		Hourly	\$ 36.5117	\$ 38.3373	\$ 40.2542	\$ 42.2669	\$ 44.3802
1107	Fire Captain Specialist	Annually	\$ 111,948.86	\$ 117,546.30	\$ 123,423.62	\$ 129,594.80	\$ 136,074.54
		Monthly	\$ 9,329.07	\$ 9,795.53	\$ 10,285.30	\$ 10,799.57	\$ 11,339.54
		Hourly	\$ 38.3386	\$ 40.2556	\$ 42.2684	\$ 44.3818	\$ 46.6009
7106	Fire Engineer	Annually	\$ 96,563.91	\$ 101,392.10	\$ 106,461.71	\$ 111,784.79	\$ 117,374.03
		Monthly	\$ 8,046.99	\$ 8,449.34	\$ 8,871.81	\$ 9,315.40	\$ 9,781.17
		Hourly	\$ 33.0698	\$ 34.7233	\$ 36.4595	\$ 38.2825	\$ 40.1966
7109	Fire Mechanic (40 hr/week)	Annually	\$ 87,253.05	\$ 91,615.70	\$ 96,196.48	\$ 101,006.31	\$ 106,056.62
		Monthly	\$ 7,271.09	\$ 7,634.64	\$ 8,016.37	\$ 8,417.19	\$ 8,838.05
		Hourly	\$ 41.9486	\$ 44.0460	\$ 46.2483	\$ 48.5607	\$ 50.9888
7110	Firefighter (without PM license)	Annually	\$ 84,780.41	\$ 89,019.43	\$ 93,470.40	\$ 98,143.92	\$ 103,051.12
		Monthly	\$ 7,065.03	\$ 7,418.29	\$ 7,789.20	\$ 8,178.66	\$ 8,587.59
		Hourly	\$ 29.0344	\$ 30.4861	\$ 32.0104	\$ 33.6109	\$ 35.2915
7126	Firefighter-Paramedic** (after probationary year)	Annually	\$ 95,085.52	\$ 99,324.54	\$ 103,775.51	\$ 108,449.03	\$ 113,356.23
		Monthly	\$ 7,923.79	\$ 8,277.05	\$ 8,647.96	\$ 9,037.42	\$ 9,446.35
		Hourly	\$ 32.5635	\$ 34.0153	\$ 35.5396	\$ 37.1401	\$ 38.8206

\*Fire Captain assigned to Administrative Duty receives an additional 5% Premium pay and 5% Incentive pay

\*\*Includes Paramedic Pay

**Entry Level Firefighter pay for probationary year:			Months 1-2	Months 3-6	Months 7-12
2126	Entry Level Firefighter	Annually	\$ 76,302	\$ 80,541	\$ 84,780
		Monthly	\$ 6,359	\$ 6,712	\$ 7,065
		Hourly	\$ 26.1309	\$ 27.5827	\$ 29.0344

\*After probationary year move into Firefighter-Paramedic grade code



**SAN RAFAEL FIREFIGHTERS' ASSOCIATION  
MEMORANDUM OF UNDERSTANDING**

**REPRESENTED BENCHMARKS  
AND  
INTERNAL RELATIONSHIPS**

**Effective JULY 1, 2008**

**Benchmark Job Class:** Firefighter\*

**Internal Relationship:** Fire Captain Specialist = Fire Captain + 5% (base salary)\*\*

\*Firefighter is identified as the benchmark job class for compensation survey purposes. Under the current system any increase granted to the Firefighter would also be granted to other job classes.

\*\*New Fire Captain Specialist internal relationship established July 1, 2008. The Fire Dispatcher internal relationship was terminated June 30, 2008.

The Fire Mechanic position shall be based on the City's ability to pay and the labor market comparison for mechanic positions that perform similar duties to those of the Fire Mechanic.

Note: This exhibit is used to display salary relationships; the MOU document itself must be reviewed to see specifics of compensation changes.

**DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES**

The procedures outlined in this document relating to drug and alcohol abuse and drug and alcohol testing shall also be subject to all applicable provisions of the Memorandum of Understanding between the City of San Rafael (hereinafter "Employer") and the San Rafael Firefighters Association, Local 1775 (hereinafter "Association") as well as any Rules and Regulations or Policies and Procedures which have been agreed to following the meet and confer process.

**Section 1.**     **Policy:** The Employer and the Association, recognize that drug use by employees would be a threat to public welfare and safety of department personnel. It is the goal of this policy to provide an alcohol/drug free workplace and to eliminate illegal drug use and alcohol abuse through education and rehabilitation of the affected personnel. The possession, use or being under the influence of alcoholic beverages or unauthorized drugs shall not be permitted at the Employer's work sites and/or while an employee is on duty. Exception: Alcohol may be stored at the workplace for use at social events which may or may not be held at City facilities. Employees on duty shall not consume alcohol under any circumstances.

**Section 2.**     **Informing Employees About Drug and Alcohol Testing:** All employees shall be fully informed of the Fire Department's drug and alcohol testing policy. Employees will be provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, the Employer shall inform the employees on how the tests are conducted, what the test can determine and the consequence of testing positive for drug use. All newly hired employees will be provided with this information on their initial date of hire. No employees shall be tested before this information is provided to them. Prior to any testing, the employee will be

required to sign the attached consent and release form. Employees who wish to voluntarily seek assistance may do so by contacting the Fire Chief or The Association. The person contacted will contact the employer on behalf of the employee and make arrangements to implement the rehabilitation portions of this policy. No disciplinary action will be taken against an employee unless he/she refuses the opportunity for rehabilitation, fails to complete a rehabilitation program successfully, or again tests positive for drugs within two (2) years of completing an appropriate rehabilitation program.

Section 3.     **Employee Testing:** Employees shall not be subject to random medical testing involving urine or blood analysis or a similar or related test for the purpose of discovering possible drug or alcohol abuse. If, however, there is reasonable suspicion that an employee's work performance is currently impaired due to drug or alcohol abuse, the Employer may require the employee to undergo a medical test consistent with the conditions set forth in this Policy. This reasonable suspicion may be based upon the following:

Involvement in a fatal or serious bodily injury accident or in an accident involving substantial property damage (i.e., in excess of \$25,000); or

An observable phenomena, such as direct observation of drug/alcohol use or the physical symptoms of being under the influence of a drug or alcohol; or

An arrest or conviction of a drug related offense; or

Involvement in a physical altercation while on duty.

Section 4.     **Sample Collection:** The collection and testing of the samples shall be performed only by a laboratory and by a physician or health care professional qualified and authorized to administer and determine the meaning of any test results. The laboratory performing the test shall

be one that is certified by the National Institute of Drug Abuse (NIDA). The laboratory chosen must be agreed to between the Association and the Employer.

The laboratory used shall also be one whose procedures are periodically tested by NIDA where they analyze unknown samples sent to an independent party. The results of employee tests shall be made available to the Medical Review Physician.

Collection of blood or urine samples shall be conducted in a manner which provides the highest degree of security for the sample and freedom from adulteration. Recognized strict chain of custody procedures must be followed for all samples as required by the NIDA. The Association and the Employer agree that security of the biological urine and blood samples is absolutely necessary, therefore, the Employer agrees that if the security of the sample is compromised in any way, any positive test shall be invalid and may not be used for any purpose.

Blood or urine samples will be submitted as per NIDA Standards. Employees have the right for Association or legal counsel representatives to be present during the submission of the sample.

A split sample shall be reserved in all cases for an independent analysis in the event of a positive test result. All samples must be stored in a scientifically acceptable preservation manner as established by NIDA. All positive confirmed samples and related paperwork must be retained by the laboratory for at least six (6) months for the duration of any grievance, disciplinary action or legal proceedings, whichever is longer. Employer retained sample will be stored in the evidence locker of the San Rafael Police Department. At the conclusion of this period, the paperwork and specimen shall be destroyed.

Tests shall be conducted in a manner to ensure that an employee's legal drug use and diet does not affect the test results.

Section 5.     **Drug Testing:** The laboratory shall test for only the substances and within the limits for the initial and confirmation test as provided within NIDA standards. The initial test shall use an

immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

Marijuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites <sup>1</sup>	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file. Only specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the following listed cutoff values.

Marijuana metabolites <sup>2</sup>	15 ng/ml
Cocaine metabolites <sup>3</sup>	150 ng/ml
<b>Opiates</b>	
Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml
<b>Amphetamines</b>	
Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml

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<sup>1</sup> If immunoassay is specific for free morphine the initial test level is 25 ng/ml.

<sup>2</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid

<sup>3</sup> Benzoylecgonine

If confirmatory testing results are negative all samples shall be destroyed and records of the testing expunged from the employee's file.

**Section 6. Alcohol Testing:** A breathalyzer or similar test equipment shall be used to screen for alcohol use and if positive shall be confirmed by a blood alcohol test performed by the laboratory. The screening test shall be performed by an individual qualified through and utilizing equipment certified by the State of California. An initial positive alcohol level shall be .08 grams per 210 L. of breath. If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file. If initial testing results are positive, the test shall be confirmed using a blood alcohol level. Sampling handling procedures, as detailed in Section 4, shall apply. A positive blood alcohol level shall be .08 grams per 100 ml of blood. If confirmatory testing results are negative all samples shall be destroyed and records of the testing expunged from the employee's file.

**Section 7. Medical Review Physician:** The Medical Review Physician shall be chosen and agreed upon between the Association and the Employer and must be a licensed physician with a knowledge of substance abuse disorders.

The Medical Review Physician shall be familiar with the characteristics of drug tests (sensitivity, specificity, and predictive value), the laboratories running the tests and the medical conditions and work exposures of the employees. The role of the Medical Review Physician will be to review and interpret the positive test results. The Medical Review Physician must examine alternate medical explanations for any positive test results. This action shall include conducting a medical interview with the affected employee, review of the employee's medical history and review of any of the relevant biomedical factors. The Medical Review Physician must review all medical records made available by the tested employee when a confirmed positive test could have resulted

from legally prescribed medication.

Section 8.     **Laboratory Results:** The laboratory will advise only the employee and the Medical Review Physician of any positive results. The results of a positive drug or alcohol test can only be released to the Employer by the Medical Review Physician once he has completed his review and analysis of the laboratory's test. The Employer will be required to keep the results confidential and it shall not be released to the general public.

Section 9.     **Testing Program Costs:** The Employer shall pay for all costs involving drug and alcohol testing as well as the expenses involved of the Medical Review Physician. The Employer shall also reimburse each employee for their time and expenses, including travel incurred, involved in the testing procedure.

Section 10.    **Rehabilitation Program:** Any employee who tests positive for illegal drugs or alcohol, shall be medically evaluated, counseled and referred for rehabilitation as recommended by the EAP Counselor (The EAP Program selected for use in conjunction with this policy will be one agreed to by the employer and the union. It is anticipated that a specific EAP/drug alcohol counselor will be selected and named in this policy.) Employees who successfully complete a rehabilitation program will be retested once every quarter for the following twenty-four (24) months. An employee may voluntarily contact the EAP Counselor and/or may voluntarily enter rehabilitation without having previously tested positive. Employees who enter a rehabilitation program on their own initiative shall not be subject to retesting as outlined above. Employees covered by this policy will be allowed to use their accrued and earned annual leave and/or sick leave for the necessary time off involved in the rehabilitation program. If an employee, subject to retesting, tests positive during the twenty-four (24) month period, they shall be subject to



disciplinary action as per the Department Rules and Regulations and/or Memorandum of Understanding. Any employee testing positive during the twenty-four (24) month period shall be re-evaluated by the E.A.P. counselor to determine if the employee requires additional counseling and/or treatment. The employee must participate in any additional rehabilitation and/or counseling as directed by the E.A.P. counselor. Subsequent to completion of additional counseling and/or treatment, the employee will again be subject to random retesting for a twenty-four (24) month period. If an employee tests positive during this subsequent twenty-four (24) month period, the employee will be subject to discipline as per the Department Rules and Regulations and/or Memorandum of Understanding.

Section 11.     **Duty assignment after treatment.** Once an employee successfully completes rehabilitation, they shall be returned to their regular duty assignment. Once treatment and any follow-up care is completed, and three (3) years have passed since the employee entered the program, the employee's personnel file shall be purged of any reference to his/her drug or alcohol problem.

Section 12.     **Right of Appeal:** The employee has the right to challenge the results of the drug or alcohol tests and any discipline imposed in the same manner that any other Employer action under the terms of this agreement is grievable.

Section 13.     **Association held Harmless:** The Employer assumes sole responsibility for the administration of this policy and shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of this collective bargaining agreement relating to drug and alcohol testing. The Association shall be held harmless for the violation of any worker rights arising from the administration of the drug and alcohol testing program.

Section 14.    **Changes in Testing Procedures:**    The parties recognize that during the life of this agreement, there may be improvements in the technology of testing procedure which provide for more accurate testing. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements.

Section 15.    **Conflict with Other Laws.**    This Article is in no way intended to supersede or waive any constitutional or other rights that the employee may be entitled to under Federal, State or local statutes.

APPROVED: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

CONSENT AND RELEASE FORM  
FOR DRUG/ALCOHOL TEST PROGRAM

I acknowledge that I have received a copy of, have been duly informed, and understand the San Rafael Fire Department's drug and alcohol testing policy and procedures. I have been provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, I have been informed on how the tests are conducted, what the test can determine and the consequence of testing positive for drug use.

I have been informed of the San Rafael Fire Department's Employee Assistance Program. I understand that if I voluntarily come forward and ask for assistance to deal with a drug or alcohol problem through the Employee Assistance Program, that I will not be disciplined by the Employer.

I understand how drug/alcohol tests are collected and further understand that these are medical tests that are conducted under the auspices of a Medical Review Physician. I understand that the Medical Review Physician will review and interpret any positive test results, and that I will have an opportunity to be interviewed by the Medical Review Physician to review my status, my medical history and any relevant biomedical factors prior to the San Rafael Fire Department being informed whether I passed or failed the test.

I understand that a confirmed positive drug or alcohol test result will result in my referral to the San Rafael Fire Department Employee Assistance Program and that I will be required to complete a rehabilitation program. No disciplinary action will be taken against me unless I refuse to take a drug/alcohol test, refuse the opportunity for rehabilitation, fail to complete a rehabilitation program successfully, or again test positive for drugs/alcohol within two (2) years of completing an

appropriate rehabilitation program. I understand that such disciplinary action, as described herein,  
may include dismissal from the San Rafael Fire Department.

\_\_\_\_\_  
Printed or Typed Name of Employee

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

# CITY OF SAN RAFAEL POLICIES AND PROCEDURES



Subject:	Firefighters Outside Employment
Resolution No.	N/A
Issue Date:	July 9, 2008
Revision Date:	N/A
Prepared By:	Leslie Loomis, HR Director
Approved By:	Ken Nordhoff, City Manager

## FIREFIGHTERS OUTSIDE EMPLOYMENT POLICY

### PURPOSE:

In order to avoid actual or perceived conflicts of interest for employees engaging in outside employment, all employees shall complete an annual outside employment notification form and submit it to the Fire Chief between January 1-15 of each calendar year. Outside employment shall be administered in accordance with the provisions of this policy.

### RESPONSIBILITY:

All City Departments, Divisions, and City Officials. Any substantial violation of the provisions contained herein respecting outside employment or use of City property or resources shall constitute sufficient grounds for disciplinary action, up to and including termination.

### REFERENCES:

Government Code 1126

### DEFINITIONS:

- A. **Outside Employment:** Any employee who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with the City for services, product(s) or benefits rendered. For purposes of this section, the definition of "Outside Employment" includes those employees who are self employed and not affiliated with the City for services, product(s) or benefits rendered.
- B. **Outside Overtime:** Any employee who performs duties or services on behalf of an outside organization, company or individual for the City of San Rafael. Such outside overtime shall be requested and scheduled directly through the employee's department so that the City may be reimbursed for the cost of wages and benefits (see section on Procedure, item H for more details).
- C. **Employee:** For the purposes of interpretation of this policy, "employee" shall mean any person holding full time or part time employment in a position in the classified service except when referred to by job title.

**POLICY:**

Employees shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his/her duties as a City officer or employee, or would tend to impair their independence of judgment or action in the performance of their official duties, functions or responsibilities.

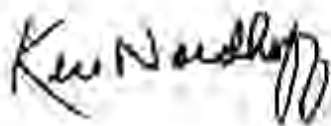
**PROCEDURE:**

- A. City employees who find it necessary or desirable to engage in employment, including self-employment, in addition to their City duties shall present, in writing, to the Fire Chief, notification of outside employment (see Attachment A). The form shall provide the following information about the employees job:
  - 1. Name and telephone number of prospective/present employer (if prior to the implementation of this policy)/self employment.
  - 2. Position to be held and anticipated start date.
  - 3. Overview of job duties.
  - 4. Extent of commitment – approximate hours per week.
- B. Those City Employees represented by the San Rafael Firefighters Association who find it necessary or desirable to engage in outside employment, including self-employment, within the City of San Rafael, with duties that are related to the San Rafael Fire Department, in addition to their City duties shall present, in writing, to the Fire Chief, a request for authorization to engage in outside employment (see Attachment B). Examples would include Fire Extinguisher and/or Systems sales, design, installation and/or maintenance and inspection, vegetation management, EMS provider. The form shall provide the following information about the job the employee desires to engage in:
  - 1. Name and telephone number of prospective/present employer (if prior to the implementation of this policy)/self employment.
  - 2. Address of work site.
  - 3. Position to be held and anticipated start date.
  - 4. Anticipated end date (if applicable).
  - 5. Detailed description of duties to be performed.
  - 6. Days/hours of work to be performed.
  - 7. Average number of hours of work per month.
- C. **Employees shall not engage in activities that (Government Code Section 1126):**
  - 1. Involves the use for private gain or advantage of City time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of one's City office or employment.
  - 2. Involves receipt or acceptance by an employee of any money or other consideration from anyone other than the City for the performance of an act which the employee would be required or expected to render in the regular course of their City employment or as a part of their duties as a City employee.

3. Involves the performance of an act in other than their capacity as a City employee, which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such employee or the department by which they are employed.
  4. Involves time demands that would render performance of the employee's duties for the City less efficient.
  5. Involves employment which reasonably may be considered a potential conflict under the joint employment provisions of the Fair Labor Standards Act, Section 522.
- D. The employee engaged in outside employment shall advise the Fire Chief if the nature, character, and/or the extent of the outside employment has changed or if the outside employment is terminated. Outside employment will be reviewed at the time of the employee's annual evaluation. Any promotion or reassignment will automatically require a review. The employee shall not use outside employment to justify any failure of his/her employment performance or failure to respond promptly to the needs of the department when summoned.
- E. Employees are prohibited from using any City equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or data bases of the City or other agencies through the use of the employee's position with the City.
- F. No employee shall allow any unauthorized person to rent, borrow or use any City equipment or resources in the course of or for the benefit of any outside employment.
- G. Outside Employment While on Disability:**  
Employees who are placed on disability leave or modified/light duty by the City of San Rafael shall adhere to the City's light duty policy and to State and federal laws.

**ATTACHMENTS:**

- Notification of Outside Employment
- Request for Authorization to Engage in Outside Employment

**APPROVED BY:**

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**Ken Nordhoff, City Manager****9-23-2008**

---

**Date**



APR 01 2008

LIEBERT CASSIDY WHITMORE

A PROFESSIONAL LAW CORPORATION

LOS ANGELES | FRESNO | SAN FRANCISCO

Exhibit E

153 TOWNSEND STREET, SUITE 520  
SAN FRANCISCO, CALIFORNIA 94107  
T: (415) 512-3000 F: (415) 856-0306

GCHAN@LCWLEGAL.COM  
(415) 512-3014

March 26, 2008

**ATTORNEY-CLIENT PRIVILEGED**

**VIA FIRST CLASS U.S. MAIL**

Leslie Loomis  
Human Resources Manager  
City of San Rafael  
P.O. Box 151560  
San Rafael, CA 94915

Re: *Firefighters' Memorandum of Understanding & Firefighters Bill of Rights*  
*Client-Matter: SA026-001*

Dear Ms. Loomis:

This is in follow-up to your e-mail exchange of March 12, 2008 with Cynthia O'Neill. You requested that we review the Memorandum of Understanding between the City of San Rafael and San Rafael Firefighters' Association, I.A.F.F., Local 1775 (hereinafter "MOU") and to provide proposed changes to the language contained in the MOU in order to comply with the Firefighters Procedural Bill of Rights (hereinafter "FBOR"). Pursuant to your request, we have reviewed the MOU to determine what language should be revised in light of the FBOR and we are available to discuss the proposed changes with you at your convenience.

The FBOR mainly governs two areas: 1) permissible interrogation and investigation processes; and 2) administrative appeals of "denials of promotion on grounds other than merit" or "punitive action", which is defined in the FBOR as "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."<sup>1</sup> This has been interpreted to mean that an employee is entitled to an administrative appeal of any action that results in loss of pay,<sup>2</sup> except in the case of a transfer. An employee is not entitled to an administrative appeal of a transfer unless it is considered punitive, meaning it is imposed for disciplinary purposes.<sup>3</sup> As such, all provisions of the MOU that touch upon disciplinary action, investigation of allegations of misconduct, interrogation procedures, grievance procedures, transfers for purposes of punishment, and appeals of disciplinary actions may be affected by the FBOR. We have reproduced those affected provisions below and have underlined our suggested revisions.

<sup>1</sup> Cal. Gov. Code § 3251(c)

<sup>2</sup> *White v. County of Sacramento* (1982) 31 Cal.3d 676, 682-684

<sup>3</sup> *Benach v. County of Los Angeles* (2007) 149 Cal.App.4<sup>th</sup> 836, 844-846

Please note that since it is generally in the City's best interest to keep the MOU as short as possible, there are portions of the MOU which are affected by the FBOR, but have been left unchanged. We have also reproduced those MOU provisions in this letter for your reference. You will note that we have included comments and recommendations with regard to these unchanged portions to ensure the City is aware of how to comply with the FBOR's provisions.

## **CHAPTER 1.0      GENERAL PROVISIONS**

### **1.4.    Management Rights**

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, the Firefighters Procedural Bill of Rights, and this Memorandum of Understanding.

*Comments:* This acknowledges the requirement that all firefighters be afforded the rights and protections delineated in the FBOR<sup>4</sup>.

14.    To hire, transfer, promote and demote employees for non-disciplinary reasons in accordance with this Memorandum of Understanding and the City's Rules and Regulations.

*Comments:* We do not recommend any changes to this provision. However, please be advised that a demotion or a transfer that results in loss of pay may entitle the firefighter to the opportunity for an administrative appeal under the FBOR.

## **CHAPTER 2.0      COMPENSATION**

### **2.2.3.   EMT I**

Employees who have completed their first year of full-time service with the San Rafael Fire Department and who have successfully completed and who maintain an EMT I certification, accredited by the State of California or State Fire Marshal's Office, shall receive an additional compensation amounting to 2.5% of their basic monthly salary. EMT I re-certification training shall be conducted on duty at times determined by the Fire Chief.

If an employee fails to maintain a valid EMT I, said employee shall lose their 2.5% incentive pay. All non-paramedic line employees hired on or after March 7, 1994 shall be required to possess and maintain a valid EMT I certification as a condition of employment.

*Comments:* We do not recommend any changes to this provision. However, please be advised that the loss of an employee's 2.5% incentive pay may entitle the firefighter to the

<sup>4</sup> *Id.* § 3260

opportunity for an administrative appeal under the FBOR.

## **CHAPTER 3.0 PROBATIONARY PERIOD**

### **3.9 Unsuccessful Passage of Promotional Probation**

An employee who does not successfully pass his/her promotional probationary period shall be reinstated to the position in which the employee held regular status prior to his/her promotion. If the employee was serving a probationary period at the time of promotion, the suspension of the prior probationary period shall be lifted, the employee shall be reinstated to probationary status in the prior classification and the remainder of that period shall be served. Provided, however, that if the cause for not passing the promotional probationary period is sufficient grounds for dismissal, the employee shall be subject to dismissal without reinstatement to the lower position. If the employee has completed the probationary period in the prior classification and the employee is subject to dismissal without reinstatement, the employee has the opportunity to appeal pursuant to the provisions of the Firefighters Procedural Bill of Rights Act and this Memorandum of Understanding.

*Comments:* The administrative appeal provisions of the FBOR only apply to firefighters who have successfully completed the probationary period. It states that "punitive action or denial of promotion on grounds other than merit shall not be undertaken by any employing department or licensing or certifying agency against any firefighter who has successfully completed the probationary period without providing the firefighter with an opportunity for administrative appeal<sup>5</sup>." Although there is no case law to help interpret this provision of the FBOR, it does seem clear that there is no right to an administrative appeal after rejection from the initial probation that one serves with an employer, or even a promotional probation if merit-based reasons are the reason for rejection from probation. Until there is case law that interprets this provision, a cautious approach would be to provide an opportunity for an administrative appeal to any employee who has been dismissed from promotional probation "for reasons other than merit" and not returned to his or her original position.

## **CHAPTER 5.0 HEALTH AND WELFARE**

### **5.7 Sick Leave**

#### **5.7.2 Sick Leave Usage**

An employee eligible for sick leave with pay will be granted such leave with approval of the department head for the following purposes...

Except that in a. and b. above an employee may not use sick leave for a work related injury and/or illness once said employee has been determined

<sup>5</sup> *Id.* § 3254(b)

permanent and stationary. The Association acknowledges the Fire Chief's right to investigate sick leave abuse.

**Comments:** Although we do not recommend any changes in the language of this provision, we would like to bring to your attention that any and all investigation and/or interrogation of an employee is subject to the rights and provisions contained in the FBOR. As a result, those who investigate sick leave usage must be briefed on proper interrogation and investigation procedures to ensure compliance with the FBOR.

## **CHAPTER 7.0      TERMS & CONDITIONS OF EMPLOYMENT**

The Fire Chief may demote an employee when the following occurs:

- A.     The employee fails to perform his/her required duties.

**Comments:** We do not recommend any changes in the language of this provision. We would, however, like to bring to your attention that any demotion, including the one described above, would likely be subject to the FBOR, and most significantly, its appeals processes which are discussed at length below.

### **7.8.3. Termination – Disciplinary Reasons**

An employee may be terminated for disciplinary reasons, as provided in Chapter Eight (8) Disciplinary Action of the Memorandum of Understanding.

**Comments:** We do not recommend any changes in the language of this provision. However, please note that termination, as it results in a loss of pay, would be considered "punitive action." This stands even if the termination was not carried out for disciplinary reasons. As such, the FBOR would likely be applicable and the terminated employee must be afforded the opportunity for an administrative appeal.

## **CHAPTER 8.0      DISCIPLINARY ACTION**

### **8.1     Authority**

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 for violating or ordering the violation of the Memorandum of Understanding.

**Comments:** We do not recommend any changes in the language of this provision. However, please note that the FBOR provides that, subject to several exceptions<sup>6</sup>, punitive action

<sup>6</sup> *Id.* § 3254(d)

or denial of promotion on grounds other than merit may be imposed for misconduct only if the investigation of the alleged misconduct is completed within one year of discovery by the "Fire Department." It is critically important to act on misconduct as soon as *any* member of the fire department becomes aware of it; the one year time clock is arguably triggered when any member of the Department learns of the misconduct. In addition, if it is determined that disciplinary action will be taken, the offending firefighter must also be served with Notice of the proposed discipline within that same one year as well. Please note that this one year statute of limitations applies only to alleged misconduct that occurred after January 1, 2008<sup>7</sup>. We recommend that all management be aware of this one year statute of limitations and its exceptions, so that the City does not lose the opportunity to discipline because of the time taken to investigate.

Another notice requirement contained in the FBOR is that the offending employee must be notified of the imposition of discipline within the following time constraints. The Notice of Discipline must occur no later than 30 days after the decision to discipline, but not less than 48 hours prior to the effective date of the discipline. Since the earliest that the decision to discipline occurs is at the *Skelly* conference, it is a good idea to issue the Notice of Discipline no later than 30 days after the *Skelly* conference. The 48-hour notice provision serves to delay the effective date of a discipline by at least two days.

#### 8.4 Appeals

Whenever punitive action is undertaken, the offending employee shall have the opportunity for an administrative appeal which will be conducted in conformance with the Administrative Procedure Act and this Memorandum of Understanding. Such appeal must be filed with the City Manager or his/her designee by the employee in writing within fourteen (14) calendar days from the date of the discipline/discharge and unless so filed the right of appeal is lost.

**Comments:** One of the key protections of the FBOR is that all firefighters must be afforded the right to an administrative appeal of any punitive action.<sup>8</sup> This language clearly states that the MOU is in conformance with the APA and does afford the right to an administrative appeal.<sup>9</sup>

#### 8.5 City Manager and Arbitration

The appellant may have the appeal heard by the City Manager or may request arbitration.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* § 3254(b)

<sup>9</sup> *Id.* § 3254.5

#### **8.5.1 Proceeding Heard by City Manager**

If an employee elects to have an appeal heard by the City Manager, the employee must state in writing that he or she waives his/her right to an appeal that conforms to the procedures of the Administrative Procedure Act.

#### **8.5.2 Arbitration**

If arbitration is requested, the arbitration will be held in conformance with the Administrative Procedure Act, California Code of Regulations, and other applicable statutes. Representatives of the City and the appellant shall meet within fourteen (14) days to select a mutually acceptable arbitrator. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the appellant and the city.

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, in which case the hearing shall be held not more than 120 days after the selection of the arbitrator.<sup>10</sup> The arbitrator shall not have the power to amend or modify either party's position;<sup>11</sup> but shall rule on the merits of each party's case as presented during the hearing. Decisions of the Arbitrator on matters properly before him/her shall be final and binding on the parties hereto, to the extent permitted by the Charter of the City.

In addition to 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 a side letter to the MOU.

**Comments:** Please note that the Administrative Procedure Act (hereinafter "APA") allows for alternative dispute resolution, namely binding arbitration, as well as non-binding arbitration and mediation. By affording the covered employees with the option to enter into binding arbitration, and following the APA procedures regarding binding arbitration, the requirement that an employee may make an administrative appeal under the APA is satisfied. However, should binding arbitration be negotiated out of the MOU, an alternative hearing method as prescribed by the APA must be included. Please do not hesitate to contact us should this be the case so we can discuss alternative administrative appeal procedures.

In addition, all arbitration procedures must be in conformance with the APA<sup>12</sup> and the

<sup>10</sup> 1 Cal. Code Regs. § 1240

<sup>11</sup> We do not understand how an arbitrator could ever modify a party's "position."

<sup>12</sup> Cal. Gov. Code §§ 11420.10-11420.30

California Code of Regulations.<sup>13</sup> Please note that the current arbitration procedures, as amended in this letter, are consistent with both the APA and the California Code of Regulations.

## **CHAPTER 9.0      GRIEVANCE PROCEDURE**

### **9.1      Definition**

A grievance is any dispute, which involves the interpretation or application of any provision of this Memorandum of Understanding, or any Fire Department policy specifically referenced herein, except issues concerning appeals of punitive action, which is governed by Chapter 8.0. Policy 1-VI-3 is specifically incorporated by reference.<sup>14</sup>

**Comments:** So as to avoid any confusion in determining when the appeals processes contained in the APA and FBOR must be followed, this clarifies that all appeals of punitive action must be undertaken in accordance with Chapter 8.0 of this MOU, and that all other grievances will be resolved in accordance with Chapter 9.0.

This concludes our comments and suggested revisions of the MOU as it pertains to the FBOR. Thank you for your attention to the above. Should you have any questions or would like to discuss this further, please do not hesitate to contact us.

Sincerely,

LIEBERT CASSIDY WHITMORE



Grace Y. Chan

CJO/GYC/ab

<sup>13</sup> 1 Cal. Code Regs. §§ 1200-1258

<sup>14</sup> We have not reviewed Policy 1-VI-3 so we do not know its relevance to FBOR issues.



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CITY OF



# San Rafael

 Mayor  
 Albert J. Bora

 Council Members:  
 Paul M. Cohen  
 Barbara Heller  
 Gary Q. Phillips  
 David J. Zappacchi

September 25, 1995

Mr. James Lydon, President  
 San Rafael Firefighters' Association  
 P.O. Box 2518  
 San Rafael, CA 94912

**Subject: Personnel Rules Letter of Agreement**

Dear Jim,

The City Council met with its labor negotiators in closed session on Monday, 9-18-95 to discuss the unresolved issue associated with the experience qualifications for the Fire Chief officer classifications, which the City and the Association have been discussing as a part of finalizing the meet and confer process on the revised Personnel Rules and Regulations. The final proposal from the City, on this issue, as well as a summary of the second, agreed "rules" issue, is as follows:

1. Experience qualifications of Fire Chief Officer classifications, excluding Fire Chief:
  - A. 3 yrs. line captain experience for promotion/appointment to any current or future chief officer class that has emergency incident commander responsibilities. 2 yrs of line captain experience for acting assignment to such a position.
  - B. No impact on the status of incumbent chief officer employees in their current positions.
  - C. Chief officer classifications, minus Fire Chief, include: Fire Division Chief, Fire Marshal, and Fire Training Officer. (Note: Fire Marshal and Fire Training Officer presently hold the rank of Battalion Chief.)
  - D. The incumbent Fire Marshal remains eligible to serve as an acting incident commander, in accordance with the 11-93 arbitrated special agreement. The training program, once completed, detailed in this special agreement serves to qualify the incumbent, as to the experience necessary, to compete for promotion to other chief officer opportunities.
2. Section 1.5 of Personnel Rules: Collective Bargaining Agreements.

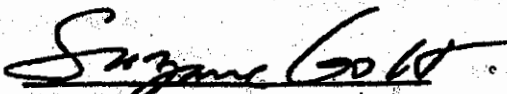
As per our tentative agreement dated 3-21-95, section 1.5 of the revised Personnel Rules will be changed to read:

Mr. James Lydon, President  
San Rafael Firefighters' Assn.  
September 25, 1995  
Page 2

These rules are not intended to supersede any provisions of an existing collective bargaining agreement. What this means is that if any section of these Rules and Regulations is covered by a provision of a collective bargaining agreement, the collective bargaining agreement shall prevail and the parallel provisions in the Rules and Regulations shall not apply to the affected Unit.

In addition to the above two items, we agreed that the experience section of each of the current chief officer job descriptions included in the Fire Department's Career Development Guide will be updated to reflect the qualifications conditions noted in # 1 of this letter.

This letter constitutes the agreement of the parties, as evidenced by their signatures below. It is intended that this letter shall be appended to the current Memorandum of Understanding (MOU) and shall be appended to future MOU's, unless modified by the meet and confer process set forth in Resolution No. 4027.



Suzanne Golt  
Assistant City Manager



James Lydon  
President, San Rafael Firefighters'  
Association

cc: Mayor and City Council  
Pamela J. Nicolai  
Robert Marcucci  
Daryl Chandler  
Dick Whitmore  
John Grey

**SIDE LETTER AGREEMENT  
BETWEEN CITY OF SAN RAFAEL AND  
SAN RAFAEL FIREFIGHTERS' ASSOCIATION, I.A.F.F., LOCAL 1775  
REGARDING ACTING CAPTAIN REQUIREMENTS**

Representatives of the City of San Rafael (City) and IAFF Local 1775 (Union) have met and conferred and reached agreement on this Side Letter of Agreement. The following provisions represent the mutual understanding and consent of both parties:

**Section 3.4.2 – Engineer Out of Class Compensation**

The incumbent Fire Engineers listed below are not required to meet the minimum qualifications of the Captain classification in order to perform in Acting Captain status:

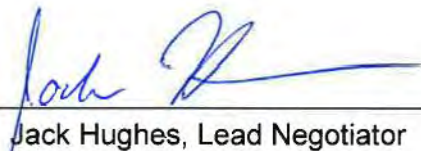
Rick Brown  
Matt Locatelli  
Cameron Mrsny  
Rich Nettleman

Arthur Phillips  
Jason Schmitt  
Dan Sutherlin

**SAN RAFAEL FIREFIGHTERS' ASSOCIATION,  
I.A.F.F., LOCAL 1775**

**CITY OF SAN RAFAEL**

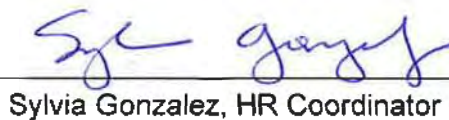
  
\_\_\_\_\_  
Andrew Rogerson, Fire Captain

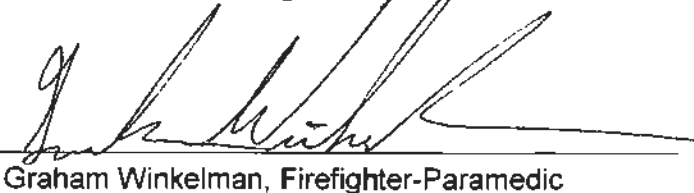
  
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Jack Hughes, Lead Negotiator  
Attorney, Liebert Cassidy Whitmore

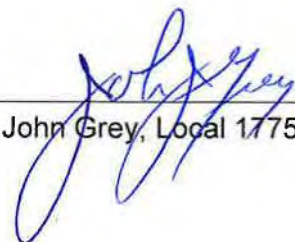
  
\_\_\_\_\_  
Kyle Hamilton, Fire Captain

  
\_\_\_\_\_  
Deirdre Dolan, Human Resources Director

  
\_\_\_\_\_  
Evan Minard, Fire Engineer

  
\_\_\_\_\_  
Sylvia Gonzalez, HR Coordinator

  
\_\_\_\_\_  
Graham Winkelman, Firefighter-Paramedic

  
\_\_\_\_\_  
John Grey, Local 1775 Attorney